

FACT-FINDING HEARING OUTLINE - CHIPS

A. STATUTORY SUMMARY

I. Fact-Finding Hearing

- a. A hearing to determine if the allegations in a petition are proved by clear and convincing evidence
- b. If the petition is for TPR to an Indian child, the hearing is to determine if the allegations in the petition are proved by clear and convincing evidence and if the allegations under §48.42(1)(e) relating to serious emotional or physical damage are proved beyond a reasonable doubt as provided in §48.028(4)(e)1, unless partial summary judgment on the grounds for TPR is granted.
- c. The hearing is before the court unless one of the parties requests a jury trial before or during the plea hearing.
 - i. 6 person jury if petition is under §48.13 or §48.133
 - ii. 12 person jury if petition is under §48.42, unless parties agree to less
 - iii. Jury selection governed by chapters 756 and 805
- d. If the hearing involves a child victim or witness, deposition may be done by audiovisual means and the recording may be played in court.
- e. At the conclusion, the court or jury shall make a determination of the facts.
 - i. Except in a case alleging (U)CHIPS, the court shall make a determination under §§48.13 or 48.133
- f. If the court finds that it is without jurisdiction, or that child is not (U)CHIPS, or that the allegations have not been proven, it shall dismiss the petition without prejudice.
- g. The court or jury shall prepare findings of fact and conclusions of law.
 - i. The court may not find that a child is suffering emotional damage unless a licensed psychiatrist or psychologist has examined the child and testified that the condition exists, and an opportunity for cross-examination has been afforded.
 1. The court may admit written reports if the opportunity for oral testimony is voluntarily, intelligently and knowingly waived by the GAL or counsel for parent/guardian.
 - ii. In cases alleging (U)CHIPS, the court may not find that the child or expectant mother is in need of AODA treatment unless an approved treatment facility has conducted an AODA assessment conforming to §48.547(4).
- h. If the child is an Indian child, the court/jury shall also determine whether continued custody by the parent/Indian custodian is likely to result in serious emotional or physical damage, and whether active, successful efforts have been made to prevent the breakup of the Indian child's family, unless partial summary judgment on the (U)CHIPS allegations is granted, in which case the court shall make those determinations at the dispositional hearing.

- i. The court shall set a date for the dispositional hearing that is no later than 10 days after the fact finding hearing if the child is in secure custody and no more than 30 days after the fact finding hearing if the child or expectant mother is not in secure custody.
 - i. If all parties consent, the court may proceed immediately with the dispositional hearing subject to §48.299(9).
- j. If it appears that the child will be placed outside the home, order parents to provide a financial statement.
- k. See §48.31

B. CASE LAW

48.31: A fact-finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. *In Interest of C.M.L.* 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by s. 48.13 (10), and at the time of the hearing the other can provide the necessary care for the children. *State v. Gregory L.S.* 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890.

Even in civil cases not implicating the fundamental rights of birth-parenthood, a defaulting party may appear at the prove-up hearing and counsel may cross-examine the plaintiff's witnesses and present evidence to mitigate or be heard as to the diminution of damages. A parent in a termination-of-parental-rights case is entitled to no less, unless, of course the adult parent knowingly waives the right to counsel. *State v. Shirley E.* 2006 WI App 55, 290 Wis. 2d 193, 711 N.W.2d 690. *Affirmed on other grounds.* 2006 WI 129, 298 Wis. 2d 1, 724 N.W.2d 623.