

LEGAL ACTION OF WISCONSIN

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TO: Members of the Assembly Committee on Family Law
FROM: Abby Bar-Lev Wiley, Legislative Director, Legal Action of Wisconsin;
Robert Held, Family Law Priority Coordinator & Managing Attorney,
Legal Action of Wisconsin
RE: Impact of AB 627 on Legal Action's Clients
DATE: December 1, 2021

Thank you for the opportunity to comment on AB 627. Legal Action of Wisconsin (LAW) is a nonprofit law firm that provides free civil legal aid to low-income people in 39 of Wisconsin's southern counties. One of our priority areas is serving low-income, domestic abuse victims with their family law needs; we work to help victims become safe. Our Family Law attorneys may handle a variety of types of cases for domestic abuse victims, including domestic abuse and child abuse injunctions; divorce cases; maintenance and child support; child custody and placement; paternity, and modification of divorce, paternity, custody, placement, maintenance, or child support judgments, among other types of cases. We have concerns that AB 627 would have severe and negative impacts on the clients we serve and their families, particularly on those who are Black, Indigenous, and People of Color (BIPOC).

AB 627 Would Disproportionately Impact BIPOC Individuals and Their Families:

At Legal Action of Wisconsin, many of our low-income clients are involved with the justice system. Some end up incarcerated for varying lengths of time, but "termination of parental rights" is a punishment far beyond any sentence that could be issued. Moreover, a recent report found that one in every 36 Black adults in Wisconsin are incarcerated, which is a rate that is more than double the national average and is the highest rate in the nation. Therefore, if passed, AB 627 would have a grossly disproportionate impact on BIPOC families across the state.

AB 627 Asks Judges to Speculate on the Future, Inviting Further Bias into the Decision:

By asking courts to determine whether an individual is "likely to continue to be incarcerated for a substantial period of the child's minority," not only does the bill require judges to determine future events (something courts do not generally like to do), but it *requires* such determinations to be based not in fact but in bias and speculation—considerations that are also likely to disproportionately and negatively impact BIPOC families. Any good lawyer knows that past behavior does not dictate future results. The fact that someone has been incarcerated in the past does not mean that they will be incarcerated in the future, and neither is determinative of whether they are or can be a good parent to their child. If the state truly wanted to help children in families with an incarcerated parent, the legislature could consider bills that would lend support to the non-incarcerated parent, or fund free, quality pre-k across the state, or provide more opportunities and resources for transitioning an incarcerated parent back into society when he is close to release. Instead, this bill further punishes someone who is already incarcerated—a condition that the parent cannot change—by including that the very fact that they are incarcerated makes them unfit to parent.

AB 627 is Not Necessary & Removes Important Judicial Discretion:

In addition to disproportionately impacting BIPOC families and adding unnecessary punishment to those already incarcerated, the bill is simply not necessary. This bill represents a solution in search of a problem. Current law already allows for a TPR finding to include elements related to incarceration, such as failure to assume parental responsibility and abandonment. This bill unnecessarily removes judicial discretion, which is critical to understanding the nuances of a child's well-being and in making the ultimate decision about whether to take the grave step of removing a parent's right to their child. These decisions must be made on a

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case-by-case basis to ensure that the courts are not unduly taking away parental rights and violating a parent's substantive due process.

AB 627 Conflicts with Precedent & Constitutional Law:

In fact, in 2006 the Wisconsin Supreme Court in *In Re Termination of Parental Rights to Max G.W.*, 2006 WI 93 held that, "Substantive due process requires that the State's action to terminate Jodie's [the parent] parental rights be narrowly tailored to meet the State's compelling interest of protecting Max [a child] from an unfit parent." *Id.* at ¶ 55. Therefore, the court concluded that "the circuit court improperly deemed Jodie unfit solely by virtue of her status as an incarcerated person without regard for her actual parenting activities or the condition of her child," and found that the TPR not only violated state law, but the parent's substantive due process rights as protected by the U.S. Constitution. *Id.* AB 627 stands in contradiction to this Wisconsin Supreme Court decision.

Incarceration Does Not Mean that Someone Cannot Parent:


Although it is difficult and looks different than traditional families, incarceration itself does not mean that an individual cannot provide adequate parenting during or after incarceration. A parent may continue to communicate with children while incarcerated. While attempting to help get the child out of foster care, an incarcerated parent may be directing resources or coordinating care and other services for their children. The adoption and foster-care systems are already overly burdened. This bill would only swell those systems to a crisis point, while breaking apart BIPOC families across the state. At Legal Action of Wisconsin, we see every day how families are struggling to get by—we see families carry the burdens of poverty while desperately trying to provide for their families.

AB 627 Would be Harmful to Wisconsin Families:

AB 627 would do nothing to help parents or families. Rather, it would break families apart, create additional punishments on parents already incarcerated, and violate parents' constitutional substantive due process rights while removing judicial discretion and adding additional stress to already overburdened systems.

Thank you for your consideration.

Sincerely,



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