

TEMPORARY PHYSICAL CUSTODY HEARING, PLEA HEARINGS AND ROLE OF A PARENT'S ATTORNEY

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SIGNIFICANCE OF TPC HEARING

- o TPC Hearing one of the most significant and critical hearings in a CHIPS case.
- o Removal of children from their home is highly traumatic; they should not be removed, nor continued to be held outside their home, unless their safety demands it (sec. 48.355(1)).
 - Foster care = Stranger care
- o Usually the first time parents will be in front of the court
 - Emotional and traumatic event for parents
 - Sets tone for how case will progress
 - Engage and motivate the parties



LAW AND PROCEDURE

Wis. Stat. § 48.21

Wis. Stat. § 48.299

- o Hearing for child in custody
- o Procedures at hearings



PREPARING FOR A TPC HEARING

- Review TPC request and if filed, Petition
 - TPC Request - JC-1608
 - TPC Request Supplement - JC-1609
- Meet with your client; discuss placement options
- Meet with or talk to prosecutor and Social Worker- discuss possible in-home safety plans and possible relative placements
- Determine if any related criminal charges
- Identify main issues (i.e., mental health, AODA, D.V, Poverty, Trauma)
- View TPC Hearing learning activity on the CCIP E-Learning Project website:
- www.wiccuptraining.com

TIME IS OF THE ESSENCE



- Child taken into custody - CHIPS
 - 48 hours
- Excludes Saturdays, Sundays, & legal holidays (§ 995.20)
- Not held within 48 hours
 - Child released from custody



ADVERSARY COUNSEL OR GUARDIAN AD LITEM FOR THE CHILD

- Guardian ad Litem for a child under 12 years old.
- State Public Defender appoints adversary counsel for a child 12 years and older.
- May have both under certain circumstances.



PERSONS ALLOWED TO ATTEND COURT

- Parties
- Counsel or Guardian ad Litem
 - Client/ward
- Child's foster parent or other physical custodian
- Other persons with proper interest in case or work of the court (including media)
- Court Appointed Special Advocate (CASA)
- Ask client if objects to anyone



COUNSEL FOR PARENTS

- Right to hire
- Right to petition for court-appointed counsel
- SPD appointment for in WICWA cases and 5-county pilot project (Brown, Kenosha, Outagamie, Racine, and Winnebago)
- Court has discretion to appoint counsel under s. 48.23(3)
 - Court must exercise discretion under *Joni B.* when (a) parent requests counsel or (b) reasonable concern that parent will not be able to provide meaningful self-representation. See *Tammy L.D.*, 238 Wis. 2d 516 (2000)



COUNSEL FOR PARENTS

Factors under *Joni B.*, 2020 Wis. 2d 1 (1996)

- Personal characteristics of the parent: age, mental capacity, education, and contact with the court.
- Parent's demonstrated level of interest in the proceedings and desire to participate.
- Whether the petition alleges abuse or neglect that could result in criminal prosecution.
- The complexity of the case, including the likelihood of introduction of medical or psychological evidence.



PROBABLE CAUSE TO CONTINUE HOLDING THE CHILD

- Court must find jurisdiction under § 48.13

AND

- That child may injure self or be injured, is neglected, will runaway, or be taken away
 - Wisconsin Indian Child Welfare Act (WICWA) does not apply at TPC, but inquire

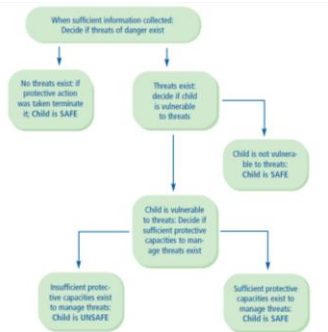


FINDINGS FOR OUT-OF-HOME PLACEMENT

- Continued placement with parent is contrary to child's welfare, i.e., unsafe
- Reasonable efforts to prevent removal and return home (except for not required cases)
- Assign agency with placement and care responsibility
- Reasonable efforts to place siblings together



REMOVAL DECISION: SAFE OR UNSAFE?



OUT-OF-HOME PLACEMENT

- Relative
- Non-relative
- Foster home
- Shelter care
- Hospital



OTHER ISSUES IF CHILD PLACED OUT-OF-HOME

- Parents provide three names for placement.
- The court shall order the Agency to conduct a diligent relative search in order to locate and to all adult relatives within 30 days of removal. (Wis. Stats. 48.21(5)(e)2.; Fostering Connections Act of 2008).
- Agency must provide for sibling interaction.
- Parent's are entitled to reasonable visitation if not unsafe. See DCF Standards for guidelines as to recommended parental contact with children. Important part of "reasonable efforts."

CHANGE IN PLACEMENT UNDER TPC ORDER

- Caseworker or prosecutor:
 - Provide notice of change in placement 10 days prior or 48 hours after an emergency change
 - Hold hearing if objection is filed by participant
- Other parties:
 - Child, GAL/attorney, parents, guardian, legal custodian, Indian custodian, or court may request change in placement
 - Hearing required unless written waivers of objection filed
