

CHIPS PERMANENCY PLANNING OUTLINE

❖ ABBREVIATIONS

- AODA – Alcohol and Other Drugs Abuse
- ASFA – Adoption and Safe Families Act
- CASA – Court-Appointed Special Advocate
- GAL – Guardian ad Litem
- OPPLA – Other Planned Permanent Living Arrangement
- RCCCY – Residential Care Center for Children and Youth
- TPR – Termination of Parental Rights
- (U)CHIPS – (Unborn) Child in need of protection or services

❖ PURPOSE OF THE PERMANENCY PLANNING PROCESS

- To ensure reunification of the child with his or her family whenever safely appropriate, or that the child is placed quickly in a home providing long-term stability and permanency.
- To ensure that the agency is fulfilling its role in achieving the goals of the plan.
- To keep parents, guardians, and the child involved in achieving the goals, especially when the goal is reunification.
- To prevent children from becoming stuck in the foster care system.

❖ PERMANENCY PLAN BASICS

- Prepared by the agency responsible for the placement or by the agency primarily responsible for providing services for the child.
- Prepared for any child who is living in a:
 - Foster Home
 - Group Home
 - Residential Care Center for Children and Youth
 - Juvenile Detention Facility
 - Shelter Care Facility
 - Home of a guardian or relative other than a parent
 - Supervised independent living arrangement
- The plan is required for children living in the above, if:
 - The child is in custody under §§48.207-209.

- The child is in the agency's custody.
 - The child is under agency supervision under §48.64(2), a consent decree, or a court order.
 - The child is under a voluntary placement agreement or voluntary transition-to-independent-living agreement.
 - The child is under agency guardianship.
 - The child's care is eligible for payment under §49.19.
 - The child's parent is in one of the above placements and the child is residing with that parent.
 - See §48.38(2).
- The plan must be filed with the court within **60 days** after removal from the home. Failing to act within Chapter 48 time periods is non-jurisdictional.
 - If reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination and the plan must be filed 5 days before the hearing.

❖ **PERMANENCY PLAN NOT REQUIRED**

- Juvenile is alleged delinquent and held in juvenile detention, juvenile portion of county jail, or shelter care facility, and
- The agency intends to recommend placement in a juvenile correctional facility or secured RCCCY.
- If the court does not accept the agency's recommendation, and places the juvenile in another out-of-home placement, the agency must file a plan within 60 days of the disposition date. §938.38(3).

❖ **PERMANENCY PLAN REQUIREMENTS**

- See §48.38(4) for contents of the permanency plan.

❖ **REASONABLE EFFORTS NOT REQUIRED; PERMANENCY PLAN DETERMINATION HEARING**

- If the court finds that circumstances in §48.355(2d)(b)1.-5. apply as to a parent, the court shall hold a hearing under §48.38(4m) within 30 days of that finding (i.e., reasonable efforts are not required), to determine a permanency plan for the child.
 - The agency shall file the permanency plan not less than 5 days before the hearing.
 - The court shall consider placing the child outside the state if that action would be appropriate to achieving the goal of the permanency plan.

- At least 10 days before the hearing, the court will inform the parties of the time, place, and purpose of the hearing, of the issues to be heard at the hearing, and that they have a right to be heard at the hearing.
- If the child's age and developmental level are sufficient for the court to consult with the child, or if the court determines doing so is in the child's best interests, the court shall consult with the child in an age- and developmentally-appropriate manner about the permanency plan and other appropriate matters. If neither situation applies, the child's counsel, caseworker, or GAL may submit a written or oral statement expressing the child's wishes, goals and concerns regarding the permanency plan. The child may still be required to be physically present if a written statement is submitted.
- The court shall give a foster parent, facility operator, notified relative, or other physical custodian a right to be heard at the hearing by giving an opportunity to submit a written or oral statement relevant to the issues to be heard. That person does not need to be a party to the proceeding solely on the basis of receiving that notice and right to be heard.

❖ **PERMANENCY REVIEW - §48.38(5)**

- If reasonable efforts are required, the plan must be reviewed not later than 6 months after the child is removed from the home and every 6 months thereafter, for so long as the child is in an out-of-home placement.
- The court must hold a hearing for the review the permanency plan at 12-month intervals.
 - The first court review must be within 12 months of the child's removal from the home, or within 6 months of a prior review, whatever is earlier.
 - If the court elects not to conduct the 6-month interval reviews:
 - The court shall appoint a panel to review.
 - The court may appoint an independent agency to designate a panel.
 - The panel must consist of at least three persons.
 - The voting majority must not be employed by the agency that prepared the child's plan, and must not be responsible for providing services to the child or family.
 - The panel will be allowed to access the child's records but may not disclose any information therein to outside parties.
- Periods of delay in §48.315(1) may not be excluded when computing time periods for conducting permanency reviews/hearings.

- The 6-month and 12-month periods include trial reunifications under §48.358.
- Thirty days before the review, the court shall notify in writing the parties as to the date, time, place of the review, the issues to be discussed, and that they may be heard via submission of written comments not less than 10 working days before review.
- At least 5 days before the review date, the agency that prepared the permanency plan shall provide written copies of the plan and any written comments received to:
 - Panel members;
 - Child's parent, guardian, or custodian;
 - District Attorney or Corporation Counsel;
 - Child's counsel, GAL, and CASA; and
 - If the child is an Indian child, the Indian custodian and tribe.
 - Notwithstanding §48.78(2)(a), the above parties may have access to any of the child's other records for the purpose of participating in the review, but may not share those records with any other person.
- The court or panel must determine:
 - Continuing necessity for and appropriateness of the child's placement.
 - If OPPLA is a permanency goal, this determination shall include an explanation of why OPPLA is the best permanency goal for the child and why, supported by compelling reasons, it continues not to be in the child's best interests to be returned home or placed for adoption, with a guardian, or with a fit and willing relative.
 - The extent of compliance with the plan by:
 - Agency,
 - Other service providers,
 - Parents,
 - Child, and
 - Guardian, if present.
 - The extent of any efforts to involve appropriate service providers in addition to the agency's staff to meet the needs of the child and the parents.
 - The progress toward eliminating the causes for the child's placement outside the home, and towards returning the child home or obtaining another permanent placement.

- The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian, with a fit and willing relative, or in some other planned permanent living arrangement (that includes an appropriate, enduring relationship with an adult).
- The continuing appropriateness, according to standards established by the department, of the permanency goal and, if the court or panel considers appropriate, any concurrent permanency goals for the child. If the court or panel does not approve of any of those goals or if the court or panel determines that a concurrent permanency goal is appropriate, the court or panel shall determine the permanency goal and, if appropriate, any concurrent permanency goals for the child.
- If the child has been placed outside the home for 15 or more of the most recent 22 months (not counting periods when the child is in runaway status or a trial reunification), the appropriateness of the permanency plan and the circumstances which prevent the child from:
 - Being returned safely to his or her home;
 - Having a petition for the involuntary termination of parental rights filed on behalf of the child;
 - Being placed for adoption;
 - Being placed with a guardian;
 - Being placed in the home of a fit and willing relative of the child; or
 - If age 16 or over, being placed in some other planned permanent living arrangement (OPPLA) that includes an appropriate, enduring relationship with an adult.
- Whether reasonable efforts were made by the agency to achieve the permanency goal of the permanency plan, including through an out-of-state placement, if appropriate.
- If the child has one or more siblings who have also been removed from the home, whether reasonable efforts were made in placing the sibling group together, unless the court or panel finds that placement contrary to the well-being or safety of those children. In that case, whether reasonable efforts have been made to allow for frequent visitation or other ongoing contact between the siblings, unless the court finds that arrangement to be contrary to the well-being or safety of those children.
- If goal of OPPLA, the steps taken by the agency, including consultation with the child, to ascertain whether the child has

regular, ongoing opportunities to engage in age or developmentally appropriate activities and to ensure the caregiver is applying the reasonable and prudent parent standard.

- If the child is an Indian child, whether active efforts under §48.028(4)(d)2. have been made to prevent the breakup of the Indian family, whether those efforts have proved unsuccessful, and whether the Indian child's placement is in compliance with the order of placement preference under §48.028(7)(b) or (c), and if it is not, good cause for departing from that order under §48.028(7)(e).
- If the child is subject to an order that terminates at age 21:
 - Appropriateness of the transition to independent living plan;
 - Progress made by the child toward the transition to successful adulthood; and
 - Extent of compliance with the transition to independent living plan by the child, guardian, agency primarily responsible for providing services under the plan, and service providers.

❖ **AGENCY SUMMARY - §48.38(5)(e)-(f)**

- Agency must prepare a written summary of the panel's determinations within 30 days of the review, providing copies to
 - The court that entered the order;
 - The child, counsel, and/or GAL;
 - The parent, guardian, or custodian;
 - The CASA;
 - The foster parent, operator of facility where the child is living, or relative with whom the child is living;
 - The District Attorney or Corporation Counsel; and
 - If an Indian child, the Indian custodian and tribe.
- If the written summary contains recommendations that are in conflict with the dispositional order, or provide for additional services not specified in the dispositional order, the agency must request revision of the dispositional order.

❖ **PERMANENCY HEARING - §48.38(5m)**

- The court shall hold a hearing to make the determinations provided above no later than 12 months after the child was first removed from the home and every 12 months after a previous hearing as long as the child is placed outside the home.

- Not less than 30 days before the hearing, the court must inform the parties of the time, place, and purpose of the hearing, of the issues to be heard at the hearing, and that they have a right to be heard at the hearing.
- A child, parent, guardian, legal custodian, foster parent, operator of a facility, relative caregiver, and school who is provided notice shall have a right to be heard at the hearing by submitting written comments relevant to the determinations specified above not less than 10 working days before the date of the hearing or by participating at the hearing. This does not make that person a party to the proceeding solely on the basis of receiving notice and a right to be heard.
- An attorney, GAL, CASA, agency, or person representing the interests of the public who is provided notice may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified above not less than 10 working days before the date of the hearing or by participating at the hearing.
- If the child's permanency plan indicates that the child's age and developmental level are sufficient for the court to consult with the child regarding the permanency plan or the court determines that consultation with the child would be in the child's best interests notwithstanding a prior decision, the court shall consult appropriately with the child regarding the permanency plan and any other appropriate matters. If none of those circumstances apply, the court may permit the child's caseworker, counsel, or GAL to make a statement during the hearing, or to submit a written statement prior to the hearing, expressing the child's wishes, goals, and concerns regarding the permanency plan and those matters. If the court permits such a statement, it may still require the child to be physically present at the hearing.
- At least 5 days before the date of the hearing, the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the counsel or GAL, to the CASA, and for an Indian child placed outside the home, to the Indian custodian and tribe.
- Notwithstanding §48.78(2)(a), the person representing the interests of the public, the child's counsel or GAL, the CASA, and, if the child is an Indian child, the Indian custodian and tribe may have access to any other records concerning the child for the purpose of participating in the review. The information in the records may not be disclosed to any other person.
- ***Important: TPR Warnings*** Whenever the court reviews a permanency plan under this section, the court shall orally inform the parents appearing in court of:
 - Any grounds for termination of parental rights, AND

- The conditions that must be met for the child to return home, or for the parent to regain visitation.
- See §48.356.

Case Law

- ❖ Section 48.415(2)(a)1. makes the written notice in sub. (2) an element to prove in a TPR case grounded in continuing CHIPS. The plain language of s. 48.415(2)(a) 1. provides that the statutory notice requirements are satisfied when at least one of the CHIPS orders contains the written notice required under sub. (2). Section 48.415(2)(a) does not require that notice be given in every CHIPS order, and it does not require that notice be in the last CHIPS order. *St. Croix County Department of Health and Human Services v. Michael D.*, 2016 WI 35, 368 Wis. 2d 170, 880 N.W.2d 107, 14-2431.