

POST-DISPOSITION OUTLINE - CHIPS

Abbreviations

(U)CHIPS – (Unborn) Child in need of protection or services

CASA – Court-Appointed Special Advocate

GAL - Guardian ad Litem

TPR – Termination of Parental Rights

AODA – Alcohol or Other Drug Abuse

ASFA – Adoption and Safe Families Act

I. CHANGE OF PLACEMENT

A. STATUTORY SUMMARY

1. EMERGENCY CHANGES

1. **Out-of-home to out-of-home, out-of-home to in-home, or in-home to in-home.**

If emergency conditions necessitate an immediate change in placement of a child, the person or agency responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without prior notice. Notice of the emergency change in placement shall be sent within 48 hours after the emergency change in placement to the child, child's parent, guardian, and legal custodian of the child, district attorney or corporation counsel, any foster parent, or other physical custodian and the child's court appointed special advocate, and if the child is an Indian child, the Indian custodian and tribe. Any party receiving notice may demand a hearing by filing an objection within 10 days after receipt of the notice.

See §48.357(1)(c).

2. **In-home to out-of-home.** If emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the person or agency responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without first requesting a change in placement. The court shall hold a hearing on the emergency change in placement within 48 hours after the emergency change in placement is made.

- i. The agency, district attorney, or corporation counsel must file a formal request for change in placement by the time of the hearing. If all parties consent to waive the notice requirements, the court may hear the request immediately in lieu of conducting the emergency change in placement hearing.

See §48.357(2)(b).

2. **REQUESTS UNDER §48.357(1)** – May be requested by person or agency responsible for implementing the dispositional order, the district attorney, or the corporation counsel, whether or not the change was authorized by the dispositional order.

See §48.357(1)(a).

- a. For a change from in home to out of home placement, the request shall contain the name and address of the new placement, reasons for the change, why the new placement is preferable and how the new placement satisfies the objectives of the treatment plan. The request shall also contain why continued in home placement is contrary to the welfare of the child and information showing that reasonable efforts to prevent removal have been made. A hearing shall be held with not less than 3 days notice given to the child, the parent, guardian, and legal custodian, the child's court appointed special advocate, and all parties bound by the dispositional order. If the placement is changed from in home to out of home, ASFA findings must be made. At the hearing, the parent must provide to the court the names of 3 relatives or other individuals over 18 for the court to consider for placement. For a change from in home to out of home placement for an Indian child, the request must also contain specific information showing that continued in home placement is likely to result in serious emotional or physical damage to the child, that efforts have been made, unsuccessfully, to prevent the breakup of the Indian family, that order of placement preference requirements have been met, and if they have not, that the court has good cause for departing from that order. See §48.357(1)(am)1-1g, 48.357(1)(c); 48.028(4)(d)1-2, 48.028(7)(b),(c),(e).
- b. For other changes of placement under §48.357(1), written notice of the proposed change of placement shall be sent to the child, the parent, guardian, and legal custodian, any foster parent, or other physical custodian, and the child's court appointed special advocate, and if the child is an Indian child, to the Indian custodian and tribe. The notice shall contain the name and address of the new placement, reasons for the change, why the new placement is preferable and how the new placement satisfies the of the treatment plan. Any person, other than the child's special advocate, may obtain a hearing by filing an objection within 10 days of receiving notice. Placements may not be changed until 10 days after the notice is given unless the change was authorized in the dispositional order or the parent, guardian, legal custodian, Indian custodian and tribe (if an Indian child), child, if 12 years of age or older, or unborn child by GAL, sign waivers of objection. A hearing for a change authorized in the dispositional order is not required except when an objection alleges there is new information available that affects the advisability of the court's dispositional order. If the change in placement would remove the child from a foster home, or other placement with a physical custodian, a foster parent, or physical custodian may make a written or oral statement during the hearing or submit a statement prior to the hearing. If a placement outside of the home is changed to another placement outside the home, ASFA findings must be made. See §48.357(1)(am) and §48.357(2r).

- 3. REQUESTS UNDER §48.357(2m)** – May be requested by the child, the parent, guardian, legal custodian or Indian custodian of the child, an expectant mother, an unborn child by the GAL, any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, or the court on its own motion. See 48.357(2m)(a).

- a. For a change from in home to out of home placement, the request shall contain the name and address of the new placement and shall state what new information is available that affects the advisability of the current placement. The request shall also contain why continued in home placement is contrary to the welfare of the child and information showing that reasonable efforts to prevent removal have been made. A hearing shall be held with not less than 3 days notice given to the child, the parent, guardian, and legal custodian, any the child's court appointed special advocate, and all parties bound by the dispositional order. If the placement is changed from in home to out of home, ASFA findings must be made.
See §48.357(2m).
- b. For an out of home placement of an Indian child, a the request shall also contain specific information showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, that active efforts have been made, unsuccessfully, to prevent the breakup of the Indian child's family, a statement as to whether the new placement is in compliance with the order of placement preference, or a statement showing good cause for departing from that order. No hearing shall be held until 10 days after receipt of the request or proposal by the Indian child's parent, custodian, or tribe, or else 15 days after receipt by the Secretary of the Interior. Upon request of the Indian parent, custodian, or tribe, a continuance of an additional 20 days may be granted to prepare.
See §48.357(2m)(am)1, 48.357(2m)(br).
- c. For other changes of placement under §48.357(2m), the request shall contain the name and address of the new placement and shall state what new information is available that affects the advisability of the current placement. The court shall hold a hearing on the matter if the request states that new information is available that affects the advisability of the current placement, unless written waivers of objection to the proposed change are signed by the child, the parent, guardian, and legal custodian of the child, the Indian custodian, any foster parent, or other physical custodian of the child and the court approves. If a hearing is scheduled, the court shall notify the child, the parent, guardian, and legal custodian of the child, any foster parent, other physical custodian and the child's court-appointed special advocate, and if the child is Indian, the child's Indian custodian and tribe, at least 3 days prior to the hearing. If the change in placement would remove the child from a foster home, or other placement with a physical custodian, a foster parent, or physical custodian may make a written or oral statement during the hearing or submit a statement prior to the hearing. If a placement outside of the home is changed to another placement outside the home, ASFA findings must be made.
See §48.357(2m) and §48.357(2r).

4. HEARING PROCEDURES

The general public shall be excluded from the hearing. The only persons entitled to be present are the parties and their counsel or guardian ad litem, the court appointed special advocate for the child, the child's foster parent or other physical custodian, witnesses and other persons requested by a party and approved by the court. A child, with the consent of the child's counsel or guardian ad litem, may be temporarily excluded from the court. Except as provided in §901.05, neither common law nor statutory rules of evidence are binding. Telephone or live audiovisual means may be used. The court should admit all testimony having reasonable probative value. Hearsay evidence may be admitted. The court shall give effect to the rules of privilege recognized by law. See §48.299.

5. PROHIBITED PLACEMENTS

The court may not change a child's placement to a placement in the home of a person convicted of 1st degree or 2nd degree intentional homicide of a parent of the child, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the child. See §48.357(4d).

6. MANDATORY CHANGE OF PLACEMENTS

If a parent in whose home a child is placed is convicted of 1st degree or 2nd degree intentional homicide of the child's other parent and the conviction is not reversed, vacated or set aside, the court shall change the child's placement to a placement out of the home of the convicted parent on the petition of the child, the guardian or legal custodian, a person or agency bound by the dispositional order, the district attorney or corporation counsel, or on the courts' own motion, and on notice to the convicted parent unless the court determines by clear and convincing evidence that the continued placement is in the child's best interest. See §48.357(4d).

7. CHILD SUPPORT INFORMATION

If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide financial information to the court or the person or agency primarily responsible for implementing the dispositional order. See §48.357(5m).

8. ASFA

Remember, a hearing is required anytime a child's placement is changed from in-home to out-of-home. The court must make a number of findings, including: (1) that it is contrary to the welfare of the child to remain in the parental home; (2) that reasonable efforts have been made to prevent the removal of the child from the home; and (3) reasonable efforts have been made to finalize the permanency plan (if filed at time of hearing).

II. CASE CLOSURE ORDERS

Where a child is subject to a juvenile court dispositional order and a family court order exists/is pending, the child's counsel, GAL, parent, guardian, legal custodian, or Indian custodian, the agency, district attorney or corporation counsel, or the court, on its own motion, may file a petition requesting that the juvenile court issue an order that would both: (1) modify the existing or pending family court order (e.g., divorce or paternity) consistent with the CHIPS dispositional order; and (2) terminate the current juvenile court order.

1. The juvenile court judge may modify/establish paternity, legal custody, periods of physical placement, visitation rights, child support, and coverage of health care expenses.
2. The juvenile court judge may not transfer legal custody of the child to a relative or an agency under s. 767.41 (3).
3. Future modifications of the family court order by any party to that order are made using the regular Ch. 767 procedures.

See §48.355(4g).

III. REVISIONS

A. STATUTORY SUMMARY

1. A revision of an order regarding a child, including a change of child support but other than for change of placement, can be requested by the child, child's parent, guardian or legal custodian, Indian custodian, an expectant mother, an unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel or the court on its own motion.
See §48.363(1)(a).
2. A hearing shall be held if the request indicates that new information is available which affects the advisability of the dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.
See §48.363(1)(a).
3. If a hearing is held, the court shall notify the child, the child's parent, guardian and legal custodian, Indian custodian, all parties bound by the dispositional order, the child's foster parent, treatment foster parent or other physical custodian, the child's court-appointed special advocate, and the district attorney or corporation counsel, and the Indian tribe if the Indian child is placed out of home, at least 3 days prior to the hearing. A copy of the request shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing.
See §48.363(1)(b).
4. If the proposed revision includes a request to change child support, the court shall order the child's parent to provide financial information and provide a copy to the county department.
See §48.363(1)(c) and §48.363(1)(d).

5. The general public shall be excluded from the hearing. The only persons entitled to be present are the parties and their counsel or guardian ad litem, the court appointed special advocate for the child, the child's foster parent or other physical custodian, witnesses and other persons requested by a party and approved by the court. A child, with the consent of the child's counsel or guardian ad litem, may be temporarily excluded from the court. Except as provided in §901.05, neither common law nor statutory rules of evidence are binding. Telephone or live audiovisual means may be used. The court should admit all testimony having reasonable probative value. Hearsay evidence may be admitted. The court shall give effect to the rules of privilege recognized by law.
See §48.299.
6. If a hearing is held, any party may present evidence relevant to the issue of revision. A foster parent or physical custodian may make a written or oral statement during the hearing or submit a statement prior to the hearing.
See §48.363(1m).
7. If child support is revised for a child held in a residential nonmedical facility, the parent's liability shall be determined under §49.345(14).
See §48.363(2).
8. Remember, at every dispositional hearing in which the child is placed outside the home or continued outside of the home, the court must make three findings: (1) that it is contrary to the welfare of the child to remain in the parental home; (2) that reasonable efforts have been made to prevent the removal of the child from the home; and (3) reasonable efforts have been made to finalize the permanency plan.

IV. EXTENSIONS

A. STATUTORY SUMMARY

1. An extension of an order regarding a child can be requested by the parent, child, guardian, legal custodian, Indian custodian, expectant mother, unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel or the court on its own motion.
See §48.365(1m).
2. No order may be extended without a hearing. However, if a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days. Failure to object if a hearing is not held within a time period under this section waives any challenge to the court's competency to act on the request.
See §48.365(2) and §48.365(6).

3. The court shall notify the child, the child's parents, guardian, legal custodian, and Indian custodian, all parties present at the original hearing, the child's foster parents or other physical custodian, the child's court-appointed special advocate, and the district attorney or corporation counsel of the time and place of the hearing, and if an Indian child being placed out of home, the Indian child's tribe. No minimum notice is stated.
See §48.365(2).
4. The appearance of the child may be waived by consent of the child, counsel or guardian ad litem.
See §48.365(3).
5. The general public shall be excluded from the hearing. The only persons entitled to be present are the parties and their counsel or guardian ad litem, the court appointed special advocate for the child, the child's foster parent or other physical custodian, witnesses and other persons requested by a party and approved by the court. A child, with the consent of the child's counsel or guardian ad litem, may be temporarily excluded from the court. Except as provided in §901.05, neither common law nor statutory rules of evidence are binding. Telephone or live audiovisual means may be used. The court should admit all testimony having reasonable probative value. Hearsay evidence may be admitted. The court shall give effect to the rules of privilege recognized by law.
See §48.299.
6. At the hearing the person or agency primarily responsible for providing services to the child shall file a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the rehabilitation or care and treatment of the child.
See §48.365(2g)(a).
 - a. In addition, if the child is placed outside his or her home, the report shall also contain information about the child's adjustment, progress, suggestions for amending the order, and, if the child has been placed outside of the home for 15 of the most recent 22 months, a statement about whether or not a recommendation has been made for termination of parental rights and a copy of the review of the permanency plan and the agency's response.
See §48.365(2g)(b)1.,2. & 3.
 - b. If the child is an Indian child placed outside the home, the report shall also contain specific information showing that active efforts have been made, unsuccessfully, to prevent the breakup of the Indian child's family.
See §48.365(2g)(4), §48.028(4)(d)2.
 - c. In addition, if the child is NOT placed outside his or her home, the report shall contain a description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation, an explanation of why these efforts have not yet succeeded in meeting the objectives, and anticipated future planning for the child.
See §48.365(2g)(c).

7. Any party may present evidence relevant to the issue of extension. A foster parent or physical custodian may make a written or oral statement during the hearing or submit a statement prior to the hearing. If the child is placed outside the home, the person or agency shall present evidence showing the agency has made reasonable efforts to achieve the permanency plan. If an Indian child has been placed outside the home, the person or agency shall present evidence that reasonable efforts have been made, unsuccessfully, to prevent the breakup of the Indian family. The judge shall make findings of fact and conclusions of law based on the evidence. The judge shall determine which dispositions are to be considered for extension.

See §48.365(2m)(a)1, §48.365(2m)(ag) and §48.365(4).

8. An order for extension that continues the placement of a child in his or her home shall be for a specified length of time not to exceed one year after its date of entry. An order for extension that continues a child in an out of home placement shall be for a specified length of time not to exceed the later of the following:
 - a. Date the child turns 18.
 - b. One year after the date of entry of the order.
 - c. If the child is a full-time student in high school or its equivalent and is reasonably expected to complete the program before reaching 19, the date on which the child reaches 19 or graduates, whichever comes first.
 - d. Date child turns 21 or graduates high school, whichever comes first, if:
 - i. Child is a full-time student in high school or its equivalent.
 - ii. Child has an individualized education program (IEP) in effect.
 - iii. Child is at least 17 years old when the order is entered.
 - iv. Child or child's guardian agrees to the order.

See §48.365(5).

9. Remember, at every dispositional hearing in which the child is placed outside the home or continued outside of the home, the court must make three findings: (1) that it is contrary to the welfare of the child to remain in the parental home; (2) that reasonable efforts have been made to prevent the removal of the child from the home; and (3) reasonable efforts have been made to finalize the permanency plan.

B. CASE LAW

Extension order that was signed after termination of dispositional order for children in need of protection or services was valid; extension was based on timely oral decision in extension hearing held before termination; and oral, newly granted extension was effective and ran from date that disposition would otherwise terminate. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

Thirty-day extension of dispositional order for children in need of protection or services was valid, even though 30-day extension was ordered before petitions for extension were filed; request for extension was made before dispositional order terminated. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

Gap between effective dates of extensions of dispositional order for children in need of protection or services did not deprive court of subject matter jurisdiction. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

One-year extension of dispositional order for children in need of protection or services ran from termination date of valid, 30-day extension. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

Dispositional order for children in need of protection or services could not be extended for 30 days after it had already been extended for one year and 30 days, even though second 30-day extension had been ordered as continuance without objection and due to court's calendar. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

Parents' failure to challenge competency of trial court to enter into more than one 30-day extension of dispositional order for children in need of protection or services and to enter another one-year extension precluded them from challenging court's competency at expiration of one-year extension; parties had ample opportunity to litigate competency to proceed before grant of one-year extension and in Court of Appeals by timely appeal; and public interest in protecting adoption strongly supported ruling that parents were precluded from litigating trial court's competency to grant dispositional extension, except in proceeding granting extension or an appeal. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

Order granting or denying extension of dispositional order for children in need of protection or services is appealable as of right. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

While purpose of hearing on application to extend dispositional order, entered after children were found to be in need of protection and services due to neglect, was to determine best interests of children, it was petitioning, and not objecting, party which had primary obligation to move case along in timely fashion to get to that hearing. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

Circuit court loses its competence to exercise jurisdiction over petition to extend dispositional order, affecting children adjudged to be in need of protection and services due to neglect, by its failure to hold hearing before expiration of 30-day temporary extension of dispositional order; 30-day temporary extension period cannot be enlarged by statute governing delays, continuances, and extensions. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

Dispositional order, entered after children were found to be in need of protection and services due to neglect, expired once 30-day temporary extension of dispositional order elapsed, and circuit court was no longer competent to consider county's petition to extend dispositional order for another year, though original hearing date was properly set and it was parent's attorney who sought to reschedule hearing due to scheduling conflict, absent any evidence explaining why county was unable to file early enough so as to enable circuit court to hear matter prior to expiration of 30-day extension or why it failed to alert circuit court to necessity of holding hearing prior to expiration of 30-day extension. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

Circuit court's loss of competency to consider county's petition to extend dispositional order entered after children were determined to be in need of protection and services, resulting from circuit court's failure to hold hearing before 30-day temporary extension elapsed, could not be waived by any of the parties. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

Note: 48.365(6) has since been amended to so that “Failure to object if a hearing is not held within the time period under this subsection waives any challenge to the court’s competency to act on the request.”

V. POTENTIAL ISSUES

- A. Exceeding time limitations
- B. Need for counsel or guardian ad litem
- C. TPR warnings
- D. ASFA
- E. WICWA