



Nuts & Bolts of TPRs

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Two types of TPRs

Wis. Stat. §48.41 – Voluntary TPR

Wis. Stat. §48.415 – Involuntary TPR

Phases of TPRs

Two phases to TPRs:

- Grounds – does the court have a legal reason to TPR
- Best Interest – is it in the child's best interest to TPR

Focus at phases

- Grounds – parent's rights are paramount
- Best Interest – child's rights are paramount

Voluntary TPR – Wis. Stat. §48.41

- Parent is asking the court to TPR
- Parent is waiving his/her right to contest both phases

Voluntary TPR – Wis. Stat. §48.41

Parent appears by telephone:

- At the request of the parent, unless good cause to the contrary is shown, admit testimony on the record by telephone or live audiovisual means

Voluntary TPR – Wis. Stat. §48.41

Alleged father of **non-marital** child:

- Can terminate any parental rights he may have to the child without appearing in court
- Alleged father may provide a written, notarized statement in lieu of appearing in court
- Notarized statement must recite that the alleged father has been informed of, and understands, the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings

Minimum requirements: Voluntary TPR plea colloquy

Judge can accept parent's consent only after:

- the effects of TPR are explained to parent
- Judge or attorney has questioned the parent
- Court is satisfied that the consent is informed & voluntary

Written plea form is not required; however, it is advisable

If ICWA applies, then additional safeguards are required

Involuntary TPR grounds – Wis. Stat. §48.415

Abandonment – §48.415(1) – 5 types

Relinquishment – §48.415(1m)

Continuing CHIPS – §48.415(2) – 2 types

Continuing Parental Disability - §48.415(3)

Continuing Denial of Periods of Physical Placement/Visitation – §48.415(4)

Involuntary TPR grounds – Wis. Stat. §48.415

Child Abuse - §48.415(5)

Failure to Assume Parental Responsibility - §48.415(6)

Incestuous Parenthood - §48.415(7)

Homicide or Solicitation to Commit Homicide of Parent - §48.415(8)

Parenthood as a Result of Sexual Assault - §48.415(9)

Involuntary TPR grounds – Wis. Stat. §48.415

Commission of Felony Against a Child - §48.415(9m)

Prior Involuntary TPR - §48.415(10)

ABANDONMENT – Most common examples

CHIPS Abandoned: Child has been found CHIPS under §48.13(2) or comparable state or federal law & child was under one year of age OR a court has found that the parent abandoned the child when the child was under one year of age in violation of §948.20, or a violation of any other state or federal law, if that violation would be a violation of §948.20 if committed in this state

ABANDONMENT – Most common examples

3 months: child has been adjudicated CHIPS, placed outside the home of a parent pursuant to a court order which contained the TPR warning, and has failed to visit or communicate with the parent for a period of 3 months or longer

ABANDONMENT – Most common examples

Six months: child has been left by the parent with any person the parent knows or could discover the whereabouts of the child and the parent fails to visit or communicate with the child for a period of six months or longer

- CHIPS finding is not required
- TPR warnings are not required

ABANDONMENT – Most common examples

Incidental contact by the parent with the child shall not preclude the court from finding that the parent has abandoned the child

ABANDONMENT: Affirmative defenses

Affirmative defense – “good cause” for failing to visit/communicate for 3/6 months

- Burden is on **PARENT** to prove “good cause” for failing to visit or communicate
- Burden of proof – **preponderance of evidence**

ABANDONMENT: Affirmative defenses

1st: did parent have "good cause" for failing to visit with the child?

If no, then inquiry is done & parent has not proved affirmative defense.

If "good cause" is found for failing to visit with the child, then go to 2nd inquiry.

ABANDONMENT: Affirmative defenses

2nd: did parent have "good cause" for failing to communicate w/child?

Good Cause for failing to communicate can be based on evidence that the child's age or condition would have rendered any communication with the child meaningless

If no, then inquiry is done & parent has not proved affirmative defense.

If "good cause" is found for failing to communicate with the child then go to 3rd inquiry

ABANDONMENT: Affirmative defenses

3rd: if good cause exists for the parent's failure to visit or communicate with the child, then the parent must show either of following:

- Parent communicated about the child with the child's physical custodian or with the agency responsible for the care of the child;

OR

- Parent had "good cause" for failing to communicate about the child with the physical custodian or with the agency responsible for the care of the child.

ABANDONMENT Ground

See Odd S.G v. Carolyn S.G., 194 Wis.2d 366, 533 N.W. 2d 794 (1995) regarding the burden shifting to parent to prove "good cause" for failing to visit or communicate

It is possible to file a TPR petition, pursuant to the 6 month abandonment grounds, for periods of time prior to the biological father's legal adjudication as the child's father. [See State v. James P. 2005 WI 80, 281 Wis.2d 685]

ABANDONMENT Ground

Whether the parent visited or communicated with the child prior to or following the abandonment ground is not relevant at the "grounds" phase

Allege as large a time frame as possible – not just 3 months if you have 8 months

Multiple periods of abandonment can be alleged

ABANDONMENT Ground

- One verdict form can be submitted for a continuous period of time (eg. January 1, 2018 – August 1, 2018)
- Separate verdict forms should be submitted if you have multiple abandonment periods that are separated by non-abandonment periods (eg. January 1, 2017 – August 1, 2017 and February 1, 2018 – July 1, 2018)
- Abandonment period does not need to immediately precede the filing of TPR petition

RELINQUISHMENT Ground

Relinquishment: Established by proving that the court has found the child CHIPS pursuant to Wis. Stat. §48.13(2m) – that the parent has relinquished custody of the child under Wis. Stat. §48.195(1) when the child was 72 hours old or younger

No known parents – publish for parents

Continuing CHIPS ground

2 Types of Continuing CHIPS

- Typical CHIPS case
- On 3 or more occasions child was found CHIPS and removed from the home

Elements are not the same

Typical Continuing CHIPS ground – Element 1

Element 1

- Child found to be CHIPS pursuant to any CHIPS ground
- Placed/continued to be placed outside the home of a parent pursuant to one or more CHIPS orders for a cumulative total period of six months or longer
- CHIPS orders contain the written TPR warnings required by Wis. Stat. §48.356

Typical Continuing CHIPS ground – Element 2 & 3

Element 2:

- Agency has made a “reasonable effort” to provide the services ordered by the court

Element 3:

- Parent has failed to meet the conditions established for the safe return of the child to the home (as of the date the TPR petition was filed)

Typical Continuing CHIPS ground – Element 4

Element 4 – OLD LAW

- There is a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the home within the nine month period following the fact finding hearing.

NEW CHANGE IN LAW AFFECTING ELEMENT 4

Typical Continuing CHIPS ground – Element 4

- Change immediately effective on 4/6/18 –
- Element 4 is eliminated if:
 - At time of TPR petition filing: child has been placed outside the home for 15 of 22 months
 - At time of TPR fact finding hearing: child has been placed outside the home of the parent for 15 of 22 months

Typical Continuing CHIPS ground – Element 4

- Element 4 continues until the 15th month of out of home placement.
- If TPR fact finding hearing occurs prior to the 15th month, the jury is required to consider:

is there a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the parent's home within 15 months of the child's out of home placement

Element 4 – What does that mean right now?

- Child placed outside the parent's home on 1/2/18
- CHIPS dispositional hearing: 3/2/18 – old TPR warning
- TPR petition is filed: 12/12/18
- CHIPS annual court permanency plan hearing: 1/2/19
- TPR initial appearance: 1/10/19
- TPR fact finding hearing: 3/22/19 (within 45 days)
- NOTE: no 6 month court perm plan hearing
- What happens if 6 month perm plan occurred on 7/2/18?

Element 4 – What do we do now?

Questions: based on the immediately effective date

- Parents have been warned only under the “old” law & TPR petition has been filed or will be filed prior to being given the “new” warning?
- Parents have been given the “new” warning but the TPR fact finding hearing is within 9 months of the new warning?

Continuing Parental Disability - Elements

- Parent presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the TPR has been inpatient at one or more facilities defined in specific statutory sections under Chapters 50, 51, 55.
- Condition of parent is likely to continue indefinitely
- Child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or guardian.

Continuing Denial of Periods of Physical Placement or Visitation ground

Elements:

- Denied periods of physical placement (family court order) or visitation (CHIPS/JIPS case)
- Written TPR warning must be attached to court order
- At least one year has elapsed
- The court has not modified the order so as to permit periods of physical placement or visitation

Continuing Denial of Periods of Physical Placement or Visitation ground

It is important for the court to set pre-conditions for visitation - Pre-conditions should be very concrete & specific to the individual circumstance

At the time the court denies a parent the ability to visit with the child, the court should read the Denial of Visitation termination of parental rights ground

Denial of Visitation TPR ground & pre-conditions for visitation should be read at each subsequent hearing

Continuing Denial of Periods of Physical Placement or Visitation ground

Pre-conditions for visitation: Example

- Parent must meet with the assigned worker for four consecutive weeks
- Parent shall write letters to the child on a weekly basis for four consecutive weeks and forward the letter to the assigned case worker

Continuing Denial of Periods of Physical Placement or Visitation ground

Pre-conditions for visitation: Example

- Parent must submit urine for testing which is free of alcohol, illegal drugs and prescription drugs that have not been prescribed for the parent for four consecutive weeks
- Parent shall attend parenting education classes for four consecutive weeks
- There shall be a hearing prior to the re-instatement of visitation (this avoids a dispute between the parent & case worker regarding completion of the pre-conditions).

Continuing Denial of Periods of Physical Placement or Visitation ground

- It is possible to have a denial of visitation ground AND an Abandonment ground – if the parent is permitted to communicate with the child either through letters or phone calls.
- See Dane County Department of Human Services v. P.P., 2005 WI 32, 279 Wis.2d 169.

Child Abuse ground

Child Abuse – 3 elements

- 1st: Parent has exhibited a pattern of physically/sexually abusive behavior
- 2nd: Behavior is a substantial threat to the health of the child who is subject of TPR petition
- 3rd : Either of the following:
 - parent caused death or injury to a child or children resulting in a felony conviction **OR**
 - a child has been previously removed from the parent’s home pursuant to a CHIPS dispositional order after a CHIPS finding under 48.13(3) OR (3m)

Child Abuse ground

- Felony “conviction” – **appeal as of right must be completed** [see Monroe Co. v. Jennifer V. 200 Wis.2d 678; 548 N.W. 2d 837 (Ct. App. 1996)].
- However, an appeal not related to guilt or innocence is still considered a felony conviction [see Reynaldo F. v. Christal M. 2004 WI App 106, 272 Wis.2d 707] – this was a Commission of a Serious Felony ground but is probably applicable to this ground.

Failure to Assume Parental Responsibility ground

Failure to Assume Parental Responsibility – 2 Elements

- 1st: You are the parent or you may be the parent
- 2nd: You have not had a substantial parental relationship with the child

Failure to Assume Parental Responsibility ground

"Substantial parental relationship"

- Acceptance & exercise of significant responsibility for
- Daily supervision, education, protection and care of the child

Failure to Assume Parental Responsibility ground

In evaluating whether the parent has had a substantial parental relationship, the fact finder may consider:

- Did the parent express concern for or interest in the support, care or well-being of the child
- Did the parent neglect or refuse to provide care or support for the child
- Did the (alleged) father express concern for or interest in the support, care or well-being of the mother during her pregnancy

Failure to Assume Parental Responsibility ground

List is not exclusive – fact finder is not limited by the factors enumerated in the statute

In determining whether a biological father has failed to assume parental responsibility, the fact finder must consider the father's efforts to assume parental responsibility after he discovers he is the father but before the fact finding hearing.

See State v. Bobby G., 2007 WI 77, 301 Wis.2d 531

Incestuous Parenthood ground

- Person whose parental rights are sought to be terminated is related by blood or adoption to the child's other parent in a degree of kinship closer than 2nd cousin
- Statute has been found constitutional in that is it narrowly tailored to meet the state's compelling interests. [See State v. Allen, 214 Wis.2d 302, 571 N.W. 2d 872 (Ct. App. 1997)]
- **However**, if the parent subject to TPR was the victim of a sexual assault, the statute has been found to be unconstitutional as applied to the parent. [See Monroe Co. DHS v. Kelli B., 2004 WI 48, 271 Wis.2d 51, 678 N.W. 2d 856]

Homicide or Solicitation
to Commit Homicide of Parent ground

Homicide/Solicitation to Commit Homicide of Parent

- 1st: That a parent of the child has been the victim of certain homicide statutes or has been the intended victim of a solicitation of certain homicide statutes
- 2nd: Person whose parental rights are being sought to be terminated was convicted of the certain homicide or solicitation
- 3rd: Conviction must be final

Homicide or Solicitation
to Commit Homicide of Parent ground

Certain Homicides:

- 1* Intentional Homicide (Wis. Stat. §940.01)
- 1* Reckless Homicide (Wis. Stat. §940.02)
- 2* Intentional Homicide (Wis. Stat. §940.05)
- Solicitation to commit 1* Intentional Homicide (Wis. Stat. §939.30)
- Comparable law in another state or federal law

Homicide or Solicitation
to Commit Homicide of Parent ground

A conviction for homicide or solicitation to commit homicide is very likely to be appealed and may take years to get through the direct appeal process, thus this ground may be impractical in most cases.

Parenthood as a Result of Sexual Assault ground

- Child was conceived as a result of a sexual assault under certain statutes
- Certain statutes:
 - 1* Sexual Assault [Wis. Stat. §940.225(1), (2), (3)]
 - 1* Sexual Assault of a Child [Wis. Stat. §948.02(1)]
 - 2* Sexual Assault of a Child [Wis. Stat. §948.02(2)]
 - Repeated Acts of Sexual Assault [Wis. Stat. §948.025]
 - Sexual Assault of a Child in Substitute Care [Wis. Stat. §948.085]

Parenthood as a Result of Sexual Assault ground

Sexual assault may be proved in two ways:

- Final judgment of conviction
- Other evidence produced at fact finding hearing indicating that the person who may be the father committed, during a possible time of conception, a sexual assault under the statutes noted above

Parenthood as a Result of Sexual Assault ground

If the conviction was for Sexual Assault of a Child (Chapter 948 offenses), the mother may be heard on her desire for the termination of the father's parental rights.

Commission of a Serious Felony Against a Child ground

Commission of a Serious Felony Against a Child – 2 Types

- Parent convicted of a serious felony against his/her child
- Human trafficking of a child

Commission of a Serious Felony Against a Child ground

Serious Felony ground – 3 elements

- 1st: A child of the person whose parental rights are sought to be terminated
- 2nd: Was the victim of a serious felony
- 3rd: Evidenced by a final judgment of conviction

Commission of a Serious Felony Against a Child ground

Serious Felonies:

- 1* Intentional Homicide (incl. PTAC, solicitation, conspiracy or attempt)
- 1* Reckless Homicide (incl. PTAC, solicitation, conspiracy or attempt)
- Felony Murder (incl. PTAC, solicitation, conspiracy or attempt)
- 2* Intentional Homicide (includes PTAC, solicitation, conspiracy or attempt)

Commission of a Serious Felony Against a Child ground

Serious Felonies:

- Substantial Battery – Wis. Stat. §940.19(3) – 1999 statute
- Substantial Battery – Wis. Stat. §940.19(2)
- Aggravated Battery – Wis. Stat. §940.19(4)
- Aggravated Battery – Wis. Stat. §940.19(5)

Commission of a Serious Felony Against a Child ground

Serious Felonies:

- 1* Sexual Assault – Wis. Stat. §940.225(1)
- 2* Sexual Assault – Wis. Stat. §940.225(2)
- 1* Sexual Assault of a Child – Wis. Stat. §948.02(1)
- 2* Sexual Assault of a Child – Wis. Stat. §948.02(2)
- Repeated Acts of Sexual Assault – Wis. Stat. §948.025

Commission of a Serious Felony Against a Child ground

Serious Felonies:

- Physical Abuse of a Child – Intentionally Causing Great Bodily Harm – Wis. Stat. §948.03(2)(a)
- Physical Abuse of a Child – Recklessly Causing Great Bodily Harm – Wis. Stat. §948.03(3)(a)
- Sexual Exploitation of a Child – Wis. Stat. §948.05
- Human Trafficking of a Child – Wis. Stat. §948.051

Commission of a Serious Felony Against a Child ground

Serious Felonies:

- Incest with a child – Wis. Stat. §948.06
- Soliciting a child for prostitution – Wis. Stat. §948.08
- Human Trafficking for the purpose of a commercial sex act – Wis. Stat. §940.302(2)
- Neglect of a Child Resulting in Death – Wis. Stat. §48.21

Commission of a Serious Felony ground

Serious Felonies: Violation of any other state or federal law that would be a violation of the above statutes if committed in Wisconsin

Felony “conviction” – appeal as of right must be completed [see Monroe Co. v. Jennifer V. 200 Wis.2d 678; 548 N.W. 2d 837 (Ct. App. 1996)] – this was a Child Abuse TPR ground but is probably applicable to this ground.

However, an appeal not related to guilt or innocence is still considered a felony conviction [see Reynaldo F. v. Christal M. 2004 WI App 106, 272 Wis.2d 707]

Serious Felony Ground –
Human Trafficking

Human trafficking ground:

- Commit a violation of the Wisconsin human trafficking law [Wis. Stat. §948.051]
- Commit a violation of another state or federal law if that would be a violation of the Wisconsin human trafficking law

Serious Felony Ground –
Human Trafficking

Human trafficking ground does not appear to require a conviction – probably analogous to the Parenthood as a Result of a Sexual Assault ground in which evidence of the sexual assault can be produced at the fact finding hearing.

Prior Involuntary Termination of Parental Rights ground

Prior Involuntary Termination of Parental Rights – 2 Types

- Child adjudicated CHIPS
- Child born after a TPR petition under this section was filed

Prior Involuntary Termination of Parental Rights ground

Child was adjudicated CHIPS:

- Was adjudicated CHIPS pursuant to Wis. Stat. §48.13(2), (3), or (10)
- That, within 3 years prior to the date the child was adjudged to be CHIPS under 48.13(2), (3), or (10), a court has ordered the termination of parental rights with respect to another child of the parent pursuant to one or more grounds for TPR

Prior Involuntary Termination of Parental Rights ground

The prior TPR ground must be an involuntary TPR ground

It does not matter which involuntary TPR ground formed the basis for the prior TPR. [See Oneida County Department of Social Services v. Nicole W., 2007 WI 30, 299 Wis.2d 637]

Prior Involuntary Termination of Parental Rights ground

Child born after TPR granted under this statute

- That, within 3 years prior to the date of birth of the child who is the subject of the TPR petition, a court has ordered the termination of parental rights with respect to another child of the parent pursuant to Prior Involuntary TPR ground
- This would be the 3rd child – 1st child Invol TPR, 2nd child – TPR granted under Prior Invol TPR ground & now third child born within 3 years of 2nd TPR

TPR Petition & Summons
Wis. Stat. §48.42

TPR petition must contain:

- Name & birth date of the child
- Names & addresses of the child’s parent or parents, guardian and legal custodian
- Statement regarding whether TPR is Voluntary or Involuntary

TPR Petition & Summons
Wis. Stat. §48.42

TPR petition must contain:

- If involuntary TPR petition is filed – statement of the grounds for TPR under Wis. Stat. §48.415, including a statement of facts & circumstances the petitioner alleges establish these grounds
- Statement regarding the applicability of ICWA
- If ICWA applies or may be applicable: names of the child’s Indian custodian, if any, and tribe, if known

TPR Petition & Summons
Wis. Stat. §48.42

TPR petition must contain:

- If ICWA applies & the petitioner asserts involuntary TPR grounds, must include reliable and credible information showing: (both of the following)
- that continued custody of the Indian child by the parents or Indian custodian is likely to result in serious emotional or physical damage to the child

TPR Petition & Summons
Wis. Stat. §48.42

ICWA TPR petition must contain:

- that active efforts have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful

TPR Petition & Summons
Wis. Stat. §48.42

TPR summons must contain:

- Name & birth date of the child
- Nature, location, date & time of the Initial Appearance
- Advise the party of his/her right to counsel regardless of ability to pay

TPR Petition & Summons
Wis. Stat. §48.42

TPR summons must contain:

- Advise the party of the possible result of the hearing and the consequences for failing to appear
- Advise the party that if the court TPRs, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after judgment is entered for the right to appeal to be preserved

WHO MUST BE SUMMONED – Wis. Stat. §48.42(2)

Who must be summoned – Wis. Stat. §48.42(2)

- Mother
- Adjudicated or presumptive father
- Guardian
- Guardian ad Litem for Child
- Legal custodian
- Indian custodian of the child
- Child, if 12 years or older
- Any other person to whom notice is required to be given under Chapter 822 – UCCJA

WHO MUST BE SUMMONED – Wis. Stat. §48.42(2)

In the case of a non-marital child, whose parents do not subsequently intermarry and whose paternity is not established:

- Person who has filed an unrevoked declaration of paternal interest before the birth of the child or within 14 days after the birth of the child
- Person(s) alleged to the court to be the father of the child, or who may, based on the statement of the mother or other information presented to the court, may be the father of the child – unless he has waived his right to notice under Wis. Stat. §48.21(2)(c)

WHO MUST BE SUMMONED – Wis. Stat. §48.42(2)

In the case of a non-marital child, whose parents do not subsequently intermarry and whose paternity is not established, must notify:

- Person who has lived in a familial relationship with the child and who may be the father of the child.

Notice of TPR proceedings

- Summons & Petition must be **served** on the parties
- Foster Parents shall receive notice & petition
- 1st notice shall be in writing
- After 1st notice, notice of hearings may be given by phone at least 72 hours before the time of the hearing
- If ICWA applies then different procedures apply.

Notice of TPR proceedings

NOT REQUIRED TO PROVIDE NOTICE:

- To a person who may be the father of a child conceived as a result of a sexual assault [1*SA, 2*SA, 3*SA, 1*SA of a Child, 2* SA of a Child, Repeated Acts of Sexual Assault, Sexual Assault of a Child in Substitute Care] AND either of the following occurs:
 - Physician must attest to his/her belief that that a sexual assault occurred
 - Person who may be the father of the child has been convicted of sexual assault for conduct that may have led to the child's conception

Notice of TPR proceedings

Exception: notice must be provided to a person who may be the father of a child conceived as a result of a sexual assault in violation of 1* or 2* Sexual Assault of a Child if the person is under the age of 18 at the time of the sexual assault

Manner of Serving Summons & Petition

- Personal Service: at least 7 days prior to the court hearing – if in state
- Service on a person with a disability shall be as set forth in Wis. Stat. §801.11
- Serving a Wisconsin State Prison inmate: Wis. Stat. §302.025
 - Service shall be made by the warden/superintendent or some person appointed by the warden/superintendent to serve process

Manner of Serving Summons & Petition

Constructive Notice: Publication

- If with reasonable diligence a party cannot be personally served, service shall be made by publication
- Published in newspaper that is likely to give notice
- Must be published once
- If identity of father is not known, petitioner can request that constructive notice be waived

Manner of Serving Summons & Petition

Considerations for "where" to publish:

- Last known residence or location of the party
- Residence of relatives of party, if known
- Not specifically enumerated: child's place of birth/conception
- If party's post office address is known, then a copy of the summons & petition shall be mailed to the party upon or immediately prior to the first publication

Publication Requirements

Publication requirements:

- Date, place & circuit court branch for the hearing
- Court file number
- Name, address & telephone number of petitioner's attorney
- Name of the party to whom notice is given

Publication Requirements

Publication requirements:

- Former addresses of the party
- Description of the party
- Approximate date and place of conception
- Date and place of child's birth

Publication Requirements

- Shall NOT publish the Mother's name unless she consent
- Shall NOT publish the child's name unless the court finds that inclusion of the child's name is essential to give effective notice to the father

Publication Requirements

- Shall inform the party that the parental rights of parent alleged parent who fails to appear may be terminated
- Shall inform the party of his/her right to have an attorney present & that if the person desires to contest the petition and cannot afford an attorney, the person may ask the state public defender to represent him/her
- Shall inform the party that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after judgment is entered for the right to be preserved

Suspension of Visitation and Contact
Wis. Stat. §48.42(1m)

Suspension of Visitation and Contact
Wis. Stat. §48.42(1m)

- Can file a petition to suspend visitation and contact with the child
- Petition to suspend visitation/contact is filed at the time TPR petition is filed
- Must allege facts sufficient to show that prohibiting visitation or contact would be in the child's best interest

Suspension of Visitation and Contact
Wis. Stat. §48.42(1m)

Suspension of Visitation and Contact

- Court may issue a temporary ex parte order prohibiting the parent from visiting or communicating with the child if the court believes it is in the child's best interest
- Court hearing is held on the request for an injunction prior to or at the Initial Appearance on the TPR petition
- The order prohibiting visitation in TPR applies to the underlying CHIPS case

Suspension of Visitation and Contact
Wis. Stat. §48.42(1m)

Suspension of Visitation and Contact

- Some courts require the suspension of visits to be filed in the CHIPS case – if you don't believe the parent should visit or communicate with the child, file your request in the CHIPS case – not the TPR case
- **What does your county require?**

Initial Appearance – Wis. Stat. §48.422

- Initial Appearance shall be held within 30 days after TPR petition is filed with the court
- If ICWA – then Initial Appearance shall not occur until at least 10 days after receipt of the notice of the hearing if the tribe is known or until at least 15 days after receipt of the notice by the U.S. Secretary of the Interior
- If ICWA – Indian child's parent, Indian custodian, or tribe may request an additional 20 days to enable the requestor to prepare for the hearing – the court shall grant such request

Initial Appearance – Wis. Stat. §48.422

Rights of Party:

- Contest the petition
- Jury trial & Substitution of judge – must be made by the end of the Initial Appearance or be waived
- Continuance to consult with an attorney on the request for Jury Trial or substitution of judge
- If a person appears and claims to be the father of the child, court shall set a date for hearing on the issue of paternity

Initial Appearance Procedures – Wis. Stat. §48.422

Procedures:

- If paternity has not been established & no declaration of paternal interest has been filed, the court shall hear testimony regarding the child’s paternity – to determine whether all interested parties have received notice
- If court determines that unknown person may be the father – the court must determine whether constructive notice will substantially increase the likelihood of notice to that person – if not, the court may proceed

Initial Appearance Procedures – Wis. Stat. §48.422

Before accepting admission to TPR petition, the court shall:

- Address the party & determine that the admission is made voluntarily & with understanding of the nature of the acts alleged in the petition & potential dispositions
- Establish whether any threats or promises were made
- Unrepresented parties: alert the party to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them

Initial Appearance Procedures – Wis. Stat. §48.422

Before accepting admission to TPR petition, the court shall:

- Make such inquiries as satisfactorily establish that there is a factual basis for the admission

Initial Appearance Procedures – Wis. Stat. §48.422

If the petition is not contested, the court shall:

- Hear testimony in support of the allegations in the petition
- Address the parties in the same way as when taking an admission

Acceptance of Admission or No Contest Plea

The court must ensure that the parent understands:

- that he/she will be found to be an “unfit” parent
- AND**
- that, at the time of the dispositional hearing, the court will decide whether to TPR or to dismiss the TPR petition based on what is in the child’s best interest

Oneida County Dept. of Social Services v. Therese S., 2008 WI App 159, 314 Wis.2d 493

Acceptance of Admission or No Contest Pleas

- It appears that when the court accepts a “no contest” plea – **testimony** is required in support of the petition
- However, when the court accepts an “admission” to the petition – the statute is silent regarding the need to take testimony
- **Take testimony anyway in Admission cases?**

Admission or No Contest Pleas

If the parents enter a "no contest" plea or an "admission" to the "grounds" phase, they still can contest disposition

The court shall find the parent "unfit" upon these pleas

A finding of "unfitness" shall not preclude the court from dismissing the TPR petition at the time of the disposition. However, the court can only dismiss the petition if the court finds that it is not in the child's best interest to TPR
Sheboygan County D.H.S.S. v. Julie A.B. 2002 WI 95, 255 Wis.2d 170

Admission or No Contest Pleas

If all parties admit, enter a no contest plea or are defaulted, the court shall order the agency to do a report for disposition report as provided in Wis. Stat. §48.425

The court may proceed to disposition immediately if the parties consent & if the court has received the dispositional report

If the parties do not consent to immediately proceeding to disposition or if the court has not received the dispositional report, the hearing can be adjourned up to 45 days.

Fact Finding Hearing – Wis. Stat. §48.424

If the TPR petition is contested:

- Fact finding hearing shall be set within 45 days of the Initial Appearance
- Court has the ability to toll time limits - §48.315
- Hearing is to determine whether "grounds" exist to TPR
- Jury only determines "grounds" – not disposition

Fact Finding Hearing – Wis. Stat. §48.424

Fact Finding Hearing:

- ICWA: whether the additional requirements under Wis., Stat. §48.42(1)(e) have been proved.
- If “grounds” are found, the court shall find the parent “unfit”
- Burden of Proof: Clear & convincing – exception: ICWA cases

Dispositional Hearing Report – Wis. Stat. §48.425

Contents of the Report:

- Social History of Child
- Medical/Genetic History form – state form
- Statement of facts supporting the need for TPR
- If CHIPS, statement of steps the agency has taken to remedy the conditions responsible for court intervention

Dispositional Hearing Report – Wis. Stat. §48.425

Contents of the Report:

- Statement of parent’s response to and cooperation with the services
- Statement of reasons why the child cannot be returned safely to the home and the steps the agency has taken to effect this return

Dispositional Hearing Report – Wis. Stat. §48.425

Contents of the Report:

- If perm plan has been filed: specific information showing that the agency has made reasonable efforts to achieve the goal of the permanency plan including out of state placement, if appropriate
- ICWA: additional requirements
- Statement of other services, if any, which might allow the child to safely return to the home

Dispositional Hearing Report – Wis. Stat. §48.425

Contents of the Report:

- Statement applying the standards & factors enumerated in Wis. Stat. §48.426
- If TPR is being recommended: a statement of the likelihood of the child’s adoption, including a presentation of the factors that might prevent adoption, those that would facilitate adoption and the agency that would be responsible for accomplishing the adoption

Dispositional Hearing Report – Wis. Stat. §48.425

Contents of the Report:

If the agency determines that it is not likely that the child will be adopted or if adoption is not in the child’s best interest - report shall include a plan for placing the child in a permanent family setting

Plan shall include a recommendation as to the agency to be named guardian of the child, recommendation that the person appointed to be the guardian of the child under 48.977 continue or that a guardian be appointed for child

Standard & Factors – Wis. Stat. §48.426

Standard: best interest of the child

Factors: 6 must be considered – others may be considered

- Likelihood of the child’s adoption after TPR
- Age & health of child – now & at the time of detention
- Whether the child has substantial relationships with parent or family members & whether it would be harmful to the child to sever the relationships

Standard & Factors – Wis. Stat. §48.426

Factors

- Wishes of the child
- Duration of the separation of the parent from the child
- Whether the child will enter into a more stable and permanent family relationship as a result of TPR, taking into account the conditions of the child’s current placement, the likelihood of future placements & the results of prior placements

Disposition

Any party may present relevant evidence

Expert testimony may be presented

Any party may make alternative dispositional recommendations

After receiving any evidence, the court shall enter one of the dispositions authorized by law within **10 days** of the dispositional hearing

Disposition – Foster parent’s statement

The foster parent/physical custodian has a right to make a statement relevant to the issue of disposition

Statement may be oral or written

Statement may be made at disposition or a written statement may be submitting prior to disposition

Disposition

Court may:

- Dismiss the petition if the court finds that the evidence does not warrant TPR
- Order TPR & transfer custody & guardianship pending adoption to the State/county department authorized to accept guardianship/child welfare agency authorized to accept guardianship or to a kinship relative with whom the child resides or appoint a guardian under Wis. Stat. §48.977
- Order TPR & sustaining care

Meaningful participation

A parent has a right to meaningfully participate in the court proceedings

Whether physical presence is necessary is required must be determined on a case by case basis

In the Interest of Christopher D. 191 Wis.2d 681, 530 N.W.2d 34 (Ct. App. 1995).

Meaningful participation

An alternative to physical presence must be the functional equivalent to personal presence – unless the parent waives his/her appearance or the ministerial nature of the proceedings makes the physical presence unnecessary. The parent must be able to assess the witnesses, confer with his/her lawyer and hear everything that is going on. State v. Lavelle W. 2005 WI App 266, 288 Wis.2d 504

Court found that father could not meaningfully participate by telephone as he claimed that he could not hear the proceedings.

Meaningful participation

Father was deemed to be able to meaningfully participate in the TPR proceedings although he appeared via webcam from Mexico. As he was able to see and hear the proceedings and confer with his attorney.

The father had been deported to Mexico. Options to secure his physical presence were unsuccessful.

Waukesha County Dept. of Health & Human Services v. Teodoro E., 2008 WI App 16, 307 Wis2d 372

Stipulation by a parent to an element of a TPR ground

Frequently, there is no dispute regarding one or more elements of a Continuing CHIPS ground, such as:

Whether the child has been placed outside the home of a parent pursuant to one or more court orders which contained the written TPR warnings

Or

That the parent, as of the date the TPR petition was filed, had failed to meet the conditions of return.

Stipulation by a parent to an element of a TPR ground

Have the parent (rather than the attorney alone) confirm the stipulation on the record – verbally & in writing

Courts are urged to engage the parent in a colloquy regarding the effect of the stipulation and to ensure that the stipulation is knowingly and voluntarily given.

Walworth County DH&HS v. Andrea L.O., 2008 WI 46, 309 Wis.2d 161

See also: Manitowoc Human Services Department v. Allen J., 2008 WI App 137, 314 Wis.2d 100

Parent's criminal history & relevance at trial

A parent's criminal history & sentences may be relevant to the TPR trial – information could assist the jury in determining whether:

- the parent has had a substantial parental relationship with the child. State v. Quinsanna D., 2002 WI App 318, 259 Wis.2d 429

Parent's criminal history & relevance at trial

A parent's criminal history & sentences may be relevant to the TPR trial – information could assist the jury in determining:

- the likelihood of the parent meeting the conditions of return in the next 9 months. LaCrosse County Dept. of Human Services v. Tara P., 2002 WI App 84, 252 Wis.2d 179

Parent's prior criminal history

A parent's prior convictions are not so prejudicial so as to outweigh the probative value to the jury if it assists the jury in understanding the reasons the child was removed from the home

Reynaldo F. v. Christal M., 2004 WI App 106, 272 Wis.2d 816.

Parent's prior history

Events prior to the CHIPS dispositional order may be relevant in predicting the parent's chances of completing the conditions of return within the 9 months following the TPR fact finding hearing.

LaCrosse County Dept. of Human Services v. Tara P., 2002 WI App 84, 252 Wis.2d 179
