

## **DISPOSITIONAL HEARING OUTLINE - CHIPS**

### **I. STATUTORY SUMMARY**

**A. See generally: §§ 48.335, 48.345, 48.347, 48.355 and 48.356**

#### **B. Required Court Reports**

1. Court must designate an agency to prepare a report before the disposition of a child or unborn child.
2. In Home placement reports may be made orally and transcribed
3. Out-of-Home Placements – recommendations to place an adult expectant mother outside her home or to place a child in a foster home, group home, residential care center for children and youth, supervised independent living arrangement, or in the home of a relative or guardian must be in writing. See §48.33.

#### **B. Dispositional Hearing Procedures**

1. Unless a public hearing is demanded, the general public shall be excluded from the hearing. Only the parties, their counsel or guardian-ad-litem (GAL), court-appointed special advocate (CASA), and foster parents/custodians and witnesses requested by the parties may attend.
2. The court may allow a child under seven to be excluded from the entire hearing if it determines the child is too young to comprehend and exclusion is in the child's best interest.
3. Statutory and common law rules of evidence are not binding
4. If a man appears to allege his paternity of the child, the court shall refer the matter to the child support enforcement agency attorney for determination of paternity in family court.
5. See §48.299

#### **C. Substantive Matters at Disposition**

1. Mandatory - the court will conduct a hearing for a child in need of protection or services (CHIP) under §§48.13, 48.133.
2. Parties may present evidence, including expert testimony, and make recommendations.
3. For out-of-home placements, the agency must present evidence showing:
  - a. Continued placement with parent is contrary to child's welfare.
  - b. That reasonable efforts have been made to prevent the removal of the child from the home.
  - c. That reasonable efforts have been made to achieve the permanency goal of the child's permanency plan.

- d. That reasonable efforts have been made so the child can remain with his/her sibling(s) unless contrary to the well-being of those children.
  - e. That reasonable efforts have been made, if the siblings have not been placed together, to arrange for visitation unless contrary to the well-being of any of those children.
  - f. See §48.335(3g)
4. For out-of-home placements of an Indian child, the agency must present evidence showing:
    - a. Continuing custody by the parent or Indian custodian will cause serious emotional or physical damage to the child.
    - b. Efforts have been made, unsuccessfully, to prevent the breakup of the Indian child's family.
    - c. That recommended placement is in compliance with the order of preference under §48.028(7)(b) or §48.028(7)(c) or good cause for departing from that order in §48.028(7)(e).
    - d. See §48.335(3j).
  5. A parent can present evidence regarding support to be paid by one or both parents.
  6. The court may admit testimony by telephone/audiovisual means. The request and showing of good cause may be made by telephone.
  7. The court shall produce a dispositional order.
  8. If the parent is present and out-of-home placement is ordered, the parent may provide the names of 3 relatives to be considered for placement. If they do not do so at the hearing, the agency must permit them to do so at a later date.
  9. See §48.335(3r)-(6)

**D. Dispositional Factors**

The best interest of the (unborn) child shall always be of paramount consideration. See §48.01(1).

1. If a judge finds that a child or unborn child of child expectant mother is in need of protective services, he/she must issue an order designating one or more of the resolutions of the case.
2. *Except:* the order may not place any child who is not specifically found to be developmentally disabled, mentally ill, or to have a disability specified in §115.76(5) in facilities that exclusively treat those categories of children.
3. The court may not place any child expectant mother of an unborn child in need of protection or services (UCHIP) outside of her home unless the court finds that she is refusing or not making a good faith effort to participate in AODA services. Dispositions include:

- a. Counseling the child or parent/guardian/custodian.
- b. Placing the child under supervision of the agency/department, or a suitable adult, including a friend of the child, under conditions prescribed by the judge, including reasonable rules for the child's conduct designed for the child's well-being, and, if applicable, for the physical well-being of the child's unborn child. See §48.345(2).
- c. Place the child in his/her home under agency/department supervision, ordering it to provide assistive services. See §48.345(2m).
- d. Placing the child as provided in sub. (2) or (2m) and, in addition, designate a court-appointed special advocate for the child. §48.345(2r). See §§48.236(3), (4), 48.07(5)(a).
- e. Designating one of the following as placement for the child:
  - i. The parent or relative of the child, unless the parent has been found guilty of intentional homicide of the child's other parent, unless placement would be in the child's best interest. The court shall consider the child's wishes.
  - ii. The home of a person not required to be licensed if the placement is under 30 days, subject to homicide conditions above.
  - iii. A 48.62 foster home, a 48.625 group home, or the home of a guardian under 48.977(2).
  - iv. A group home, if the child is at least 12, is a custodial parent, or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.
  - v. A residential treatment center under §48.60.
  - vi. If an Indian child is being placed outside the home, designating one of the placements listed in §48.028(7)(b) 1. to 4. in the order of preference listed, unless the court finds good cause to depart from that order.
  - vii. See §48.345(3)-(3m).
- f. If the child cannot be rehabilitated, treated or cared for with the voluntary consent of the child's parent/guardian, transferring custody to:
  - i. The child's relative.
  - ii. The department or county department.
  - iii. A licensed child welfare agency.
  - iv. See §48.345(4).

4. Payment - If the child needs special treatment/care, the judge may order the parent to pay for it. If the parent fails or is unable to, the judge may order an agency to provide the treatment/care. An order for a county department to provide care is subject to provisions under chapter 51. An order may not include administration of psychotropic drugs.
  - a. Payment for the special treatment/care relating to AODA services ordered under par. (a) shall be in accordance with §48.361.
  - b. Payment for chapter 51 services ordered under par. (a), other than AODA services, shall be in accordance with §48.362.
  - c. If the report recommends that the child is in need of an integrated service plan and one is available, the judge may order that one be developed and implemented. See §48.345(6)-(6m).
5. The judge may order that a child over 17 may live independently or with friends under appropriate supervision.
  - a. The child must show sufficient maturity and judgment.
  - b. If the plan cannot be implemented with consent, custody may be transferred.
  - c. See §48.345(10).
6. Educational programs – the judge may order the child to participate in any of the following:
  - a. A non-residential education program offered by the child’s school district.
  - b. Pursuant to contract with the district, a non-residential education program offered by a licensed child welfare agency, private, nonprofit, nonsectarian agency located in the child’s school district and that complies with 42 USC 2000(d), or a technical college located in the child’s school district.
  - c. The judge shall order the school to release the child’s records to ensure compliance with the order.
  - d. The judge shall order the child’s records disclosed to the entity offering the non-residential education program as necessary to ensure provision of adequate education.
  - e. The provision does not apply to a child with a disability, as defined under §115.76(5).
  - f. See §48.345(12).
7. If the child is in need of treatment for alcohol or drug abuse, the court may order the child to enter an outpatient treatment program at an approved facility. The facility shall report to the agency providing services as to the child’s cooperation.
  - a. The court may also order the child to participate in an alcohol or other drug abuse education program, the facilitators of which also must report on the child’s progress.
  - b. Payment for such treatment will be in accordance with §48.361.

- c. See §48.345(13).
8. If the judge finds that the child expectant mother of a UCHIP is in need of inpatient treatment for severe abuse alcohol or other substances, that it is appropriate for her and that it is the least restrictive treatment consistent with her needs, the judge may order her to enter an inpatient AODA program. The inpatient facility shall report to the agency primarily responsible for providing services to her as to whether she is cooperating and whether treatment is effective.
  - a. Payment for such treatment will be in accordance with §48.361. See §48.345(14).
9. If a UCHIP may be born during the period of the dispositional order, the judge may order that the child, when born, be provided with any services/care that may be ordered for a CHIP. See §48.345(15).

**E. Duty to Warn**

1. Whenever the court orders a child or expectant mother to be placed outside of the home, or denies a parent visitation because the child has been found to be (U)CHIP, and whenever the court reviews a permanency plan, the court shall orally inform the parents or expectant mother appearing in court of any grounds for termination of parental rights, and of the conditions that must be met for the child or expectant mother to return to the home, or for the parent to regain visitation.
2. In addition, the written order must inform the parent or expectant mother of the information listed above (i.e., conditions for return and grounds for termination of parental rights). See §48.356.

**F. Disposition of unborn child of adult expectant mother adjudged in need of protection or services.** The judge shall order one of the following dispositions:

1. Counseling
2. Supervision
3. Placement
4. Special treatment/care
5. Alcohol or drug treatment or education
6. Inpatient alcohol or drug treatment
7. See §48.347

**G. Dispositional Orders**

1. Based on evidence, the judge shall decide a disposition that employs the necessary means to protect the well-being of the child or expectant mother in the least restrictive manner. The decision shall:
  - a. Assure the care, treatment and rehabilitation of the child and family.
  - b. As well as the protection of the public.

- c. Whenever appropriate, the family unit shall be preserved and custody will be transferred only when there is no less drastic alternative. In that event, the judge should transfer custody to a relative whenever possible.
    - d. See §48.355(1).
  2. The judge shall make written findings of fact and conclusions of law, including findings as to the condition and need for special treatment or care of the child or expectant mother if an examination or assessment was conducted under §48.295. The court may not find that a child or an expectant mother is in need of psychotropic medications. See §48.355(2)(a).
  3. Content - The order shall include:
    - a. The services to be provided to the child and family and the identity of the legal custodian.
    - b. A notice to the child's parent/guardian/custodian, the child, if 14 years of age or over, the expectant mother, if 14 years of age or over, or the unborn child via the GAL that they may request an agency that is providing care or services to disclose the contents of any record kept or information received by the agency about the child or expectant mother as provided in s. 48.78 (2) (ag),(aj).
    - c. For an out-of-home placement: the name of the place where the child is being cared for or treated, except
      - i. *If placement is a foster home* –and the name and address of the foster parent is not available at the time of the order, it shall be furnished to the court and the parent within 21 days of the order. If the judge finds (after a hearing with due notice to the guardian) that disclosing the foster parent's identity would result in imminent danger to the child or foster parent, the judge may withhold the name of the prospective foster parents from the parent/guardian.
    - d. If an adult expectant mother is placed outside the home, the name of the facility where she will be treated.
    - e. The expiration date of the court order.
    - f. If the child is placed outside the child's home, a designation of the amount of support, if any, to be paid by the child's parent/guardian/trustee, specifying that the support obligation begins on the date of placement OR a referral to the county child support agency under §59.53(5) for establishment of child support.
    - g. If the child is placed outside the home, an order for the child's parent to provide a statement of income, assets, debts and living expenses to the department by a date specified by the court if it has not been done already.
    - h. For a child placed outside his or her home pursuant to an order under §48.345, a permanency plan under s.48.38 if one has been prepared.

- i. If the child is placed outside the home, a finding that continued in-home placement would be contrary to the welfare of the child.
- j. A finding as to whether the department or agency primarily responsible for providing services under a court order has:
  - i. Made reasonable efforts to prevent the removal of the child from the home.
    - a. Assuring that the child's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d)(b) 1. to 5. applies.
    - b. A finding as to whether the department or agency has made reasonable efforts to achieve the permanency goal of the child's permanency plan if one has been prepared.
  - ii. Make findings on a case-by-case based on circumstances specific to the child.
  - iii. Document or reference the specific information on which those findings are based in the court order.
  - iv. **Mere reference to this subdivision without specific information in the court order is not sufficient to comply with this subdivision.**
- k. If the child is placed under department supervision, an order ordering the child into the placement and care responsibility of the department and assigning the department primary responsibility for provision of services to the child.
- l. A statement that the court approves the placement recommended by the agency, if applicable; or if the court is ordering placement other than that recommended by the agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties.
- m. If the child is placed outside the home and the child's sibling has also been placed outside the home, a finding that the department or agency has made reasonable efforts to allow the siblings to remain together unless contrary to the children's well-being, or that reasonable efforts have been made to arrange for frequent visitation, unless contrary to the children's well-being.
- n. A determination that the department or agency does not have to make reasonable efforts to return the child safely to the home if the court finds that any of the circumstances in sub. (2d)(b)(1) to (5) applies as to the parent.
- o. In addition to the above, if the child is an Indian child who is being removed from the home of his or her parent or Indian custodian and placed outside that home, a finding supported by clear and convincing evidence (including testimony by at least one expert witness) that continued custody of the child will result in serious emotional or physical damage under 48.028(4)(d)(1) and a finding that active efforts have been made under 48.028(4)(d)(2),

unsuccessfully, to prevent the breakup of the Indian family. The findings must be in addition to those in bullet j above.

- p. A statement of the conditions with which the child or expectant mother is expected to comply. See §48.355(2)(b)(1)-(7).
- q. If school attendance is a condition of an order, the court shall specify what constitutes a violation of the condition and direct the school to notify the department of any violation by the child.
- r. The court shall require the department or agency to conduct a diligent search in order to locate and provide notice of the information in §48.21(5)(e)(2). a. to e. to all relatives of the child and other adults named under §48.335(6) and all adult relatives of the child under §48.21(5)(e)1. within 30 days of the child's removal from the parent's custody unless the child is returned home within that period.
  - i. The department or agency may not provide notice to a person named under §48.335(6) if it has reason to believe placement with that person would be dangerous to the child or parent.
  - ii. This does not apply if the search and notice were previously conducted within 30 days of the child's removal from custody under §48.21(5)(e)2.
- s. The court shall provide a copy of a CHIPS dispositional order to the parent/guardian/custodian/trustee, the child by counsel or GAL, the child's CASA, and if an Indian child, to the Indian custodian and tribe.
- t. A UCHIPS dispositional order will be provided to the mother, the unborn child through the GAL, the parent/guardian/legal custodian/trustee of a child expectant mother, and to the Indian custodian and tribe if the expectant mother is Indian. See §48.355(2)(d).

#### 4. Reasonable Efforts

- a. A department or agency may make reasonable efforts to prevent the removal of the child from the home at the same time as it makes reasonable efforts to place the child for adoption, with a guardian, with a fit and willing relative, or in some alternative permanent placement, including out-of-state. See §48.355(2b).
- b. When the court is considering whether the department or agency made reasonable efforts, the consideration should include but not be limited to whether:
  - i. A comprehensive assessment of the family was completed.
  - ii. Financial assistance was provided to the family.
  - iii. Services were offered/provided to the family, and whether assistance was provided to help them use the services, such as:
    - a. In-home support services (homemakers, parent aids).



- b. In-home intensive treatment services.
  - c. Community support services (child care, parent training, etc.).
  - d. Specialized services for family members with special needs.
  - e. Monitoring of client progress and participation.
  - f. If services did not exist or were not available, whether an alternative way of assessing the family's needs was utilized.
- iv. When the court is considering whether the department or agency has made reasonable efforts to achieve the permanency goal of the permanency plan, it shall make the same considerations as listed in 1-3 above and consider whether visitation schedules between the child and parent were implemented, unless visitation was denied or limited.
  - v. See §48.355(2c)(a)-(b).

## **H. Consent Decree**

1. At any time after a (U)CHIPS petition is filed, a judge or court commissioner may suspend the proceedings and place the child or expectant mother in the home or current placement, and specify the applicable conditions. Must be agreed to by:
  - a. The child if age 12 or older, unborn child by GAL, child or adult expectant mother.
  - b. The parent/guardian/legal custodian.
  - c. Person who filed the petition.
2. The consent decree must be written and given to all parties.
3. If the child is voluntarily placed outside the home at the time of the consent decree, or is otherwise living outside the home & the consent decree maintains that placement, it must include detailed findings, made on a case-by-case basis, that support the decision. See §48.32(b)(1) a-d.
4. If the judge or court commissioner finds that any of the circumstances in §48.355(2d)(b) 1. to 5. applies with respect to a parent, the consent decree shall include a determination that the department, department, or agency is not required to make reasonable efforts to make it possible for the child to return to the home.
5. A consent decree without such detailed findings is statutorily insufficient. See §48.32(3).
6. If any of the circumstances specified in §48.355(2d)(b) 1-5 applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing under §48.38(4m) within 30 days after the date of that finding to determine the permanency plan.
7. If the Indian child is placed or otherwise living outside the home, and if the consent decree maintains that living arrangement, it shall include a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody by the parent/Indian custodian is likely to result in serious emotional or physical damage to the child and a finding that active efforts have been made, unsuccessfully, to prevent the breakup of the Indian child's family.

8. If the placement departs from the order of placement under ICWA/WICWA preference, the court shall also find good cause for departing from that order.
9. The judge or commissioner may request a CASA for the child to perform the activities specified in §48.236(3) with the authority of §48.236(4), authorized in the memorandum of understanding under §48.07(5)(a).
10. A consent decree shall remain in effect up to 6 months unless the judge or commissioner orders sooner discharge.
11. On a parties' motion, the court may extend the decree for up to an additional 6 months in the absence of objection. If the party objects, the judge shall schedule a hearing and make a determination on the issue of extension. An extension of a UCHIPS consent decree may be granted after birth.
12. The consent decree may be amended at any time using the same procedures for entering the original consent decree. An amended consent decree may revise any of the terms and conditions or change the child's placement. A hearing is only required if the child's placement is being changed from in-home to out-of-home. See §48.32(1)(am).
13. If, prior to discharge, or the expiration of the consent decree, the court finds that the conditions of the consent decree were not fulfilled, or that the child or expectant mother objects to the continuation of the consent decree, the hearing under which the child or expectant mother was placed on supervision may be continued to conclusion as if the consent decree had never been entered.
14. A court which, under this section, elicits or examines information or material about a child or an expectant mother which would be inadmissible in a hearing on the allegations of the petition may not, over objections of one of the parties, participate in any subsequent proceedings if any of the following applies:
  - a. The court refuses to enter into a consent decree and the allegations in the petition remain to be decided in a hearing at which one of the parties denies the allegations forming the basis for a (U)CHIPS petition.
  - b. A consent decree is granted but the (U)CHIPS petition is subsequently reinstated.
15. The judge or commissioner shall inform the parties of the right object to the continuation of the consent decree and that the hearing under which the party was placed on supervision may be continued to conclusion as if the consent decree had never been entered.
16. See generally §48.32.

## II. CASE LAW

- The petitioner bears the burden of proof by the greater weight of the credible evidence for purposes of dispositional and extension hearings. *In Interest of T.M.S.*, 152 Wis. 2d 345, 448 N.W.2d 282 (Ct. App. 1989).
- A hearing on motions after the verdict is considered part of the fact-finding hearing. The dispositional hearing must be held within 30 days of the date of subsequent hearings, not the original verdict date. *In Interest of C.M.L.*, 157 Wis. 2d 152, 458 N.W.2d 537 (Ct. App. 1990).



- Scheduling conflicts with the court and attorneys may constitute good cause to grant a continuance under §48.315(2). *In re Moriah K.*, 2005 WI 152, 286 Wis. 2d 143, 706 N.W.2d 257.
- When the case is uncontested and parties are represented by counsel and the appropriate statutory procedure has been followed, the specific fact-finding of section 48.355(2)(a)/938.355(2)(a) is not required. Failure to follow literally the statutory enumeration of rights at a plea hearing in connection with a CHIPS petition was not prejudicial error, where trial court did inform parties of potential consequences of proceeding and of their right to jury trial. See § 48.355(2)(a). *In Interest of G.H.*, 150 Wis. 2d 407, 441 N.W.2d 227 (1989).
- The court must explain to the juvenile the conditions with which he or she is required to comply. *In Interest of F.T.*, 150 Wis. 2d 216, 441 N.W.2d 322 (Ct. App. 1989).
- CHIPS dispositional order was effective from the date of the clerk of courts' stamp, rather than the date of signature. *In Interest of L.M.C.*, 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).
- Even though child was CHIPS because there was no parent to take care of him rather than because he was receiving inadequate care due to his father's chemical dependency, the juvenile court had the authority to condition the return of a the child to the father on the father's successful completion of a drug treatment program. *In Interest of R.H.*, 157 Wis. 2d 161, 458 N.W.2d 576 (Ct. App. 1990). See §§ 48.355, 48.365
- Compliance with the conditions of a CHIPS dispositional order does not create a presumption that it is in the child's best interests to be returned to the biological parents; the best interests of the child standard is to be defined in relation to the child and not to be used as a euphemism for the biological parent's compliance with the return home conditions of a dispositional order. *In Interest of Nadia S.*, 219 Wis. 2d 296, 581 N.W.2d 182 (1998). See § 48.355(2)(b).
- A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education-related costs against the parents. *Calumet County Department of Human Services v. Randall*, 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503.
- Child in need of protection or services (CHIPS) order provided sufficient notice that mother's parental rights could be terminated; form portion of the CHIPS order stated that parents had been advised of the applicable grounds for termination of parental rights, and the order also contained a "Warning To The Parents," followed immediately by the statutory language for the applicable grounds for termination. *In re Artavia B.*, 2007 WI App 129, 301 Wis.2d 731, 731 Wis. 2d 360, *review denied*, 2007 WI 134, 305 Wis. 2d 130, 742 N.W.2d 527.
- Section 48.355(2)(b)1, which requires that the dispositional order contain "specific services" does not mean that the order separately list each individual service the DHHS is to provide, provided that the DHHS is to provide "supervision, services and case management, and detailed conditions that the parents must complete in compliance with the dispositional order. *In re Elijah W.L.*, 2010 WI 55, 325 Wis2d 524, 785 N.W.2d 369.

- *In re Jonathan H.*, 2010AP416 (Wis. Ct. App. Aug. 18, 2010) (unpublished), held that the Sheboygan County case did not mean that the magic words, “supervision, services and case management,” have to be used in the dispositional order. It is sufficient that the court command DHS to do services, supervise and manage the parents and that the parents and department know what needs to be done. **Please note:** This decision is unpublished and has no precedential value. It is not binding on any Wisconsin court, a court has no duty to distinguish or discuss it, and a party has no duty to research or cite it. It may be cited as persuasive authority only. See §809.23(3)(b).
- In a termination of parental rights case based on the continuing child in need of protection or services (CHIPS) ground, applicable statute does not require proof that notice of ground for terminating parental rights was given in every CHIPS order removing a child from the home or extension thereof, nor does it require proof that notice was in the last CHIPS order; rather, it requires proof that one or more of the CHIPS orders removing a child from the home, or extension thereof, contain the required written notice. *In re Matthew D.*, 2016 WI 35, 368 Wis.2d 170, 880 N.W.2d 107.
- Statutorily required written notice that termination of parental rights was at issue based on a continuing child in need of protection or services (CHIPS) proceeding was provided based on a single written order to which was attached a notice concerning grounds to terminate parental rights that mother had signed, even though subsequent written orders in the case did not contain the same warnings. *In re Matthew D.*, 2016 WI 35, 368 Wis.2d 170, 880 N.W.2d 107.

### III. POTENTIAL ISSUES

- A. Is the child an Indian child?
- B. Best interests of the child
- C. ASFA findings
- D. TPR Warnings