



**AMC 2026**

**Session 2**

# **When Criminal & Civil Law Intersect**

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**Moderated By:**

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## About the Presenters...

**Jennifer N. Brown** is a member of the firm's Divorce & Family Law section and brings a well-versed background to the Weld Riley team. She received her undergraduate degree from the University of Wisconsin, a Master of Science from Washington University in St. Louis, and her Law degree from DePaul University College of Law in Chicago. Throughout Jennifer's years of experience, she has had four publications and presented at 10 different universities or associations, four of which were on Family Law. Jennifer has a large involvement within her community as a board member and volunteer in multiple associations. In addition to Family Law litigation, Jennifer also assists the firm's Estate Planning section with fiduciary litigation, including contested probates and guardianship disputes. Jennifer approaches each case based on the party's needs, and strongly advocates for her clients whether in mediation or litigation. Jennifer previously served as a partner at another western Wisconsin firm where she practiced in all areas of Divorce and Family Law matters.

**Jennifer C. Johnson** is an attorney specializing in family law and immigration law. In her family law practice, she represents clients in various litigation and mediation cases, including divorce, child custody, child support, spousal support, property division, and Hague Convention cases. In her immigration law practice, she counsels businesses on immigration compliance and enforcement matters, providing strategic guidance to navigate complex regulatory frameworks and mitigate enforcement risks.

**Margaret V. Kaiser** is a founding shareholder at Willow River Law, LLC in Hudson, Wisconsin. She represents clients in Social Security disability appeals, estate planning, probate, and guardianship matters. She also represents the best interests of children and vulnerable adults as a guardian ad litem. Margaret began her legal career at a New Richmond law firm where she worked on civil litigation matters and Social Security disability appeals. She then had a solo practice in Hudson where she began her guardian ad litem work. Margaret attended the University of Wisconsin-Madison for her undergraduate degree in social work, and she also graduated from the University of Wisconsin Law School.

**Angela Olson** has been practicing law in Wisconsin since 2005. She practices criminal defense and family law in Northwestern Wisconsin. She owns her own firm with offices in New Richmond and Hudson. She serves as a Guardian ad litem, mediator, and supplemental court commissioner as well. Counseling people through family change and criminal allegations require very similar skills. Family law requires listening to clients and empathizing with their struggles, but also giving honest advice, while fighting for their wishes. Advocating for people accused of crimes through the criminal justice system requires a common sense, empathetic but vigorous approach as well. Angela prides herself on providing straightforward, compassionate and thorough representation. She fights when she needs to fight; she does not fight just to fight, in all areas of her practice.

**Brad Schweiger** is a founding partner at Richter & Schweiger, LLP. His primary focus is family law litigation, is a Guardian *ad Litem* and a trained mediator. He earned a Bachelor of Science in Psychology from the University of Wisconsin – Whitewater, graduating Magna Cum Laude. He graduated from University of Illinois Chicago School of Law (formerly The John Marshall Law School) where he also studied international comparative law in Prague, Czech Republic. Brad is licensed to practice law in both Wisconsin and Illinois. He is a member of the Dane County Delivery of Legal Services Committee, Wisconsin Association of Family and Conciliation Courts, and serves on his local Zoning Board of Appeals. Brad is also the State Bar of Wisconsin Family Law Section Board of Directors. He has been a presenter on family law topics including Guardian ad Litem training, teens and tweens custody issues, and division of unique assets in divorce. When not in the office, he enjoys spending time with his family, playing soccer, hiking, and traveling.

# Intersection of Criminal & Family Law in Wisconsin

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Angela Olson Law

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Overview

Criminal and family law frequently overlap

Key areas:

1. Domestic Abuse
2. Injunctions
3. Stalking
4. GPS Tracking
5. Interference with Custody
6. Marsy's Law
7. Financial considerations
8. AODA

Slide 3 features a black sidebar on the left with white zigzag patterns at the top, a white circle, and a hatched circle at the bottom. The main content area is white with a red box for the title and a green box for the list of key areas.

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Domestic Abuse – Criminal Context


Most common point of intersection

Often charged as Disorderly Conduct with Domestic Abuse modifier

Requires qualifying relationship

Slide 4 features a black sidebar on the left with white zigzag patterns at the top, a white circle, and a hatched circle at the bottom. The main content area is white with three rounded rectangular boxes in red, gold, and green.


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Wis. Stat.  
§ 968.075  
(Domestic  
Abuse) –  
Key  
Language

“Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common

- Intentional infliction of physical pain, physical injury or illness
- Intentional impairment of physical condition
- Sexual assault
- A physical act that may cause the other person reasonably to fear imminent engagement in the above conduct



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Impact  
on Family  
Law

Often triggers  
divorce and  
placement and  
custody disputes

May involve  
children directly or  
indirectly

Nature of the act(s)  
heavily influence  
impact on family  
case



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## Wis. Stat. § 767.41(5)(am)7.

Except as provided in subd. 4.\*, if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.60 or 940.61 (1) [Substantial battery or substantial battery while subject to an injunction] or s. 940.19 [Battery], 2023 stats., or s. 940.20 (1m), [Battery while subject to an injunction] 2023 stats., or domestic abuse, as defined in s. 813.12 (1) (am), [domestic abuse injunction] pars. (am), (b), and (c) [joint legal custody presumption] do not apply and there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party. The presumption under this subdivision may be rebutted only by a preponderance of evidence of all of the following:

a. The party who committed the battery or abuse has successfully completed treatment for batterers provided through a certified treatment program or by a certified treatment provider and is not abusing alcohol or any other drug.

b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5) (am).

\*The presumption under subd. 1. does not apply if the court finds that both parties engaged in a pattern or serious incident of interspousal battery or domestic abuse but the court determines that neither party was the primary physical aggressor.

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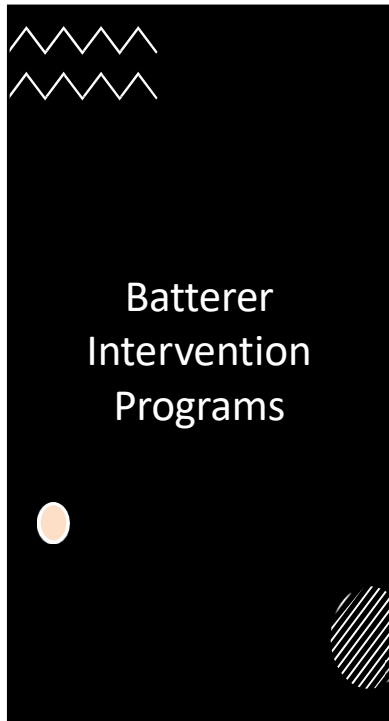
## Wis. Stat. § 767.41 – Custody & Domestic Abuse

Court must consider domestic abuse in placement and custody determinations

Rebuttable presumption against joint legal custody

Applies where there is a pattern or serious incident of abuse


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Batterer  
Intervention  
Programs

- Required to rebut custody presumption
- Must be 'certified' programs
- Ongoing debate: accessibility vs. rigor

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Batterer  
Treatment  
Program  
Resources

- Wisconsin certified programs in appendix
- Use as reference for court and client guidance

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## Domestic Abuse Evaluations



- Often required in criminal cases
- Typically based on criminal complaint
- Can be one-sided in practice
- Alternative referrals and levels of programming exist

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## Alternative & Restorative Justice Programs



- Restorative justice options available
- <https://restorativeservices.org/>
- Used for education, counseling, rehabilitation

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## Injunctions & Criminal Exposure

-  Domestic abuse, harassment, and child abuse injunctions
-  Civil proceedings with criminal implications
-  Testimony may risk self-incrimination (5th Amendment)

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## Wis. Stat. § 813.12

an adult family member or adult household member against another adult family member or adult household member    adult caregiver against an adult who is under the caregiver's care    an adult against his or her adult former spouse    an adult against an adult with whom the individual has or had a dating relationship    an adult against an adult with whom the person has a child in common

940.225 (1) (2) (3) (sexual assault)  
940.32 (stalking)  
943.01 (criminal damage to property)  
threat to engage in the conduct    1. 2. 3. 4. 5.

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Strategic Considerations in Injunctions

- Not testifying may result in injunction being granted
- Testifying may harm criminal defense
- Requires coordinated legal strategy

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Additional considerations

- Dating relationship: romantic or intimate social relationship
- Harassment Injunction
- Child Abuse Injunction
- Extending temporary restraining orders
- How they apply to temporary orders in family cases

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# STALKING

## WIS. STAT. § 940.32(2)

(2) Whoever meets all of the following criteria is guilty of a Class I felony:

(a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

(b) The actor knows or should know that at least one of the acts that constitute the course of conduct will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's acts cause the specific person to suffer serious emotional distress or induce fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

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### Elements of the Crime That the State Must Prove

Jury  
Instruction 284

1. The defendant intentionally engaged in a course of conduct directed at (name of person).
2. The course of conduct would have caused a reasonable person [to suffer serious emotional distress] [to fear bodily injury or death to (himself) (herself) (a member of (his) (her) family) (household)].
3. The defendant's acts [caused (name of person) to suffer serious emotional distress] [induced fear in (name of person) of bodily injury or death to (himself) (herself) (a member of (his) (her) family) (household)].
4. The defendant knew or should have known that at least one of the acts constituting the course of conduct would [cause (name of person) to suffer serious emotional distress] [place (name of person) in reasonable fear of bodily injury or death to (himself) (herself) (a member of (his) (her) family) (household)].

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**Global Positioning Devices  
Wis. Stat. § 940.315**

**(1)** Whoever does any of the following is guilty of a Class A misdemeanor:

**(a)** Places a global positioning device or a device equipped with global positioning technology on a vehicle owned or leased by another person without that person's consent.

**(b)** Intentionally obtains information regarding another person's movement or location generated by a global positioning device or a device equipped with global positioning technology that has been placed without that person's consent.

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**Elements of the Crime That the State Must Prove  
Jury Instruction 1283A**

1. The defendant placed [a global positioning device] [a device equipped with global positioning technology] on a vehicle owned or leased by another person.
2. The defendant placed that device without the person's consent.

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# INTERFERENCE WITH CUSTODY WIS. STAT. § 948.31

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## Affirmative Defenses to Wis. Stat. § 948.31(1)-(3)

Wis. Stat. 948.31(4)  
It is an affirmative defense if  
the action:

(a)(1) Taken by a parent (or  
authorized person) to protect  
the child from a reasonably  
believed threat of physical  
harm or sexual assault

(a)(2) Taken by a parent  
fleeing a reasonably believed  
threat of physical harm or  
sexual assault to himself or  
herself

(a)(3) Consented to by the  
other parent or  
person/agency having legal  
custody

(a)(4) Otherwise authorized  
by law

**Burden:** Defendant must  
prove by preponderance of  
the evidence.

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## Marsy's Law – Wisconsin Wis. Stat. § 950.04

Victims have constitutional rights:

- To be present
- To be heard
- To be consulted

A total of 47 rights

Witness's rights are spelled out in Wis. Stat. §950.04(2w)(a)-(h).

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## Role of Victim Counsel

Family attorney may also represent victim rights

Increases complexity, time, and cost

Victim-witness offices provide support

Clients often prefer individualized counsel

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# ALCOHOL AND DRUG ISSUES

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Wis. Stat. §  
767.41(5)(am)7

—  
**Whether a**



- party,
- a person with whom the parent of a child has a dating relationship,
- a person who resides, has resided or will reside regularly or intermittently in a proposed custodial household

**has or had a significant problem with alcohol or drug abuse.**

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**OWI  
Charges &  
Placement  
Implications**



OWI charges in Wisconsin can directly impact placement decisions and custody arrangements.

Absolute sobriety provisions may be ordered as a condition of placement.

Monitoring tools:

1. Over the counter alcohol monitors
2. BAC track
3. court-ordered monitoring
4. Soberlink remote alcohol testing
5. Ignition Interlock Device (IID)

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## Sample Provision


H. Petitioner shall not consume any alcohol for the period 24 hours prior to placement or during placement periods. If respondent has good reason to believe petitioner has violated the absolute sobriety provision, he is able to require petitioner to submit to a PBT, which he will purchase. If the results indicate any alcohol, or if petitioner refuses to submit to the PBT, respondent shall have placement immediately and until petitioner's next period of placement. This provision to submit to a PBT shall be in place for a period of two (2) years, so long as there are no positive results and/or refusals by petitioner to take during such time. However, respondent has the option to extend this period by requesting a review with the Court before the end of the two (2) years.

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- What about marijuana?



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# Conclusion

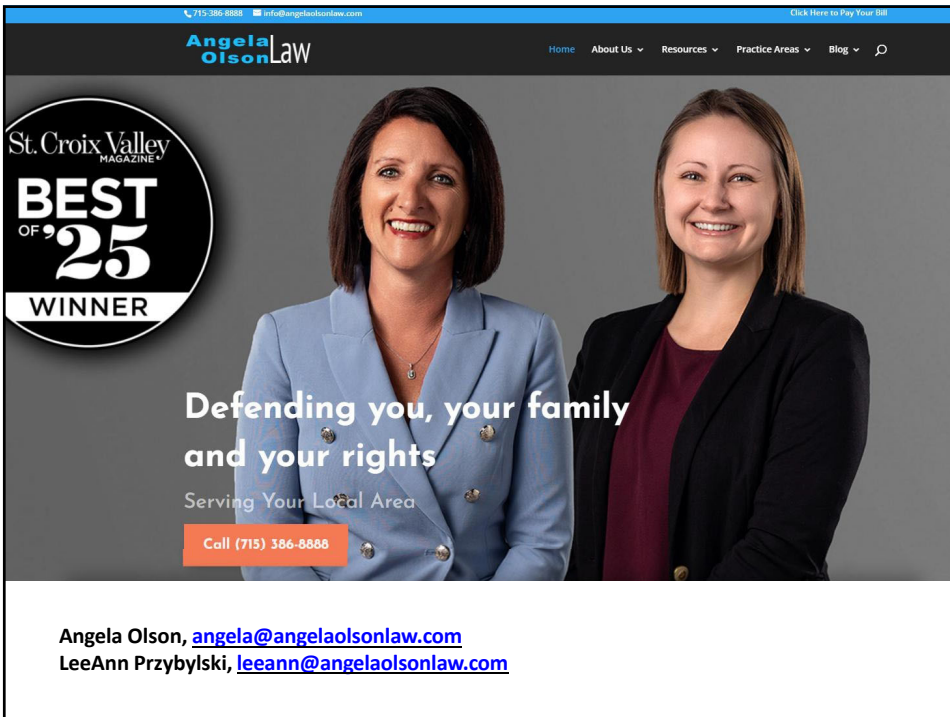



Criminal and family law are deeply intertwined

Early decisions for parties and counsel have long-term consequences

Coordination between practice areas may be required

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## THE INTERSECTION BETWEEN FAMILY LAW AND SOCIAL SECURITY

### What types of Social Security Benefits are there?

1. Retirement. Monthly payments based on your lifetime earnings. To be eligible, you must:
  - a. Be age 62 or older, and
  - b. Have worked and paid Social Security taxes for 10 years or more.
2. Disability (SSDI). Monthly payments for people who have:
  - a. A disability or blindness, and
  - b. Enough work history.
3. Survivor. Monthly payments to certain family members of someone who worked and paid Social Security taxes before they died, including:
  - a. Spouses
  - b. Ex-spouses
  - c. Children (*considered a child's benefit under 42 USC 402(d)*)
  - d. Dependent parents
4. Family. Monthly payments to certain family members of someone entitled to Retirement or Disability (NOT SSI), including:
  - a. Spouses
  - b. Ex-spouses
  - c. Children (*considered a child's benefit under 42 USC 402(d)*)
  - d. Some grandchildren
5. Supplemental Security Income (SSI). Monthly payments to people who have:
  - a. Little or no income, and
  - b. Little or no resources, and
  - c. A disability, blindness, or are age 65 or older.
6. Medicare. Health insurance for people who:
  - a. Are age 65 or older, or
  - b. Have end-stage renal disease, or
  - c. Get Disability benefits.

### What are common ways Social Security Claims/Benefits intersect with family law?

1. Child support during a party's Social Security Disability application process.
  - a. Receiving Disability benefits can take years even for the most disabled claimant.
    - i. The initial and reconsideration phases of the Social Security Disability (SSDI and SSI) process are handled by the Wisconsin Disability Determination Bureau. Approximately 40% of claimants'

benefits are approved at the initial level and approximately 15-20% are approved at the reconsideration level. Younger disabled claimants typically need to appeal two times and appear before an ALJ before receiving disability.

- ii. This can take a VERY long time. The average processing time for initial disability claims in Wisconsin for FYs 2019 through 2023 was 186.6 days. See Office of the Inspector General SSA Audit Report 072309, 07/18/2025. Two more appeals and a hearing typically occur before a claimant begins receiving benefits. This can take a year or more.

b. Issues that may arise in the family law matter during the application period:

- i. Contempt for Not Paying Child Support. If you represent the Claimant in the family law case, it may be helpful use a signed ROI from your client so you may speak with his or her Appointed Representative in the Social Security case. This person will likely be a social worker at the ADRC or an attorney. The Appointed Representative should be able to provide you with the information you need to present to the family court when making child support arguments. It is often helpful to provide medical evidence of the claimant's residual functional capacity. Additionally, you should provide proof the claim has been filed and documentation showing which level of appeal the claimant is at (initial application, request for reconsideration, or request for hearing).
- ii. Arguments for Child Support. The Court will need to decide if income should be imputed on client applying for SSDI/SSI in the family law case. Providing medical evidence of his or her residual functional capacity will assist the judge in making this determination.
- iii. May the claimant work while appealing Social Security without jeopardizing their benefits? A claimant CAN work without jeopardizing their claim for benefits. They need to be cognizant of working within their medical limitations and not earning anywhere near the presumptive amount for substantial gainful activity (\$1,690 per month in 2026).

2. Social Security benefits received by the parent and its impact on child support.

- a. Social Security disability and old-age insurance benefits under 42 USC 401 to 433 are considered "Gross income." See DCF 150.02(13)(a)3.
- b. Supplemental Security Income (SSI) under 42 USC 1381 to 1383f, including state supplemental payments under Wis. Stat. § 49.77, are not considered "Gross income". See DCF 150.02(13)(a)10.g.

3. Family benefits intended for dependent children and their impact on child support.

a. Backpay.

Upon winning one's SSDI case (not SSI), the claimant's dependents will likely receive backpay. Backpay can offset arrears, but **the burden is on the Payor to file a motion pursuant to 767.59(1r)(d).**

Wis. Stat. 767.59(1r) Credit to payer for certain payments. In an action under sub. (1c) to revise a judgment or order with respect to child support or family support, the court may grant credit to the payer against support due prior to the date on which the petition, motion, or order to show cause is served for payments made by the payer other than payments made as provided in s. 767.57 or 767.75, in any of the following circumstances:

(d) The payer proves by documentary evidence that, for a period during which unpaid support accrued, the child received benefits under [42 USC 402 \(d\)](#) based on the payer's entitlement to federal disability insurance benefits under [42 USC 401 to 433](#). Any credit granted under this paragraph shall be limited to the amount of unpaid support that accrued during the period for which the benefits under [42 USC 402 \(d\)](#) were paid.

b. Calculating Support in Primary Placement Cases: See DCF 150.03(5)(a)

DCF 150.03(5)(a) The court may consider a child's benefit under 42 USC 402(d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 and adjust a payer's child support obligation by subtracting the amount of the child's benefit received by the payee. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit. If the payer is receiving the child's benefit, the support amount is either the designated percentage applied to the payer's income or the amount of the child's benefit, whichever is greater.

**Example 1:** Two children, Dad has primary placement. Mom's income is \$2,500/month. Dad's income is \$2,000/month plus receiving \$700/month for children's benefits attributed to mom's work history.

Support calculation for Mom:  $\$2,500 \times .25 = \$625 - \$700 = \$0$

**Example 2:** Two children, Dad has primary placement. Mom's income is \$2,500/month plus receiving \$700/month for children's benefits attributed to mom's work history. Dad's income is \$2,000/month.

Support calculation for Mom:  $\$2,500 \times .25 = \$625$ . Support = \$700

c. Calculating Support in Shared Placement Cases: See DCF 150.03(5)(b)

DCF 150.03(5)(b) If the shared-placement guidelines under s. DCF 150.035(1) apply, the child's benefit is split between the parents in proportion to the amount of time the child spends with each parent. Add the proportion of the child's benefit that represents the proportion of time the child spends with the parent not receiving the benefit to the support obligation of the parent who is receiving the child's benefit. Support shall be determined as follows:

1. Determine each parent's monthly income available for child support under sub. (1). If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in s. [DCF 150.04 \(1\)](#). Include the parent's federal disability or old age insurance benefits under [42 USC 401 to 433](#) in that parent's income, but do not include the child's benefit under [42 USC 402](#) (d) in either parent's income.
2. Multiply each parent's monthly income available for child support by the designated percentage.
3. Multiply each amount determined under subd. [2.](#) by 150%.
4. Multiply the amount determined for each parent in subd. [3.](#) by the proportion of time that the child spends with the other parent.
5. Multiply the amount of the child's benefit by the proportion of the time the child spends with the parent who is not receiving the child's benefit.
6. Add the amount in subd. [5.](#) to the child support obligation calculated in subd. [4.](#) for the parent who is receiving the child's benefit.
7. Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared-placement payer. The shared-placement payer shall pay either the lesser of the amount determined in this subsection or the amount determined using the designated percentage.

**Example 1:** Two children. Alex has placement 146 days or 40% of the year. Blake has placement 219 days or 60% of the year. Alex's monthly income available for support is \$2,000. Blake's current monthly income available for support is \$2,500. Blake receives a \$1,000 per month child's benefit under 42 USC 402(d) based on Alex's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433.

Calculation:

	Alex	Blake
Monthly income available for child support	\$2,000	\$2,500
Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \$500$	$\$2,500 \times 25\% = \$625$
Amount X 150%	$\$500 \times 150\% = \$750$	$\$625 \times 150\% = \$937.50$
Amount X proportion of time spent with other parent	$\$750 \times 60\% = \$450$	$\$937.50 \times 40\% = \$375$
Child's benefit X proportion of time spent with parent not receiving the child's benefit		$\$1,000 \times 40\% = \$400$
Add last two amounts		$\$375 + \$400 = \$775$
Offset		$\$775 - \$450 = \$325$ (To be paid by Blake)

**Example 2:** Two children. Alex has placement 146 days or 40%. Blake has placement 219 days or 60%. Alex's income is \$2,000/month plus receiving \$1,000/month for children's benefits based on ???'s entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433. Blake's income is \$2,500/month.

Calculation:

	Alex	Blake
Monthly income available for child support	\$2,000	\$2,500
Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \$500$	$\$2,500 \times 25\% = \$625$
Amount X 150%	$\$500 \times 150\% = \$750$	$\$625 \times 150\% = \$937.50$
Amount X proportion of time spent with other parent	$\$750 \times 60\% = \$450$	$\$937.50 \times 40\% = \$375$

Child's benefit X proportion of time spent with parent not receiving the child's benefit	$\$1,000 \times 60\% = \$600$	
Add last two amounts	$\$600 + \$450 = \$1,050$	
Offset	<p>Amount determined in this subsection: <math>\\$1,050 - \\$375 = \\$675</math></p> <p>Amount determined using the percentage: <math>\\$500</math></p> <p>The lesser amount is used <math>\\$500</math> (To be paid by Alex)</p>	

# Special Immigrant Juvenile Status and the Intersection of Family Law and Immigration Law

A Comprehensive Guide for Family Law Practitioners

May 2026

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## SIJS Framework: Dual-Jurisdiction Process

### State Court Role

1990

Created by Congress for vulnerable immigrant children [\[1\]](#)

152,880

Unaccompanied children arrived in 2022, over 2x increase from 2019 levels

2008

TVPRA expanded eligibility to include one-parent cases [\[1\]](#)

- State juvenile courts make factual determinations on dependency, reunification viability, and best interests under state law procedures [\[1\]](#)
- Qualifying courts include family, probate, guardianship, delinquency, and dependency courts with broad state jurisdiction [\[1\]](#)
- Courts apply state law definitions of abuse, neglect, abandonment to establish non-viability of parental reunification [\[1\]](#)

### Federal Immigration Role

- USCIS reviews state court orders for federal compliance and grants DHS consent through bona fide determination process [\[1\]](#)
- EB-4 visa category with significant backlogs: 4.5-year wait for Guatemala, El Salvador, Honduras as of March 2026 [\[1\]](#)
- March 2026 Visa Bulletin advanced Final Action Dates to July 15, 2021, allowing many youth to file I-485 adjustment applications [\[1\]](#)

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## Federal SIJS Eligibility Requirements

Requirement	Description
Under 21 Years of Age	Must be under 21 at I-360 filing; age-out protection if filed before 21st birthday[1]
Unmarried Status	Unmarried at filing and throughout adjudication; 2022 rule eliminated marriage as automatic revocation basis[1]
Physical Presence	Must be physically present in U.S. at filing and during adjudication[1]
Valid Juvenile Court Order	State court order meeting federal requirements under 8 CFR § 204.11[1]
DHS Consent	Bona fide determination that primary reason for court findings was relief from parental maltreatment[1]

Source: [Special Immigrant Juvenile Status and the Intersectio...](#)

## Federal Eligibility Requirements and 2022 Regulatory Protections

- 2022 regulations codified age-out protection for petitioners who file Form I-360 before turning 21, preventing denials based solely on aging out[1]
- Regulations expanded inadmissibility waivers including simple drug possession under INA § 212(h), reflecting humanitarian purpose of SIJS[1]
- Public charge grounds removed for SIJS beneficiaries, though health, criminal, security, and fraud grounds may still apply requiring waiver strategies[1]
- Years of visa retrogression create complex inadmissibility issues requiring early coordination with immigration counsel to identify grounds and gather waiver evidence[1]

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### Dependency or Custody

Child declared dependent on court or placed under custody of state agency, department, individual, or entity appointed by court

### Reunification Not Viable

Reunification with one or both parents not viable due to abuse, neglect, abandonment, or similar basis under state law

### Best Interest Finding

Not in child's best interest to return to child's or parents' country of nationality or last habitual residence

## Three Required Judicial Determinations: The Predicate Order

State courts must make three specific determinations as conclusions of law: dependency/custody, non-viability of reunification, and best interests of the child [1]

- Placement location is not controlling: child can be in foster care, guardianship, custody with non-abusive parent, or kinship care arrangements [1]
- Non-viability of reunification does not require termination of parental rights or complete cessation of contact; visitation can occur while reunification remains impossible [1]
- Best interest determination considers factors affecting child's well-being in U.S. versus home country, citing state statutory best interest factors [1]
- 2008 TVPRA clarified one-parent cases are permissible: child residing with non-offending parent while unable to reunify with other parent qualifies for SIJS [1]

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# Drafting the Predicate Order: Best Practices for Practitioners

Precision in drafting predicate orders is critical to satisfy both state law requirements and federal USCIS standards for approval<sup>[1]</sup>

## Clear Jurisdictional Statement

Cite specific state statute or court rule establishing court's authority<sup>[1]</sup>

## Three Determinations as Conclusions of Law

Structure order with required findings stated as legal conclusions<sup>[1]</sup>

## Avoid Alternative Findings

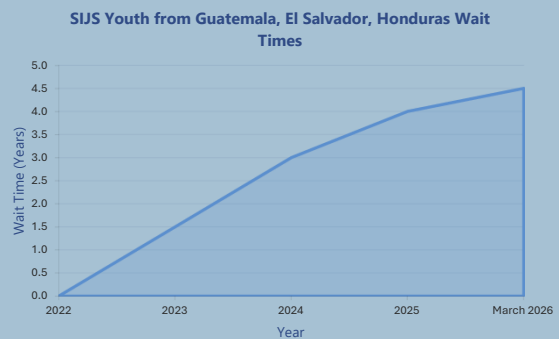
Specify which basis applies rather than "father abandoned or neglected child"<sup>[1]</sup>

- Provide precise factual recitations avoiding absolutes like "always" or "never" unless client is certain, as USCIS may reject orders contradicted by immigration records<sup>[1]</sup>
- Explicitly state which state law definition of abuse, neglect, or abandonment applies, describe specific harms by which parent, and explain how harms meet definition<sup>[1]</sup>
- Cite relevant state statutory best interest factors and discuss why no other relatives in home country could appropriately care for child<sup>[1]</sup>
- Demonstrate court made informed decision by following state procedures and noting adherence; avoid generic findings that appear formulaic or insufficient<sup>[1]</sup>

5

# Federal Application Process and Recent Policy Developments

- Three stages: state court predicate order, USCIS I-360 petition with DHS consent, and I-485 adjustment when visa available<sup>[1]</sup>
- March 2022 USCIS implemented automatic deferred action providing deportation protection and work authorization for SIJS youth<sup>[1]</sup>
- June 2025 USCIS terminated automatic deferred action; court stayed rescission; April 2026 memo again terminated policy effective May 2026<sup>[1]</sup>
- March 2026 Visa Bulletin advancement allows youth with priority dates before January 2023 to file adjustment applications<sup>[1]</sup>



Source: [Special Immigrant Juvenile Status and the Intersectio...](#)

6

# Marriage-Based Immigration, Divorce, and VAWA Self-Petitions

Divorce before removing conditions requires I-751 waiver proving good-faith marriage, while VAWA provides independent pathway for abuse victims [2]

## Marriage-Based Immigration

<2 years

Conditional green cards issued for marriages under 2 years old at approval [2]

12-18 months

Processing time for divorce-related I-751 waivers with enhanced scrutiny [2]

- Form I-751 filed within 90-day window before conditional card expires; joint filing required with U.S. citizen or LPR spouse [2]
- Divorce forces independent filing using waiver demonstrating good-faith marriage despite dissolution [2]
- Evidence includes joint financial records, housing documents, photographs, birth certificates, and affidavits from friends or relatives [2]
- Failure to file I-751 by deadline triggers removal proceedings; denial can result in deportation [2]

## VAWA Self-Petitions

50,900

VAWA petitions filed in FY2023, 56% increase from FY2022 [2]

- Violence Against Women Act allows abused spouses and children to self-petition without abuser's knowledge or consent [2]
- Battery or extreme cruelty includes physical violence, threats, psychological abuse, financial control, and isolation tactics [2]
- Self-petition requires Form I-360 with police reports, medical records, restraining orders, affidavits, and proof of relationship [2]
- Family law attorneys document abuse through protection orders, custody proceedings, and divorce records as evidence [2]

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# U Visas and T Visas: Crime Victim and Trafficking Survivor Protections

## U Visas

350,000+

petitions on waiting list, 35x the annual cap [2]

Bona Fide

determination grants work authorization and deportation protection [2]

- Temporary status and work authorization for up to four years [2]
- Requires Form I-918 Supplement B from law enforcement agencies [2]
- Family court judges can sign U visa certifications [2]
- No arrest or conviction required for qualification [2]

## T Visas

3 Years

Adjustment to permanent residence after 3 years on U or T status [2]

- Protects victims of severe trafficking through force or coercion [2]
- April 2024 DHS rule streamlined application process [2]
- Derivative benefits for spouses, children, parents, and siblings under 18 [2]
- Retaliation danger allows family members as derivatives regardless of age [2]

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## Custody Disputes Involving Immigration Status

**November 2021 DHS policy:** immigration status should not be determinative factor in custody cases [\[2\]](#)

Immigration officers access protection order databases showing **all orders from last 5 years** [\[2\]](#)

**14th Amendment** guarantees undocumented parents due process and custody rights [\[2\]](#)

- Courts apply best interests standard evaluating parental fitness, stability, and relationship quality [\[2\]](#)
- Deportation risk may affect stability assessment, but status alone cannot determine custody outcomes [\[2\]](#)
- Protection order violations can trigger deportation for green card holders or denial of citizenship [\[2\]](#)

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## International Child Abduction and the Hague Convention

The 1980 Hague Convention requires prompt return of wrongfully removed or retained children to habitual residence country for custody determination [\[2\]](#)

- 103 countries are parties; custody disputes resolved by courts in child's habitual residence country [\[2\]](#)
- Wrongful removal when parent takes child abroad violating custody rights; retention when failing to return after visit [\[2\]](#)
- Parent must demonstrate habitual residence, wrongful removal or retention, and exercised custody rights at removal time [\[2\]](#)
- Applications within one year more enforceable; return decision independent of immigration status or nationality [\[2\]](#)

### Establish Jurisdiction

Prove child's habitual residence in Convention country before removal or retention occurred



### Show Wrongful Act

Demonstrate removal or retention violated custody rights under habitual residence country's laws



### File Petition

Submit application to Central Authority (U.S. Office of Children's Issues) for child's return



### Court Decision

Court orders return unless narrow Article 13(b) defenses apply for grave risk or mature child objection

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## References

[1] Special Immigrant Juvenile Status and the Intersectio...

[2] Special Immigrant Juvenile Status and the Intersectio...



# INTERSECTION OF FAMILY LAW AND ESTATE PLANNING / FARMS

JENNIFER N. BROWN  
ATTORNEY/SHAREHOLDER

 WELD RILEY<sub>SC</sub>

1



FAMILY LAW AND ESTATE PLANNING  
CONSIDERATIONS

2

## INTERSECTION OF FAMILY LAW AND ESTATE PLANNING

*Potential Client (PC) comes to your office inquiring about how to protect assets in the event of divorce, and how to make sure that she can leave assets to her chosen family and friends at the time of her death.*

*PC has substantial assets – some attained during her career in tech and some gifted or inherited from family.*

*This is PC's second marriage.*

*How can you assist PC and help her meet her goals?*

3

## MARITAL PROPERTY

- Marital presumption: Sec. 767.61(3), Wis. Stats.
  - a. Start with presumption that all property owned by parties is subject to equal division in event of divorce
  - b. Can deviate from equal division after consideration the factors set forth in Sec. 767.61(3), Wis. Stats.
- Marital Property Agreements (“MPA”) under Ch. 766, Wis. Stats. can be a tool for deviating from presumption of equal division and estate planning

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## MPAs & ESTATE PLANNING

- Marital Property Agreements (MPA)
  - Classify property as “individual” or “marital”
  - If “individual”, not subject to division in event of divorce
  - Good estate planning tool for:
    - Protecting premarital assets / family farms
    - Clearly setting forth property that may have been or inherited or gifted
    - Individuals with business assets or debt

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## MPAs & ESTATE PLANNING, cont.

- Case law:
  - *Button v. Button*, 131 Wis.2d 84, 388 N.W.2d 546 (1986)
  - *To be binding.....*
    - Must be fair and equitable when entered into and at time of divorce
    - Each party must make reasonable financial disclosure
    - Each party must enter agreement voluntarily

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## MPAs & ESTATE PLANNING, cont.

- Titling property – It matters!
  - If titled as “marital property” each spouse has a 50% interest. (Sec. 766.60, Wis. Stats.)
  - If titled as “joint tenants” or “tenants in common” the property is marital with a 50% interest
  - If titled as “Marital property with rights of survivorship”, then decedent’s 50% share transfers to survivor (Sec. 766.60(5), Wis. Stats.)
    - This will prohibit PC’s share from transferring as she wishes

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## MPAs & ESTATE PLANNING, cont.

- Draft an MPA for PC
  - Attach financial disclosure statement and supporting documentation
  - Draft reasonable terms which are fair and equitable when drafted and likely to be at time of divorce
  - Enter into agreement voluntarily and freely
  - Couple MPA with estate planning documents (will, trust, transfer on death) to ensure assets pass as intended at death
  - Title assets to meet PC’s needs

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## FAMILY LAW AND FARM CONSIDERATIONS

9

### INTERSECTION OF FAMILY LAW AND FARMS

*Potential Client (PC) comes to your office for a divorce consult. Parties have been married for 25 years. PC is 55 years old and Husband is 57 years old. PC works as a librarian at local school, earning approximately \$30,000 annually.*

*PC states that Husband owns Funny Farm, LLC. There are 1200 acres of farmland. They grow soybeans and corn, and they sell to various corporations. She has not been involved in the business and does not know the assets or income of the farm.*

*PC says that Husband told her that she will be left destitute in the event of divorce because the farm shows a loss each tax year. She is unsure how she will be able to support herself if the farm consistently loses money. There is no MPA and the farm is not inherited or gifted.*

*What are the issues in this case and how can you help PC?*

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## FAMILY LAW AND FARM CONSIDERATIONS

- Type of Farm
  - Productive
    - A working farm
      - Asset considerations (land, machinery, crops)
      - Income producing
  - Hobby
    - Usually small and for pleasure
      - Asset consideration in event divorce

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## FAMILY LAW AND FARM CONSIDERATIONS

- Productive Farm Considerations in a Divorce:
  - Property Division
    - Real property appraisals
    - Personal property appraisals
    - Include crops in a storage/silo (valuable!)
  - Maintenance and Child Support
    - Income generated from the farm
    - Engage professionals to assist with tax returns
      - Retained earnings?
      - Depreciation?

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## CONCLUSION

- Family law is complex!!
- Must understand marital property law and what happens with and without a MPA in the event of divorce or for estate planning purposes
- Must understand complex financial issues on a tax return and how to find (or reduce!) income
- Work with professionals in their respective areas
  - Estate planning/real estate attorneys
  - Appraisers
  - Accountants
  - Forensic accounts

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