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# Wisconsin Legislative Council

## ACT MEMO

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### 2021 Wisconsin Act 72 [2021 Senate Bill 24]

### Prohibiting Child Placement With Persons With Certain Criminal History

## BACKGROUND

State law allows a court with jurisdiction under ch. 48, Stats. (the Children's Code), or ch. 938, Stats. (the Juvenile Justice Code), to place a child or juvenile in the home of a parent or other relative, or temporarily in the home of any person who is not licensed, unless the parent, relative, or person has been convicted of first- or second-degree intentional homicide of a parent of the child. In that circumstance, the court may place a child or juvenile with the parent, relative, or person if the court determines by clear and convincing evidence that the placement is in the child's or juvenile's best interest, after considering the child's or juvenile's wishes.

In addition, state law prohibits a court from placing a child or juvenile in certain types of out-of-home care entities, such as foster homes, group homes, shelter care facilities, or the home of a person receiving subsidized guardianship or kinship care payments, unless that entity is licensed. Such licensed entities may not employ or contract with a caregiver, or allow a nonclient resident to reside at the entity, if the entity knows or should have known of certain information, including that a caregiver or nonclient resident has been determined to have abused or neglected a child, or has been convicted of or adjudicated delinquent for certain criminal offenses, including various crimes against children.

## 2021 WISCONSIN ACT 72

2021 Wisconsin Act 72 generally expands the circumstances in which a court is prohibited from placing a child or juvenile in the home of a relative other than the parent, or temporarily with an unlicensed person, as well as the circumstances in which an entity is prohibited from employing or housing certain individuals.

### Prohibited Placements With Unlicensed Relatives or Persons

Specifically, under the act, the court may not place a child or juvenile in the home of a relative other than the parent, or temporarily with any unlicensed person, if the judge finds that the relative or person has been convicted of, pled no contest to, or had a charge dismissed or amended as a result of a plea agreement for any of the following crimes:

- Certain acts of sexual assault of a child, including a child placed in substitute care.
- Certain acts of physical abuse of a child.
- Sexual exploitation or trafficking of a child.
- Causing a child to view or listen to sexual activity.
- Incest with a child.

- Child enticement.
- Patronizing a child, or soliciting a child for prostitution.
- Certain acts of exposing a child to harmful material that constitute a felony.
- Possession of child pornography.
- Child sex offender working with children.
- Neglecting a child, including chronic or repeated acts of neglect.
- Child abduction.
- Child unattended in child care vehicle.

Like prior law, the act allows an exception to this prohibition when a judge finds, by clear and convincing evidence, that the placement is in the child's or juvenile's best interest, but the act does not require the court to consider the child's or juvenile's wishes. The act further requires that a judge consider the best interest of an Indian child or juvenile in accordance with the federal Indian Child Welfare Act when determining whether to allow an otherwise prohibited placement in the home of a relative other than the parent or temporarily with any unlicensed person.

### **Prohibited Employment of or Contracts With Certain Caregivers**

The act also prohibits licensed entities from employing or contracting with a caregiver, or allowing a nonclient resident to reside at the entity, if the entity knows or should have known that the caregiver or nonclient resident has pled no contest to one of the crimes listed above, or has been charged with any of the crimes listed above and that charge was dismissed or amended as part of a plea agreement.

**Effective date:** July 17, 2021

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