

2025 WISCONSIN EQUAL JUSTICE CONFERENCE

July 31 – August 1, 2025

Thursday, July 31, 2025

8:30 a.m. Social Security Disability Overview – Part 1

- Primary types
- The “Five Steps”
- Claim process

Dana W. Duncan, Duncan Disability Law, S.C., Nekoosa

9:20 a.m. Representing Trans Clients

Monika August Allis, Legal Aid Society of Milwaukee, Milwaukee

Evan F. McCarthy, Legal Action of Wisconsin, Inc., Milwaukee

10:25 a.m. Break

10:40 a.m. SPD: Civil Commitments

Solomon H. Gatton, Wisconsin State Public Defender's Office, Sheboygan

11:40 a.m. Immigration Spectrum: Issues in Representing Minors, Survivors and Defendants

Kate Frigo Drury, Kate Drury Law LLC, Waupaca

Amanda K. Gennerman, Pines Bach LLP, Madison

Natalia A. Lucak, Community Immigration Law Center, Madison

12:40 p.m. Thursday Program Concludes

Friday, August 1, 2025

8:30 a.m. Social Security Disability Overview – Part 2

- Completing an application
- Supporting forms
- Appeals
- Continuing Disability Reviews

Dana W. Duncan, Duncan Disability Law, S.C., Nekoosa

9:30 a.m. Trans Rights: Name and Gender Marker Changes

Monika August Allis, Legal Aid Society of Milwaukee, Milwaukee

Kylan F. Bartel, Legal Action of Wisconsin, Inc., Madison

Evan F. McCarthy, Legal Action of Wisconsin, Inc., Milwaukee

10:25 a.m. Break

10:40 a.m. Decolonizing Delinquencies in Wisconsin's Juvenile Legal System

Alaina K. Fahley, Wisconsin State Public Defender's Office, Appleton

Breanna K. Magallones, Wisconsin State Public Defender's Office, Rhinelander

11:40 a.m. Immigration Bond: Preparing for and Representing Detained Immigrants

Aissa I. Olivarez, Olivarez Law Firm LLC, Madison

12:40 p.m. Friday Program Concludes

Organized by: **State Bar of Wisconsin Legal Assistance Committee**



STATE BAR OF WISCONSIN

ABOUT THE PRESENTERS

Monika August Allis

Legal Aid Society of Milwaukee
Milwaukee

Monika August Allis is an attorney, advocate, and educator currently practicing Child Welfare Law as a guardian ad litem in Milwaukee County. She has a master's degree in social work and served as a case manager for the Division of Milwaukee Child Protective Services for 7 years before entering law school. Monika has been a passionate advocate for LGBTQ justice for over 20 years. She is the owner of Allis Consulting LLC and has delivered social justice-focused trainings across the country.

Kylan F. Bartel

Legal Action of Wisconsin, Inc.
Madison

Kylan F. Bartel is a law clerk with Legal Action of Wisconsin. He received a B.A. in Sociology from the University of Chicago in 2025. Following his internship with Legal Action of Wisconsin, Kylan plans to work for a legal nonprofit and later attend law school to pursue a career in public interest law.

Kate Frigo Drury

Kate Drury Law LLC
Waupaca

Kate Drury is a lawyer focused on the intersection of criminal defense and immigration, providing holistic representation to noncitizen clients. She represents individuals in detained removal cases in federal immigration court through her work at the Community Immigration Law Center in Madison. She also owns Kate Drury Law, LLC, a statewide criminal defense firm based in Waupaca.

Previously, Kate spent 13 years with the Wisconsin State Public Defender's Office, where she held multiple roles including staff attorney, regional manager, and immigration practice coordinator. She has extensive experience in providing *Padilla* advisals to attorneys and, as a litigator, has tried over 30 cases to verdict. In 2024, she was named one of *Wisconsin Lawyer*™ magazine's Women to Watch.

Dana W. Duncan

Duncan Disability Law, S.C.
Nekoosa

Dana W. Duncan is the President of Duncan Disability Law, S.C., a firm he established in 2011, which focuses primarily on Social Security disability law. A cum laude graduate of Beloit College, Dana earned his Juris Doctor from Marquette University Law School. He is an active member of several national legal organizations, including the National Organization of Social Security Claimants' Representatives (NOSSCR), the National Association of Disability Representatives (NADR), and Advocates, Counselors & Representatives for the Disabled (ACRD). He also serves as Chair of the Social Security Section of the Federal Bar Association.

Alaina K. Fahley

Wisconsin State Public
Defender's Office
Appleton

Alaina Fahley has served with the Wisconsin State Public Defender's Office since 2013. Based in the Appleton trial office, she serves youth and parents in counties throughout Northeastern Wisconsin, with a focus on youth defense and CHIPS and TPR litigation. Alaina earned both her B.A. in Social Welfare and Justice and her J.D. from Marquette University. She regularly trains attorneys statewide, has presented at major legal conferences, and authored articles on child welfare issues. Alaina is a 2024 Ambassador for Racial Justice through the Gault Center and Georgetown Juvenile Justice Initiative and has served as an editor of the State Bar of Wisconsin PINNACLE® Juvenile Law Handbook.

Solomon H. Gatton

Wisconsin State Public
Defender's Office
Sheboygan

Solomon Gatton is an Assistant Public Defender practicing out of the Sheboygan Trial Office. He is one of two Mental Health Practice Coordinators for the Wisconsin Public Defender Agency. Solomon has extensive experience handling predominantly mental health cases, including competency, NGI, Chapter 51 Commitments, and Chapter 54/55 Guardianship and Protective Placement. Solomon takes a holistic approach and is attuned to the challenges faced by clients and defense attorneys in these matters.

Continued →

ABOUT THE PRESENTERS

Amanda K. Gennerman

Pines Bach LLP
Madison

Amanda K. Gennerman has practiced immigration law exclusively since 2004. Before joining Pines Bach, LLP as a Partner, she founded Gennerman Law Group in Madison, Wisconsin. Amanda's practice focuses on multiple areas of immigration law, including family-based petitions, consular processing, humanitarian petitions, naturalization, and removal defense. She is a co-founder, board member, and volunteer of the Community Immigration Law Center (CILC) in Madison. In 2023, she co-founded Project Immigration Justice for Palestinians.

She frequently presents on immigration topics, including at the AILA Annual Conference and State Bar of Wisconsin events. Her writing appears in the U Visa Manual by the Immigrant Legal Resource Center. Amanda has received multiple honors, including Wisconsin Rising Star Attorney and the WI/AILA Pro Bono Champion award. She is a member of ASISTA and AILA, currently serving as Treasurer of the WI/AILA Chapter.

Natalia A. Lucak

Community Immigration Law
Center
Madison

Natalia Lucak is a Supervising Attorney at the Community Immigration Law Center based in Madison, Wisconsin. She received her undergraduate degree in European History from Barnard College and her law degree from the University of Maryland Francis King Carey School of Law. Over the last twelve years, Natalia has worked as an immigration attorney at non-profit organizations that provide direct legal services to immigrants in New York, New York, and Madison, Wisconsin. She is a member of the American Immigration Lawyers Association and the State Bars of New York, New Jersey, and Wisconsin.

Breanna K. Magallones

Wisconsin State Public
Defender's Office
Rhineland

Breanna Magallones is an Assistant State Public Defender in the Rhineland Office. She graduated from Grand Valley State University and attended the University of Wisconsin-Madison for law school. Following law school, she practiced civil litigation at Burnes and Libman in Chicago before transitioning to criminal defense in northern Wisconsin.

Evan F. McCarthy

Legal Action of Wisconsin, Inc.
Milwaukee

Evan F. McCarthy is an attorney with Legal Action of Wisconsin's Student Legal Aid Project. He received his undergraduate degree in Political Science and his law degree from the University of Iowa, and he has practiced in Wisconsin since 2019. He has served on the State Bar of Wisconsin's Public Interest Law Section Board since 2023 and is also a member of both the Milwaukee County Bar Association and the State Bar of Wisconsin.

Aissa I. Olivarez

Olivarez Law Firm LLC
Madison

Aissa Olivarez is the Legal Director at the Community Immigration Law Center (CILC) and a Junior Partner at Eastbridge Law Group LLP. She earned her B.A. in Government from the University of Texas at Austin and her J.D. from the University of Wisconsin Law School in 2016. Before joining CILC, she represented unaccompanied minors in removal proceedings at ProBAR in Harlingen, Texas.

During law school, Aissa participated in the Immigrant Justice Clinic and the Defenders Project, was an active leader in the Student Bar Association, and served as president of the Latinx Law Student Association. She earned multiple awards including the Barbara B. Crabb Prize and the Children's Justice Project Fellowship. She received the 2019 Ilda C. Thomas Award from Centro Hispano and was named one of Wisconsin's Most Influential Latinos in 2021.

DAY ONE

OVERVIEW OF SOCIAL SECURITY DISABILITY

- **THE HISTORY OF SOCIAL SECURITY DISABILITY,**
- **THE TYPES OF PROGRAMS,**
- **THE FIVE STEPS TO DISABILITY, AND**
- **THE APPEAL PROCESS**

A Brief History of the Social Security Disability Program

1935: The Social Security Act

The Social Security Act was signed into law by President Franklin D. Roosevelt during the Great Depression. Its original goal was to provide financial help to retired workers, not people with disabilities.

1950s: First Steps Toward Disability Insurance

As the U.S. economy and medical system advanced, more people began living with long-term disabilities. Public pressure grew to provide support for workers who could no longer work because of serious health problems.

- In **1956**, Congress created the **Social Security Disability Insurance (SSDI)** program.
- At first, it only helped workers aged **50 to 64** who had permanent, total disabilities.

Some Occupations Exempt from Social Security Disability in 1956:

- Railroad Workers
- Domestic Workers and Farmworkers (Partially)

1960: Expansion to All Disabled Workers

Congress removed the age requirement, allowing **disabled workers of any age** to apply if they had enough work history.

- Benefits were still only for people with **long-term or permanent disabilities**.
- The program was designed to support people who couldn't do any work at all.

1972: Supplemental Security Income (SSI)

A separate program, **Supplemental Security Income (SSI)**, was created to help **low-income people** who are blind, disabled, or over age 65—even if they never worked.

- Unlike SSDI, SSI is based on financial need, not work history.
- Both programs are managed by the **Social Security Administration (SSA)**.

1980s: Crackdown and Reforms

In the early 1980s, the SSA began reviewing many disability cases and **cutting people off benefits**, even if their health hadn't changed. This caused a public outcry.

- Congress passed laws to make the review process **fairer and more consistent**.
- It became harder to remove someone from the program without medical evidence of improvement.

1990s–2000s: Better Rules and Work Incentives

SSA created new rules to help make decisions more consistent across the country. The agency also added **work incentive programs** to help people with disabilities return to work if they could, without immediately losing their benefits.

- Programs like **Ticket to Work** and **Trial Work Period** let people test their ability to work again.

Today

SSDI and SSI remain key parts of the U.S. safety net. Millions of Americans with severe physical or mental conditions rely on these programs for monthly income and access to **Medicare or Medicaid**.

The system continues to evolve, with efforts to reduce wait times, improve fairness, and use modern medical and job data to make decisions.

How Social Security Disability Insurance Works

Think of **Social Security Disability Insurance (SSDI)** like an insurance policy. To qualify, a person must have:

- **Paid into the system** by working and paying Social Security taxes, and
- Done so **recently enough** to keep their coverage active.

If someone stops working, their coverage will eventually end—just like private insurance stops if you stop paying premiums.

What Counts as Paying In?

Social Security tracks your work using “quarters of coverage” (QCs). You can earn up to 4 QCs per year, depending on how much you earn. The dollar amount needed for one QC goes up a little each year. For example, in 2000, earning \$3,120 in a year gave you 4 QCs.

- Before 1978, you could only earn one QC per quarter (Jan–Mar, Apr–Jun, etc.), no matter how much you made.
 - Since 1978, all that matters is your total annual earnings.
-

When Are You Covered?

To be “fully insured,” most people need to have one QC for each year after they turned 21, up to the year before they became disabled. However, no one needs more than 40 QCs.

To have “disability insured status,” most adults (age 31 or older) need 20 QCs from the last 40 quarters (about 5 out of the past 10 years). This is called the 20/40 rule.

If someone hasn’t worked in several years, their insured status will expire. They’ll only qualify for disability if they can show they were disabled before their coverage ended (called the date last insured).

What About Younger Workers?

Younger workers don't need as many QCs:

- Ages 24–30: Need QCs in about half the quarters between age 21 and the time they became disabled.
 - Under 24: Need 6 QCs in the last 3 years (12 quarters) before becoming disabled.
-

Important Notes

- A QC is counted from the start of the quarter in which it's earned.
- Sometimes a person is fully insured but not disability insured, or vice versa—so both requirements must be checked.
- You must carefully review a claimant's earnings record to see if they meet these rules.

What Is SSI?

Supplemental Security Income (SSI) is a federal program that helps people who are **disabled, blind, or age 65 or older** and have **little or no income or assets**. Unlike Social Security Disability Insurance (SSDI), SSI is paid from **general tax revenues**, not from the Social Security trust fund.

Many states add their own money to boost the federal SSI payment, so the **monthly benefit can vary depending on where you live**.

Who Can Get SSI?

To qualify for SSI, you must:

- Be **disabled** under the same rules used for SSDI (or be blind or 65+),
 - Have **low income** and **few assets**,
 - Be a **U.S. citizen** (or fall under a few exceptions),
 - And **submit an application**.
-

Income and Asset Limits

There are strict **income and asset rules** for SSI:

- You **can't have more than \$2,000** in assets if you're single, or **\$3,000** if you're married.
- Some things don't count, like your **home** or **one car**, if used for work or medical care.

For income:

- Not all income counts. SSI ignores some earned and unearned income to encourage work.
 - If you're a child or live with a spouse, part of their income may count too. This is called **"deeming."**
-

Can You Get Both SSI and SSDI?

Yes—if **your SSDI benefits are low**, SSI can make up the difference. The total from both programs usually won't be more than the SSI benefit amount plus \$20.

Even if you don't qualify for regular SSI, you **might get it during the 5-month SSDI waiting period**, if your income and assets are low enough.

Understanding the Five-Step Disability Evaluation Process

The Social Security Administration (SSA) employs a five-step process to determine if an individual is disabled and qualifies for benefits. To be found disabled, the person must meet each of the steps below:

Step 1: Are You Working Too Much?

If you're working and earning above a certain amount, called **Substantial Gainful Activity (SGA)**, you will not be considered disabled, no matter how serious your condition is.

- SGA means you're doing work that is both meaningful and done for pay.
- Even illegal or part-time work can count.
- If you're self-employed or work for family, SSA looks beyond your paycheck to see how much you're really contributing.
- SSA allows deductions for things like medication or special transportation related to your disability, which may reduce your countable earnings.
- The SGA income limits change each year. You can check the current amount at www.ssa.gov/cola.

Step 2: Is Your Condition Severe?

Your condition must be medically proven and serious enough to limit your ability to work. SSA calls this a "**severe impairment**."

- Minor or short-term conditions usually don't qualify.
- If your condition reduces your ability to do basic tasks, it is usually considered severe.
- SSA must also consider how multiple conditions together affect your ability to work—even if each one alone seems minor.

Duration Requirement

To qualify, your condition must last—or be expected to last—for **at least 12 months**, or be expected to result in death.

- SSA doesn't allow you to combine unrelated short-term problems to meet the 12-month rule.
- If your condition is expected to improve quickly, your claim might be denied—unless time proves otherwise.

Step 3: Does Your Condition Match SSA's List?

SSA has a **Listing of Impairments**—a detailed list of health problems that automatically qualify as disabilities if you meet the criteria.

- If your condition “meets” or is medically similar to a listed condition, you're considered disabled without needing to go further.
- You can also qualify if you have multiple conditions that together equal the severity of one on the list.
- A medical expert must confirm that your condition meets or equals a listing.

Step 4: Can You Do Past Work?

If your condition doesn't meet a listing, SSA checks whether you can still do your **past relevant work**—any job you've done in the last 15 years that was substantial and lasted long enough to learn it.

- If you can still do any of your old jobs, even part-time, SSA will say you're not disabled.
- SSA compares your current abilities (called **Residual Functional Capacity**) with what your old job required.
- It doesn't matter if that job no longer exists—if you can still do it, you may be denied.

Step 5: Can You Do Other Work?

If you can't do your past work, SSA looks at whether you can adjust to **other jobs** in the national economy.

- SSA considers your age, education, and work experience.
- The **older** you are, the **less likely** SSA thinks you can switch to a new job.
- SSA uses a set of charts called the **Medical-Vocational Guidelines** (or “the grids”) to help make this decision.

This five-step test is the foundation of Social Security disability decisions. Learning the key terms and concepts—like SGA, RFC, and “severe impairment”—is essential to understanding how disability claims are evaluated.


1. Initial Application

You can apply online, by phone, or in person at a Social Security office. They check if you worked enough and if your medical condition stops you from working.

 About 70% of applications are denied.


2. Reconsideration

You have 60 days to appeal after a denial. A new reviewer looks at your case, including any new evidence.

 Most reconsiderations are still denied—but don't give up!

3. Hearing with an Administrative Law Judge (ALJ)

You request a hearing within 60 days of a second denial. You and your lawyer explain your case to a judge. Medical experts or job experts may be called to testify.

 This is where many people finally win.

4. Appeals Council Review

If the judge denies your claim, you can appeal again within 60 days. The Appeals Council is looking for errors in the judge's decision.

They can:

- Agree with the judge
- Send your case back for another hearing
- Or rarely, approve your claim themselves

5. Federal Court

If Social Security still denies you, your last option is to file a lawsuit in U.S. District Court—within 60 days.


A federal judge reviews whether Social Security followed the law.


 No new evidence is allowed.


The judge can:


- Agree with the denial
- Send your case back for a new hearing (called a remand)
- Or in rare cases, award benefits

Important Reminders






 Act fast: You usually have 60 days to appeal each step.

 A disability lawyer improves your chances.

 Keep medical records and reports up to date.

 Be patient—it can take 1–3 years or more, but persistence pays off.

☀ Social Security Disability Appeal Process Chart

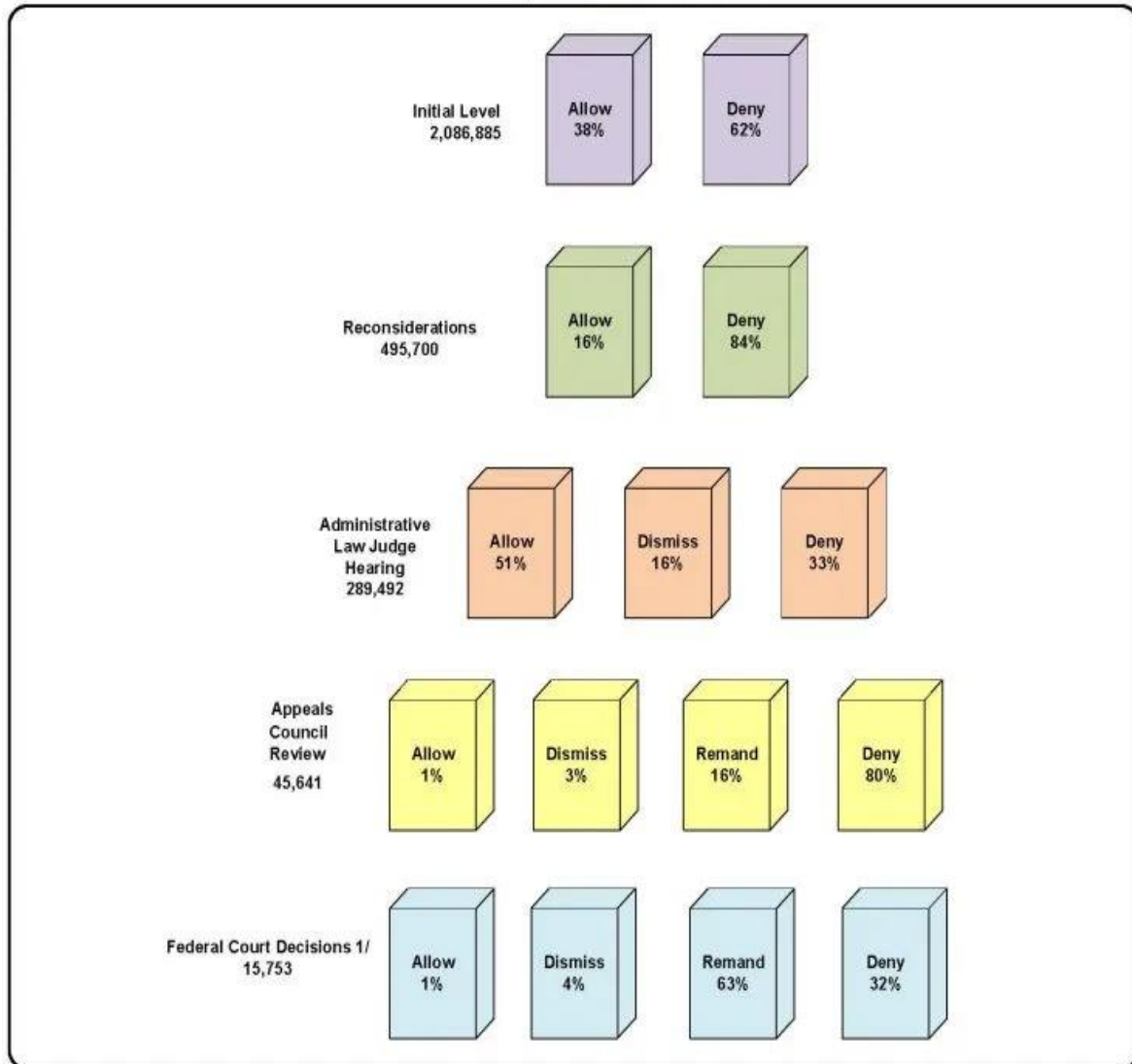
Step	What Happens	Key Details	Chance of Approval
 1. Initial Application	You apply for benefits online, by phone, or in person. SSA checks work history & medical condition.	Takes 3–6 months. Most claims are denied.	✗ ~30% approved
 2. Reconsideration	Request a second review within 60 days. A different reviewer looks at your file and any new evidence.	No hearing. Usually takes 1–3 months.	✗ ~15% approved
 3. Hearing with an ALJ	You attend a hearing with a judge (in person, phone, or video). Bring a lawyer and medical/work experts if possible.	You must appeal within 60 days. Takes 12–24 months to schedule.	✓ ~45% approved
 4. Appeals Council	You request a review of the judge's decision. They look for legal or factual errors.	Appeal within 60 days. They can approve, deny, or send it back.	✗ Most are denied or sent back
 5. Federal Court	File a lawsuit in U.S. District Court. A judge reviews your case but no new evidence is allowed.	Must file within 60 days. Process takes 1–2 years.	🌀 Decision may be upheld, reversed, or remanded

💡 Tips for Success

- ✓ **Appeal each step**—don't stop at the first denial
- 👤 **Hire a disability lawyer** to guide you
- 📅 **Watch deadlines**—you usually have **60 days** to appeal
- 📁 **Keep detailed medical records** and attend all appointments
- ⌚ **Be patient**—many cases take **years**, but persistence often wins

FISCAL YEAR 2024 WORKLOAD DATA: DISABILITY DECISIONS*

Continuing Disability Redeterminations (CDRs) are not included
except for Federal Court Level



*Includes Title II, Title XVI, and concurrent initial disability determinations and appeals decisions issued in FY 2024, regardless of the year in which the initial claim was filed, and regardless of whether the claimant ever received benefits (in a small number of cases with a favorable disability decision benefits are subsequently denied because the claimant does not meet other eligibility requirements.) Does not include claims where an eligibility determination was reached without a determination of disability. If a determination or appeals decision was made on Title II and Title XVI claims for the same person, the results are treated as one concurrent decision.

1/ Federal Court data includes appeals of Continuing Disability Reviews.

NOTE: Due to rounding, data may not always total 100%.

Prepared by: SSA, ODSSI (Office of Decision Support and Strategic Information)

Date Prepared: January 30, 2025

Data Sources:

1) Initial and Reconsideration Data: SSA State Agency Operations Report

2) Administrative Law Judge and Appeals Council Review data: SSA Office of Hearing Operations (OHO)

3) Federal Court data: SSA Office of General Counsel

Trans 101

I. Foundational Understanding of Trans Identity

- Quick Facts
 - ~1.6 million transgender people aged 13+ in the U.S. (UCLA School of Law)
 - Trans women—especially Black and brown trans women—face disproportionate rates of murder, homelessness, and incarceration
 - Most states lack legal protections in housing, employment, healthcare
 - Historical context:
 - Hijra (India),
 - Ikwékanaazo and ininiikaazo (Ojibwe)

II. Basic Terminology

- Sex vs. Gender
 - Sex: Assigned at birth (e.g., “M” or “F” on birth certificate)
 - Gender: A social construct encompassing roles, identity, behaviors
- Gender Identity Labels
 - Transgender, Cisgender, Trans Man, Trans Woman, Nonbinary
- Medical Terminology
 - HRT: Alters secondary sex characteristics
 - Gender Affirmation Surgery: Top and bottom surgery options

III. Systemic Challenges Faced by Trans People

- Anti-Trans Violence
 - 4x more likely to experience rape, assault
- Other Challenges
 - Lack of legal protection
 - Harassment and stigma
 - Trans people are characterized in the media and in politics as mentally ill, socially deviant, and sexually perverse.
 - Poverty
 - 15% of trans people were living in severe poverty (making less than \$10,000/year).
 - Healthcare Barriers
 - Bias and lack of transgender competency
- Documentation Issues
 - Barriers in updating legal documents
- Discrimination

- 4x more likely to face violence and poverty
- 2x unemployment rate (up to 4x for trans people of color)
- 90% face workplace discrimination
- 41% attempt suicide vs. 1.6% of general population

IV. Medical & Scientific Consensus: Trans People's Existence is Not Up for Debate

- Medical consensus
 - Dr. Joshua Safer: Gender identity is biologically rooted
 - APA & AAP Positions
 - Affirmation reduces harm; stigma is the problem, not identity
- Regret Rates for Transition
 - 1% regret after surgery (2021 meta-analysis)
 - Lower regret than knee or weight-loss surgery

V. Working with Trans Clients in Legal Settings

- Relevant Areas: Criminal, Family, Discrimination
 - Criminal Law – Defense attorneys representing trans clients who face bias in arrests, charging decisions, or trial.
 - Family Law – Custody, adoption, divorce, and child support issues
 - Child Welfare – Involvement of trans youth in foster care, group homes, and CPS.

VI. Criminal Law

- Considerations for criminal attorneys working with trans defendants and victims
 - Relationship Between Trans People & Police
 - 22% experienced harassment during police interactions.
 - Higher rates of mistreatment for trans people of color.
 - 6% reported physical assault; 2% reported sexual assault by police.
 - Nearly 50% feel uncomfortable seeking help from police.
 - Incarceration Challenges
 - Trans people often housed based on sex assigned at birth, not identity.
 - Higher vulnerability to assault.
 - Often denied gender-affirming care in prison.

VII. Transgender Families in Family Law

- Trans families (either with trans parents, trans children, or both) require specific considerations
- How prevalent are trans parents?

- Parenting Statistics (NTDS):
 - 38% of trans Americans are parents.
 - 82% of those who transitioned after age 55 are parents.
 - 38% of those aged 25–44 are parents.
- Impact of Transition on Parent-Child Relationships
 - 71% maintained relationships with their children.
 - 49% reported relationships remained the same or mixed.
 - 13% experienced court restrictions due to gender identity.
- Bias in Family Court – Courts may see trans identity as incompatible with parenting.
- Custody and Best Interest Consideration
 - Children and Gender Identity
 - Supportive vs. Rejecting Families
 - 57% of trans youth report family rejection.
 - 20% of homeless youth identify as transgender.
 - Average age of homelessness onset: 13.5 (NY).
 - Benefits of Affirmation
 - Youth affirmed in their identity are 50% less likely to attempt suicide.
 - Risks of Rejection
 - Linked to depression, substance abuse, suicidal behavior, homelessness.

VIII. Trans Youth in the Child Welfare System

- Disproportionate Representation
 - 4.1% of LGBTQ youth have been in foster care vs. 2.6% of general population.
- Why Trans Youth Enter Care
 - Abuse, neglect, and family rejection after coming out.
- Mistreatment in Care
 - Discrimination, lack of affirming placements, and harassment.
- Denial of Support as Child Abuse (Wisconsin Law)
 - WI Statute: Emotional Damage (Wis. Stat. 48.02(5j))
 - Emotional damage includes anxiety, depression, withdrawal, etc.
 - Could denial of affirmation qualify under this statute.

IX. Civil Rights & Anti-Discrimination Law

- *Bostock v. Clayton County* (2020): Title VII protects gender identity
 - EO 13988: Federal agencies must enforce protections
- Discrimination by Sector
 - Education: Harassment, assault, absenteeism
 - Employment: High unemployment, bias
 - Housing: HUD includes gender identity under sex discrimination

X. Legislative Landscape (National)

- Four Main Threats: Medical bans, sports bans, bathroom bans, military bans
 - Gender-Affirming Care Bans: 26 states as of 2024
 - *U.S. v. Skrmetti* (2025): SCOTUS upheld TN ban
 - Sports Bans: Title IX redefined by sex assigned at birth
 - Bathroom Bans: 13 states target K-12/public buildings
 - Military Ban: Trans troops to be identified and removed

XI. Wisconsin Legislative Landscape

- 10 anti-trans bills (ACLU)
- Examples: Flag bans, name/pronoun restrictions, sports participation, care bans

XII. Conclusion

- Trans people face legal/systemic barriers
- Identities are valid and deserve legal protection
- Attorneys must advocate respectfully and knowledgeably
- Final note: Don't be a jerk

XIII. Q&A Slide

- Open for questions, discussion, or clarification

Wisconsin Ch. 51 - Mental Health Emergency Detention and Commitment

Wis. Stat. § 51 - Provides legal procedures for voluntary and involuntary admission, treatment, and rehabilitation for individuals with:

- Treatable mental illness
- Developmental Disability
- Drug Dependency
- Alcoholism

Definitions:

Mental Health v. Illness from the American Psychological Association :

Mental Health – effective functioning in daily activities resulting in productive activities, healthy relationships, ability to adapt to change and cope with adversity

Mental illness – refers collectively to all diagnosable mental disorders

Wis. Stat. § 50.01(13)(b) - Mental Illness

A substantial disorder of THOUGHT, MOOD, PERCEPTION, JUDGMENT or MEMORY which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

DSM-V – TR - Diagnostic and Statistical Manual of Mental Disorders – 5th Edition – Text Revision – Published 2022 – American Psychological Association

“A mental disorder is a syndrome characterized by clinically significant disturbance in an individual’s cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental health functioning.”

Common Diagnoses seen: Schizophrenia spectrum, Bipolar I and II disorders, Depressive Disorders, Anxiety Disorders, Obsessive Compulsive Disorders, Trauma and Stressor Related Disorders, Substance Related and Addictive Disorders

Personality Disorders

“Is an enduring pattern of inner experience and behavior that deviates markedly from the norms and expectations of the individual’s culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.”

Anosognosia - Neurological condition – client is unaware of their neurological deficit or psychiatric condition

- Concurrent diagnosis with:
 - 50% of individuals with schizophrenia

- 40% of individuals with bipolar

Also common in dementia and stroke patients

Statistics

- According to the American Psychological Association (APA):
- Nearly 1 in 5 U.S. adults experience some form of mental illness
- 1 in 24 has a serious mental illness
- 1 in 12 has a diagnosable substance use disorder
- 50% of lifetime mental illness starts at 14 yrs. / 75% by 24 yrs.
- 17% of youth (6-17) experience a mental health disorder

Fluidity of Mental Health

- Symptoms may get worse - Even after stabilized medication/treatment may prove insufficient (treatability is a factor)
- Decompensation – APA – “breakdown in an individual’s defense mechanisms, resulting in progressive loss of normal functioning or worsening of psychiatric symptoms”

Warning Signs for Suicide *Indicate that Risk May Be Elevated for Individual*

- Marked changes in mood or behavior / Withdrawal, isolation / Anxiety, agitation / Increased substance use / Sleep disruption or insomnia / Feeling trapped, burdensome Hopelessness, helplessness / Unable to identify purpose for living / Talking about suicide

Dangerousness – Five Standards in Wis. Stat. § 51.20

51.15 Emergency Detention

- Meets the criteria of mentally ill/drug dependent/developmentally disabled
- Dangerous under sub 1-4 (reflects the 4 standards in 51.20)
- Reasonably believed to be unable or unwilling to cooperate with voluntary treatment
 - 51.15(1)(b) – belief can be based on own observation or reliably reported by any other person

Why Might Crisis Decline an ED?

- Patient is voluntarily engaged in treatment.
- Dangerousness is not believed to be imminent.
- Risk is presumed/projected, not based on any behavioral observations.
- No reliable witness to testify to dangerousness.
- Reasonable less restrictive disposition is available.
- Patient is intoxicated (will re-evaluate when sober).
- Patient’s history indicates inpatient psychiatric treatment does not reduce risk.

- No treatable mental illness.

Where it begins

- 3 party petition
- Treatment Director Hold
- Law Enforcement Emergency Detention
- Post Criminal commitment/referral

Role of Counsel

- Automatic appointment of counsel 51.20(3)/ 51.60
- Represent the stated interests of the client
- Need to follow ethics rule – 1.14 – Diminished capacity
- - Mental impairment is ground for diminished capacity
- “lawyer **shall**, as far as reasonably possible, maintain a normal client-lawyer relationship”

What is Normal?

- Competence. SCR 20:1.1.
- Diligence and promptness: SCR 20:1.3
- Communication: SCR 20:1.4
- Confidentiality: SCR 20:1.6
- Independence and loyalty. SCR 20:1.7
- Advisor. SCR 20:2.1
- Scope of Representation and Allocation of Authority. SCR 20:1.2

PC Hearing

- Within 72 hours - No extension
- Patient given notice/petition/rights
- Handled by Corporation Counsel
- Due process applies- 51.20(5)
- Normal rules of evidence apply so hearsay is generally not admissible unless it fits within an exception

Settlement Agreement

- Pauses proceedings for up to 90 days
- Conditions monitored by corp counsel/DHS
- If violated, petition to revoke/72 hours hearing
- Petition is prima facie evidence of violation
- Burden on defense to prove by preponderance that the facts are false

After PC

- Inpatient or outpatient with conditions
- If inpatient final within 14 days of detention
- If outpatient with conditions within 30 days of the order
- May be postponed only at defense request no more than 7 days
- Conversion to 54/55 or 51.45 (alcohol commitment)

Jury Trial

- Jury trial – must be filed within 48 hours of final – otherwise waived
- If filed within 5 days of detention – final 14 days after detention
- If filed later than 5 days after detention – final within 14 days of demand

Final hearing/Commitment

- Same three standards but to clear and convincing
- Consider MIL/agreement that corp counsel outline beforehand which standard
- 6 month commitment – compliance with conditions

Monitoring Compliance

- Crisis receives information from patient, family, treatment providers, and others who can speak to the individual's compliance with treatment and mental status.
- Violation of court order does not automatically result in readmission to psychiatric facility; efforts are made to stabilize/gain compliance without returning to more restrictive level of care (RTMR).
- RTMR can be based on noncompliance with outpatient conditions OR clinical judgement that return to inpatient is needed to stabilize (and patient is refusing admission).
- Decision to pursue re-detention is based on level of noncompliance, psychiatric stability, dangerousness.
- Patient can seek voluntary admission at any time.

Involuntary medication order 51.61(1)(g)(4)

- Doctor must explain adv/disadv./alt.
- Client must express an understanding/application
- Client must generally be able to identify medication
- May be applied for at any stage of the proceedings
 - If at PC only applicable until final
 - If after final then upon the request have to hold a hearing, 10 days after filing

Recommitment

- Recommitment is for 1 year – could be negotiated
- Hearing – county must prove three prongs by clear and convincing evidence

- Dangerousness – proper subject for commitment if treatment were withdrawn
- Resistant to treatment such that recommitment would occur again
- However, can not be a vague assertion but connected directly with one of five
- Right to jury trial applies

Wisconsin Equal Justice Conference

Representing Minors, Survivors and Defendants

Thursday July 31, 2025 - Friday August 1, 2025

Natalia Lucak, Community Immigration Law Center

Amanda Gennerman, Pines Bach

Kate Frigo Drury, Kate Drury Law, LLC

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Immigration Spectrum: Issues in Representing Minors, Survivors and Defendants

Representing Minors

- Intersection of Family Law and Immigration Law
 - Special Immigrant Juvenile Status (SIJS)
 - What is it?
 - Immigration classification available to certain undocumented immigrants under the age of 21 who have been abused, neglected, or abandoned by one or both parents.
 - What are the benefits?
 - Once a minor receives SIJS, he/she will be able to adjust his/her status to that of a lawful permanent resident (or green card holder), obtain work authorization, and eventually apply for U.S. citizenship.
 - No parental immigration rights - 8 CFR 204.11(i)
 - The natural or prior adoptive parent(s) of a minor granted SIJS classification will not be accorded any right, privilege, or status under the Act by virtue of their parentage. This prohibition applies to all of the minor's natural and prior adoptive parent(s).
 - Who is eligible?
 - See INA 101(a)(27)(J), 8 CFR 204.11
 - A minor must be:
 - Physically present in the U.S. at the time of filing the SIJS petition
 - Under 21 at time of filing SIJS petition
 - Unmarried at time of filing SIJS petition and adjudication of SIJS petition
 - Dependent on a Juvenile Court or Placed in the Custody of an Individual/Entity, Agency, or Juvenile Court
 - Juvenile court – 8 CFR 204.11(a)
 - “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles”
 - Dependency in a Juvenile Court – 8 CFR 204.11(c)(3)
 - Minor must have been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the minor was in the United States and

- under the jurisdiction of the court
 - Reunification with one or both parents not viable due to abuse, abandonment, neglect or “similar basis” under state law
 - Not in minor’s best interests to return to country of origin or last habitual residence
 - The secretary of homeland security consents to the grant of special immigrant juvenile status
- What is the process to apply for SIJS?
 - Stage 1: Obtain state court predicate order with the required findings from a juvenile court in Wisconsin
 - The minor must engage in a proceeding in a juvenile court in the county where he/she resides (i.e., custody, adoption, guardianship, CHIPS etc.).
 - As part of this proceeding, the minor must obtain a “special findings order” that declares the minor’s eligibility for SIJS.
 - The special findings order must include all of the following:
 - Dependency or Custody – Declares the minor dependent on the court, or legally commits or places the minor under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court;
 - Minor – Wis Stat § 54.01(20)
 - an individual who has not attained the age of 18 years
 - Parental Reunification – Declares, under state law, that the minor cannot reunify with one or both of the minor’s parents due to abuse, neglect, abandonment, or a similar basis under state law;
 - Abandonment – *See* Wis Stat § 48.415(1) and §822.02(1)
 - Generally a minor is considered abandoned if:
 - The minor has been left without provision for the minor’s care
 - The minor has been left by the parent with any person, the parent knows or could discover the whereabouts of the minor and the parent has failed to visit or communicate with the minor for a period of

- 6 months or longer.
- Abuse - *See* Wis Stat § 48.02(1)
 - Generally a minor is considered abused if:
 - Physical injury inflicted on a minor by other than accidental means.
 - The minor has experienced sexual assault, sexual exploitation, child trafficking, forcing a child into prostitution, exposing genitals to a child
- Neglect - Wis Stat § 48.02(12g)
 - “failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.”
- Death of a parent can be considered “similar basis” to abandonment
- Best Interests – Determines that it would not be in the minor’s best interest to be returned to the minor’s, or the minor’s parents’, country of nationality or last habitual residence.
- The Special Findings Order must
 - Include sufficient factual detail for each finding
 - Cite to Wisconsin statutes and case law
 - Include factual basis of why it’s not in the minor’s best interest to be returned to home country
 - Demonstrate that the minor did not seek the order only for immigration purposes but to seek relief from abandonment, neglect, or abuse
- Stage 2: Petition U.S. Citizenship and Immigration Services(USCIS) for SIJ status
 - Complete Petition for SIJS and file with USCIS - See 8 CFR 204.11.(d)
 - Include the following:
 - Completed USCIS Form I-360
 - Evidence of Minor’s age - i.e. birth certificate, official government-issued identification, or other document that in USCIS' discretion establishes the minor's

- age
 - Special Findings Court Order
 - Custody/Guardianship Order
 - USCIS should receive the I-360 while the juvenile court has jurisdiction over the minor
- Stage 3: Apply for Lawful Permanent Residence (a.k.a. a green card)
 - SIJS cases are “Special Immigrants” counted under the Employment-Based preference category E4 (=EB-4)
 - There are approximately 10,000 green cards available annually to *all* “special immigrants”
 - Per-country limit for preference immigrants is set at 7% of the total allowed fiscal year limit
 - If USCIS receives more than 7% of applications from people from a specific country for a particular preference category, applications from that country will be *backlogged*
 - When a SIJS Applicant can apply for lawful permanent residence
 - Checking if an applicant can file for his/her green card (Form I-485), and I-765, Application for work authorization, is a 2-step process:
 - Step #1: Check USCIS’s website to determine *which* Visa Bulletin chart to use: SIJS cases fall under “Employment-Based 4th Category” = E4 (= EB-4) - <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>
 - This tells you *which Visa Bulletin chart to use*, either the “Final Action” dates chart (Chart A), or the “Dates for Filing” chart (Chart B).
 - Step #2: Check your client’s Priority Date against the USCIS-indicated Visa Bulletin chart for that month.
 - <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>
 - Age Out Protections:
 - There is no age limit to apply for a Green Card as an SIJ. If the minor was under 21 on the date they properly filed the Form I-360, USCIS will preserve that age for the purposes of applying for the green card.

- To apply for lawful permanent residence, the minor must submit the following:
 - Form I-485, Application to Register Permanent Residence or Adjust Status;
 - A copy of the Form I-797, Approval or Receipt Notice, for your Form I-360 SIJ petition (unless you are filing Form I-360 together with Form I-485);
 - 2 passport style photographs;
 - A copy of their government-issued identity document with photograph (if available);
 - A copy of their birth certificate;
 - A copy of their passport page with your nonimmigrant visa (if applicable);
 - A copy of their passport page with their admission or parole stamp (if applicable);
 - A copy of their Form I-94, Arrival/Departure Record, or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable)
 - Form I-693, Report of Immigration Medical Examination and Vaccination Record,;
 - Certified police and court records of any juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable);
 - Form I-601, Application for Waiver of Grounds of Inadmissibility (if applicable)
- Inadmissibility
 - To qualify for a green card, the minor must be admissible to the United States. Reasons why a minor may be inadmissible are listed in INA 212(a) and are called grounds of inadmissibility.
 - In general, if one of the grounds of inadmissibility applies to non-citizen, USCIS cannot approve their Green Card application.
 - However, SIJ recipients are exempt from some of the grounds of inadmissibility listed in INA 212(a). *See USCIS Policy Manual, Volume 7, Adjustment of Status, Part F, Special Immigrant-Based Adjustment, Chapter 7, Special Immigrant Juveniles, Section C* for the inadmissibility grounds that do not apply to SIJs.

- Even if a minor is inadmissible, they may be eligible for a waiver of the particular grounds of inadmissibility.
 - They can apply for a waiver of inadmissibility using Form I-601, Application for Waiver of Grounds of Inadmissibility. If USCIS grants a waiver, they may approve the minor's application for a Green Card if the minor is otherwise eligible.
 - Whether a waiver is available depends on the specific inadmissibility grounds that apply and the category the minor is adjusting under. Eligibility requirements for waivers vary.
- Resources:
 - *Primary Resources*
 - USCIS Forms:
 - Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant: <https://www.uscis.gov/i-360>
 - Form I-485, Application to Register Permanent Residence or Adjust Status: <https://www.uscis.gov/i-485>
 - Form I-765, Application for Employment Authorization: <https://www.uscis.gov/i-765>
 - Form I-601, Application for Waiver of Grounds of Inadmissibility: <https://www.uscis.gov/i-601>
 - USCIS Policy Manual - Special Immigrant Juveniles: <https://www.uscis.gov/policy-manual/volume-6-part-j>
 - USCIS Websites Discussing SIJS
 - <https://www.uscis.gov/green-card/green-card-eligibility/green-card-based-on-special-immigrant-juvenile-classification>
 - <https://www.uscis.gov/working-in-US/eb4/SIJ>
 - Foreign Affairs Manual - regarding immigrant visas(or green cards) available to SIJS petitions: <https://fam.state.gov/fam/09FAM/09FAM050301.html#:~:text=c.,See%209%20FAM%20502.6>.
 - USCIS Adjustment of Status Filing Charts from the Visa Bulletin
 - <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>
 - Department of State Visa Bulletin
 - <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>
 - *Secondary Resources*
 - Jennifer Lyn Binkley & Sara T. Ghadiri, Special Immigrant Juvenile Status: Predicate Orders Demystified, available at

<https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=98&Issue=4&ArticleID=30966>

- Immigration Legal Resource Center (ILRC) - Introduction and Overview to Special Immigrant Juvenile Status: <https://www.ilrc.org/overview-uscis%E2%80%99s-new-sijs-regulations>
- A Call For Trained, Trauma-Informed Attorneys To Represent And Support Unaccompanied Children In Removal Proceedings By Petitioning For Special Immigrant Juvenile Status, 30 Roger Williams U. L. Rev. 383
- The Crucial But Overlooked Role Of State Decision-Making In Family-Based Immigration Matters, 109 Iowa L. Rev. 2321

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Wisconsin Equal Justice Conference 2025
Immigration Spectrum: Representing Minors, Survivors and Defendants
Thursday July 31, 2025

Outline prepared by Attorney Amanda K Gennerman, Partner
Pines Bach, LLP

- I. **Demographics of Wisconsin- A changing landscape**
 - <https://map.americanimmigrationcouncil.org/locations/national/>
 - <https://map.americanimmigrationcouncil.org/locations/wisconsin/>
- II. **Immigration 101**
 - Immigration and Nationality Act (INA Sections 101-507)/(U.S.C. 1101-1537)
 - o The Immigration and Nationality Act (INA) was enacted in 1952. The INA collected many provisions and reorganized the structure of immigration law. The INA has been amended many times over the years and contains many of the most important provisions of immigration law.
 - o The INA is contained in the United States Code (U.S.C.). The U.S. Code is a collection of all the laws of the United States. Title 8 of the U.S. Code covers "Aliens and Nationality."
 - Regulations, Policy Manuals, Memorandum
 - o The general provisions of laws enacted by Congress are interpreted and implemented by regulations issued by various Executive branch agencies. These regulations apply the law to daily situations.
 - o After regulations are published in the [Federal Register](#), they are collected and published in the [Code of Federal Regulations](#), commonly referred to as the CFR.
 - o The CFR is arranged by subject title and generally parallels the structure of the U.S. Code (U.S.C.), which is a collection of laws enacted by Congress. Therefore, [Title 8 of the CFR](#) deals with "Aliens and Nationality", as does Title 8 of the U.S.C
 - Executive Orders
 - o <https://immpolicytracking.org/policies>

- US Department of Homeland Security, United States Citizenship and Immigration Service (USCIS), Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP) Department of State, Executive Office of Immigration Review
 - o <https://www.dhs.gov/organizational-chart>

III. **Relief Available for Immigrant Survivors**

IV. **Use of the Term “Victim” vs. “Survivor” (per <https://www.ilrc.org/u-visa-t-visa-vawa>)**

Language matters. Often the terms “victim” and “survivor” are used interchangeably. Because a “victim” is typically defined by harm done to them, many advocates choose to instead use the word “survivor” to refer to clients. “Survivors” are defined by their lives *after* the harm, allowing them to reclaim control of their lives and their recovery. While our goal as advocates is to help community members survive and thrive despite harms they have suffered, we sometimes use the term “victim” when referring to a particular aspect of the criminal legal system, penal code, or immigration law; when describing someone recently affected by crime; when talking about the actions of a perpetrator; or when discussing the harm inflicted on those who did not survive. When working with impacted community members, we recommend asking people which term they prefer, as some may identify with the term victim, while others may prefer the term survivor.

a. Violence Against Women Act Provisions (VAWA/TVPRA). The Violence Against Women Act/Victims of Trafficking and Violence Protection Act first enacted in 1994, was created to address the widespread problem of abused non-citizens staying with their abusers because the abusers held a key role to the victim attaining lawful immigration status in the United States. VAWA petition process mirrors the family-based process but frees the victim from having to rely on the abuser’s cooperation to petition for them.

i. VAWA Self Petitions (INA §204)

ii. Relatives eligible for VAWA

1. An abused spouse of a USC or LPR;
2. An abused child of a USC or LPR (per INA, “child” is generally defined as unmarried and under 21 years of age);
3. A non-abused spouse of a USC or LPR whose child is abused by the USC or LPR spouse;
4. An abused parent of a USC son or daughter (a “son” or “daughter” is defined as 21 years or older).

iii. Petitioning Requirements

1. Abuse occurred during the marriage (in the case of a child or parent self-petitioner, the abuse could have happened at any time);
 - a. 2 years from divorce provision
2. Self-petitioner was subjected to battery or extreme cruelty by USC/LPR relative;

- a. Power and Control Wheel/Immigrants-
[ImmigrantWomenPCwheel_NO SHADING_NCDSV.indd](#)
- 3. Self-petitioner lived with the abuser at some time;
- 4. Self-petitioner must currently be living in the US (few exceptions apply);
- 5. If Self-petitioner is the spouse of an abuser, the marriage must have been entered into in “good faith”;
- 6. Self-petitioner has “good moral character.” Not an exact definition, but INA Section 101(f) identifies behaviors/conduct that bars a showing of good moral character. In general, criminal conduct, controlled substance violations, illegal gambling and prostitution, “alien smuggling,” false testimony for an immigration benefit. Good moral character has to be demonstrated for the past three years (prior to the applications submission).
 - a. Exceptions and Waivers available in limited contexts
- 7. Abuser must have been an LPR or USC (if loss of LPR or denaturalization, must file within 2 years of that change in status).
- iv. Benefits of Approved Petition
 - 1. Prima Facia Eligibility (creates evidence of qualifying “alien” for certain government benefits*/State by State variations; Deferred Action Status and ability to apply for work authorization;
 - a. <https://niwaplibrary.wcl.american.edu/pubs/power-control-wheel-eng-niwap/>
 - 2. Applying for Lawful Permanent Resident Status/Green card
 - a. Additional requirements; must be “admissible” under INA Section 212; with various exceptions and waivers.
 - b. Eventually path to Naturalization/US Citizenship
- v. Affirmative Self Petitions vs Defensive Relief
 - 1. The process above is Affirmative (Forms I 360; I 765 and possibly I 485, I 864W; I 601).
 - a. Forms located at: <https://www.uscis.gov/>
 - 2. Defensive- VAWA Cancellation of Removal (Respondent) INA 240A(b)(2)
 - a. Permits some abused non-citizens to apply for LPR status while in removal proceedings (before an Immigration Judge)
 - b. Requirements:
 - i. Non-citizen/Respondent experienced battery/extreme cruelty by spouse/former spouse or parent who is or has been a USC or LPR;
 - ii. Non-citizen/Respondent has resided in the US continuously for at least three years;
 - iii. Removal from the US would result in extreme hardship to the Non-citizen/Respondent, or her child or parent.
 - 3. Battered Spouse Waiver of Joint Petition for Removal of Conditional

Residence (Form I 751) INA Section 216

- a. Conditional residence occurs when a marriage is less than 2 years old and an adjustment/ green card is issued;
- b. Married couples subject to this provision must file a “Joint Petition” to remove the conditions to allow for a 10-year resident card;
- c. In abusive relationships, instead of enduring the harmful relationship, the conditional resident may have the option of filing a “waiver” based on being subjected to battery or extreme cruelty during the marriage to the USC or LPR spouse.

Resources: <https://store.ilrc.org/publications/vawa-manual-0>

For communities: <https://www.ilrc.org/sites/default/files/2023-02/Who%20is%20Eligible%20for%20VAWA%3F.pdf>

iv. **U Visas- Victims of Crimes (INA §101(a)(15)(U); (INA §214(p))**

The U Non-Immigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U Non-Immigrant visa with the passage of the TVTVA/Victims of Trafficking and Violence Protection Act in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of noncitizens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.

vi. Eligibility/Petitioning Requirements

1. Applicant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
2. Applicant (or in the case of an applicant child under the age of 16, the parent or guardian or next friend of the child) possesses information concerning the criminal activity;
3. Applicant (or in the case of an applicant child under the age of 16, the parent or guardian or next friend of the child) has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity;
4. The criminal activity violated the laws of the United States or occurred in the United States; and
5. The applicant must be admissible to the United States, or demonstrate eligibility for a public interest waiver of any inadmissibility factors.

vii. Benefits of Approved Petition

- a. Bona Fide Determination/Waitlist provision; Deferred Action Status and ability to apply for work authorization;
- b. Filing backlogs:
 - i. [Processing Times](#)

“Processing time for Petition for U Nonimmigrant Status (I-918) at Service Center Operations (SCOPS)

80% of cases are completed within **33.5 Months**

Notes

The posted processing time range reflects the time from receipt to issuance of either a bona fide determination notice or a notice that the petition will be considered for waiting list placement. It does not reflect the current processing times from initial receipt to the final issuance of U nonimmigrant status.”

- c. U Non-Immigrant Status/Visa- lawful permission/ status in the USA; Valid for 4 years; provides work authorization.
 - i. Qualifying family members (either through I 918A)
 - d. Applying for Lawful Permanent Resident Status/Green card INA Section 245(m); Additional requirements; must be “admissible” under INA Section 212; with various exceptions and waivers.
 - i. Qualifying family members (through I 929)
 - e. Eventually path to Naturalization/US Citizenship
2. Affirmative Applications vs Defensive Relief
- a. The process above is Affirmative (Forms I 918 and or I 918A; I 192, I 765).
 - b. Forms located at: <https://www.uscis.gov/>
3. Defensive- Jurisdictional issues
- a. USCIS has sole jurisdiction over I 918/I918A petitions; some Circuits, including 7th, Immigration Judges can hold hearings on I 192 waivers
4. Consular Processing matters

Resources: <https://store.ilrc.org/publications/u-visa-obtaining-status-immigrant-survivors-crime>

<https://www.ilrc.org/sites/default/files/2023-06/Overview%20-%20Key%20Benefits%20of%20a%20U%20Visa.pdf>

For communities: <https://www.ilrc.org/community-resources/what-u-visa>

V. T Visas- Victims of Trafficking (INA §101(a)(15)(T); (INA §214(o))

VI. SIJS- Special Immigrant Juvenile Status

Wisconsin Equal Justice Conference

Representing Minors, Survivors and Defendants



Thursday July 31st, 2025 - Friday
August 1, 2025

Outline Prepared by Kate Frigo Drury
Kate Drury Law, LLC

- I. Removal based on arrest record or criminal conviction.
 - A. Inadmissibility (INA § 212) and Deportability (INA § 237) are distinct legal concepts. The client's immigrant status will affect the application of these laws and influence goals.
 - B. Criminal defense counsel has obligation to advise noncitizen about potential immigration consequences of the plea. *Padilla v. Kentucky*, 599 U.S. 356 (2010). *State v. Shata*, 364 Wis. 2d 63, 868 N.W.2d 93 (2015)(suggesting counsel's duty under Padilla is the same as the court's statutory duty); *State v. Ortiz Mondragon*, 364 Wis. 2d 1, 866 N.W. 2d 717 (2105)(faced with unclarity, counsel need only convey an equivocal immigration warning).
 - C. Court has obligation to advise noncitizen that plea "may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law." Wis. Stat. § 971.08(1)(c).
 - D. Common inadmissible offenses (INA § 212)(nonexhaustive list).
 1. Crime involving moral turpitude. Requires (1) a vile, baseless, depraved, or reprehensible act and (2) a culpable mental state of at least recklessness. *Matter of Siva-Trevino*, 24 I&N Dec. 687 (BIA 2008); *Mata-Guerrero v. Holder*, 627 F.2d 2156, 261 (7th Cir. 2010).
 - i. Example: retail theft (*In re: Scarpulla*, 15 I&N Dec. 139, 140-41 (B.I.A. 1974)("It is well settled that theft or larceny, whether grand or petty, has always been held to be a crime involving moral turpitude")).
 - ii. But not homicide by intoxicated use of vehicle. *In re: Ghunaim*, 15 I&N Dec. 269 (B.I.A. 1975)(involuntary manslaughter not CIMT).

2. Controlled substance violation.
3. Prostitution related offense.
4. Human trafficking.
5. Money laundering.
6. Two or more convictions of any kind with aggregate sentences of five years or more.

E. Common deportable offenses (INA § 237)(nonexhaustive list + exceptions).

1. Felony CIMT committed within 5 years after admission to the U.S.
2. Multiple CIMT.
3. Aggravated felony (INA §§ 104(a)(43)(A) - (U)).
 - i. An aggravated felony conviction can be for a Wisconsin State misdemeanor conviction.
 - ii. Murder, rape, sexual abuse of minor.
 - iii. Controlled substance offenses.
 - iv. Firearm, destructive devices, or explosive materials related offenses.
 - v. Crimes related to money laundering, forgery, counterfeiting, etc.
 - vi. Theft or burglary for which the term of imprisonment is at least one year.
 - vii. Fraud or deceit in which the loss to the victim exceeds \$10,000
 - viii. Child porn.
 - ix. Prostitution related offenses
 - x. Failure to appear to serve a sentence when the underlying offense is punishable by imprisonment for a term of five years or more.

4. Controlled substance violations (exception for possession of THC, personal use under 30 g).
5. Firearms.
6. Some domestic violence offenses.
7. Stalking.
8. Child abuse, neglect or abandonment.
9. Violation of a domestic abuse order.

F. Expungement provides no protection in immigration court.

G. Some deferred prosecution agreements are considered “convictions” in immigration court, even if no conviction would ever enter in Wisconsin.

II. Arrest record or criminal conviction may affect defenses to removal.

A. Bars defenses to removal.

1. Different immigration defenses have different bars, and there are different waivers for criminal convictions available depending on the type of relief sought.
2. Nonexhaustive list of examples:
 - i. 240A, Cancellation of Removal-LPR–aggravated felonies bar application. INA § 204A(c).
 - ii. 240B, Cancellation of Removal-other–CIMT bars application, with a limited exception for one misdemeanor with a sentence 6 months or less, INA § 204A(b)(1).
 - iii. Asylum–particularly serious crimes bar application
 - iv. U-visa/VAWA– Waivers for many inadmissibility grounds, but criminal history can still lead to discretionary denial.
3. Sometimes, the sentence imposed will create a bar for the defense and not the conviction itself. For example, spending more than 180 days in jail for a conviction or convictions bars 240B relief.

B. Creates an adverse grant of discretion.

1. Any arrest or conviction record could result in an adverse discretionary decision.

III. Contact with the government may lead to removal based on immigrant status.

A. New Enforcement Guidelines.

1. Expansion into places previously restricted for ICE enforcement. Previously, a [2021 guideline](#) prohibited immigration enforcement in courthouses. Now, in 2025, [a new guideline](#) permits immigration enforcement in courthouses when certain conditions are met. These are federal, not state guidelines.

2. Expanded enforcement priorities.

i. Current administration considers anyone who is in violation of the immigration laws to be a priority for enforcement.

ii. Prior administration prioritized the removal of violent convicted criminals and prioritized keeping families together (with the exception of those convicted of violent offenses).

iii. Even people who have passed through legal channels are finding themselves in removal proceedings, like [DACA recipients](#) or asylum seekers who entered with [CBP1](#).

B. Relationships between local jails and ICE.

1. General.

i. Being booked into a county jail in Wisconsin often starts a process which can end in deportation, even for minor violations, and even before conviction of a crime.

ii. Jails share fingerprint information with ICE: this was formerly the Secure Communities and Priority Enforcement Program (PEP). At times, ICE is given direct access to jail databases. As a practice point, assume contact with a local jail is contact with ICE.

2. SCAAP: State Criminal Alien Assistance Program.

i. is a federal grant program that partially reimburses state and local governments for the costs of incarcerating noncitizens in exchange for sharing information about suspected noncitizens who are incarcerated.

4. 287(g) agreements.

i. A 287(g) agreement allows ICE to partner with state and local law enforcement agencies in its efforts to enforce immigration laws. Essentially, designated local law enforcement officers within participating agencies are deputized as immigration officers.

ii. As of July 11, 2025, fourteen Wisconsin jurisdictions participate in 287(g): Brown, Fond du Lac, Kewaunee, Manitowoc, Marquette, Outagamie, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood..

5. Immigration Detainers.

i. An immigration detainer is a request by ICE that a local jail hold an immigration suspected of being in the country without authorization for up to 48 hours after the immigration would otherwise be released, so that ICE can take custody of the immigrant.

ii. Most jails in Wisconsin honor ICE detainer requests. Some have [questioned](#) the legality of ICE detainers under Wisconsin law.

6. 2025-AB24- pending legislation.

i. In early February, Wisconsin state legislators released a [bill](#) that would 1) require sheriffs to request proof of legal residency for all people detained on felony charges 2) require sheriffs to comply with all ICE detainer requests.

ii. Governor Evers plans to [veto this bill](#).

iii. The effect of the bill would strengthen the [jail to deportation pipeline](#), as well as encourage racial profiling. Many jurisdictions who have participated in similar programs in the past found implementation to be costly. Importantly, bills regarding increased mandatory enforcement sow distrust in the criminal legal system and result in fewer crimes being reported to law enforcement, decreasing public safety.

IV. Changes in Detention.

A. Number of folks in ICE detention is at a [high point](#), comparatively.

Migrants in ICE detention

Data current through June 20, 2025

55,764

28.6% with criminal convictions

25.6% with pending criminal charges

**46.9% listed as "other immigration
violator"**

11.4% fast-tracked for deportation

B. Change in detention and immigration bond.

1. [Laken Riley Act](#) passed in late January 2025 expands mandatory immigration detention for certain noncitizens (those who entered without inspection). A conviction is not necessary for this law to apply. The law applies to those who are arrested, or charged, or make admissions to the list of applicable crimes:

- i. Burglary
- ii. Theft
- iii. Larceny
- iv. Shoplifting
- v. Assault of a law enforcement officer; or
- vi. Any crime that results in death or serious bodily injury to another person.

2. Some OPLA attorneys may argue that [Matter of Q. Li](#), 29 I&N (BIA 2025) makes a broader group of migrants bond ineligible by expanding the definition of “arriving alien” to include those who have entered the U.S. years ago and were released into the community with parole.

3. If the client is transferred and held in ICE custody without the possibility of bond, this may result in removal of clients before the criminal case has concluded. This may result in difficulties in getting clients back to state court to finish up their cases if the client is transferred to ICE custody. ICE custody does not have to be in Wisconsin; the client could be transferred to Kentucky, for instance. The Laken Riley Act does not create new grounds for removal.

National Efforts

American Immigration Council- <https://www.americanimmigrationcouncil.org/>

ASISTA- <https://asistahelp.org/>

National Immigrant Justice Center- <https://immigrantjustice.org/>

CAST- <https://casttta.nationbuilder.com/>

CLINIC- <https://www.cliniclegal.org/>

American Immigration Lawyers Association- <https://www.aila.org/>

Local Efforts

CILC - Community Immigration Law Center <https://www.cilcmadison.org/>

Centro Hispano - <https://www.micentro.org/>

CMC- Catholic Multicultural Center - <https://cmcmadison.org/immigration-legal/>

JSS- Jewish Social Services- <https://jssmadison.org/services/refugee/>

UW - Immigrant Justice Center- <https://law.wisc.edu/eji/ijc/>

Open Doors for Refugees- <https://opendoorsforrefugees.org/>

DCIA- Dane County Immigration Affairs - <https://www.danecountyhumanservices.org/Children-Youth-and-Family/Immigration-Affairs>

UMOS/Voces de la Frontera/Catholic Charities/SWCAP/Literacy Network

Websites with legal information

[Immigration Defense Project: Know your rights](#)

[Marquette University: Family Deportation Preparation](#)

[Immigrant Legal Resource Center: Family Preparedness](#)

[Legal Aid NYC: Advance Planning for Non-Citizen Parents](#)