

CHIPS DISPOSITIONAL HEARING OUTLINE

Statutory Summary

❖ **Dispositional Court Report - §48.33**

- Before the disposition of a child or unborn child adjudicated to be in need of protection or services, the court shall designate an agency to submit a court report.
- A report recommending placement of a child in a foster home, group home, residential care center, in the home of a relative other than the parent, in the home of a guardian, in a supervised living arrangement, or placing an adult expectant mother outside the home shall be in writing.
- For an Indian child removed from the home of the parent or Indian Custodian, the agency must also include specific information regarding:
 - Continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under §48.028(4)(d)1.;
 - Active efforts have been made to prevent the breakup of the Indian child's family and those efforts have proved unsuccessful under §48.028(4)(d)2.; and
 - Whether the proposed out of home placement is in compliance with the order of placement preference under §48.028(7) or a statement showing good cause for departing from that order.

❖ **Dispositional Hearing Procedures - §48.299**

- Only parties and their counsel or guardian ad litem, CASA, the child's foster parent or other physical custodian, and witnesses may be present.
 - The court may exclude a foster parent or other physical custodian from any portion of the hearing if sensitive personal information about the child or child's family is discussed or if excluding the foster parent or other physical custodian would be in the child's best interest.
- If the court finds that it is in the best interest of the child, and if the child's counsel/guardian ad litem consents, the child may be temporarily excluded from the hearing.
 - If the court finds that a child under 7 years of age is too young to comprehend the hearing and that it is in the best interest of the child, the child may be excluded from the entire hearing.
- Common law and statutory rules of evidence are not binding during a dispositional hearing.
- For DNA genetic testing, see §48.299(6).

❖ **Dispositions - §48.345**

- Counsel the child or parent, guardian, or legal custodian.
- Place 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.
- Place the child in the child's home under supervision of the agency/department to provide specified services to the child and the child's family.
- Designate a court-appointed special advocate (CASA) for the child.

❖ **Dispositions for UCHIPS - §48.347**

- Counseling, supervision, placement, special treatment or care, alcohol or drug treatment or education, inpatient alcohol or drug treatment, or services for the child when born.

❖ **Placements Available at Disposition - §48.345**

- The home of a parent.
- The home of a relative of the child.
- A foster home licensed under §48.62, a group home licensed under §48.625, or with a guardian under a §48.977 guardianship.
- The home of a person not listed above (for up to 30 days).
- 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.
- A residential treatment center operated by a licensed child welfare agency.
- 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.
- The court may not place a child not specifically found under Chs. 46, 49, 51, 54, or 115 to be developmentally disabled, mentally ill, or to have a disability under 115.76(5) in facilities that exclusively treat those children.
- The court may not place a child expectant mother outside the home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.
- The judge may order a child attaining 17 years old to live independently, either alone or with friends, under supervision as the judge deems appropriate.
 - The judge may order independent living as a dispositional alternative only upon a showing that a child is of sufficient maturity and judgment to live

independently and only upon proof of a reasonable plan of supervision by an appropriate person or agency.

❖ **Additional Dispositions**

- **Special Treatment or Care** - If the child needs special treatment or care based on an evaluation under §48.295, the judge may order the parent to provide the special treatment or care. §48.345(6)-(6m)
 - If the parent fails or is financially unable to, the judge may order an agency to provide the special treatment or care.
 - If a judge orders a county department under §51.42 or §51.437 to provide special treatment or care, the provision of that special treatment or care is subject to conditions specified in Chapter 51.
 - An order for special treatment or care under §48.345(6)(a) may not include an order for the administration of psychotropic drugs.
 - Payment for the special treatment or care relating to AODA services ordered under §48.345(6)(a) shall be in accordance with §48.361.
 - Payment for Chapter 51 services ordered under §48.345(6)(a), other than AODA services, shall be in accordance with §48.362.
 - If the report based on an evaluation under §48.295 recommends that the child is in need of a coordinated services plan of care and an initiative has been established in the county or tribe, the judge may order an assessment of the child and the child's family for eligibility, appropriateness, and development, and implementation.
- **Educational Programs** - §48.345(12)
 - The judge may order the child to attend:
 - A non-residential educational program offered by the child's school district.
 - 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 or a technical college located in the child's school district, or tribal school.
 - The judge shall order the school board to disclose the child's pupil records to the department or agency supervising the child as necessary to determine the child's compliance with the order.
 - This section does not apply to a child with a disability, as defined under §115.76(5).
- **Treatment for Alcohol or Drugs** - §48.345(13)
 - The court may order the child to enter an outpatient alcohol or other drug abuse treatment program at an approved facility.

- The facility shall report to the department or agency providing services to the child as to the child's cooperation and whether the treatment appears to be effective.
 - The court may order the child to participate in an alcohol or other drug abuse education program.
 - The education program shall report to the department or agency providing services to the child about the child's attendance.
 - Payment shall be in accordance with §48.361.
- **Child Expectant Mother of an Unborn Child - §48.345(14)**
- The judge may order a child expectant mother to enter an inpatient facility for an alcohol or other drug abuse treatment program if that is the least restrictive treatment consistent with her needs.
 - The facility shall report to the department or agency whether the child expectant mother is cooperating with treatment and whether the treatment appears effective.
 - Payment is in accordance with §48.361.
 - If an unborn child may be born during the period of the UCHIPS dispositional order, the judge may order that the child, when born, be provided with any services and care that may be ordered under a CHIPS dispositional order. §48.345(15)

❖ **Dispositional Order**

➤ **General Order Requirements**

- The expiration date of the court order.
 - Up to 1 year for a child placed in-home with a parent.
 - See §48.355(4)(b) for orders that place the child out of the home.
- A statement of the conditions with which the child or expectant mother is expected to comply. §48.355(2)(b)7.
- The specific services to be provided to the child and family.
- 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 agency or department within 5 days after any violation of the condition by the child. §48.355(2)(c)

➤ **Out of Home Requirements - §48.355(2)(b)-(cm)**

- The name of the placement or facility.
 - If, after a hearing on the issue with due notice to the parent/guardian, the judge finds 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.

- For an adult expectant mother, the name of the placement or facility where she will be treated.
- An amount of support, if any, to be paid by the child's parent/guardian/trustee, beginning on the date of placement or a referral to the county child support agency under §59.53(5) for establishment of child support.
- An order for the child's parent to provide a statement of income, assets, debts and living expenses to the department/county agency by a date specified by the court if it has not been done already.
- A permanency plan under §48.38 if one has been prepared.
- A finding that continued placement in the home would be contrary to the welfare of the child.
- Findings as to whether the department or agency primarily responsible for providing services under a court order has made reasonable efforts to:
 - Prevent the removal of the child from the home.
 - If the court finds that any of the circumstances in §48.355(2d)(b)(1) to (5) applies to a parent, a finding that reasonable efforts are not required.
 - Achieve the permanency goal of the child's permanency plan if one has been prepared.
 - **Mere reference to these findings without documenting or referencing specific information in the court order is not sufficient.**
- An order ordering the child into the placement and care responsibility of the agency/department and assigning the agency/department primary responsibility for providing services to the child.
- A statement that the court approves the placement recommended by the agency or if the court is ordering placement other than a placement recommended by the agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties.
- If 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 safety or well-being, or that reasonable efforts have been made to arrange for frequent visitation, unless contrary to safety or well-being.
- The court shall order the department or agency to conduct a diligent search in order to locate and provide notice to all relatives of the child within 30 days of the child's removal from the parent's custody unless the child is returned home within that period.

- The department or agency may not provide notice to a person if it has reason to believe placement with that person would be dangerous to the child or parent.
- If the diligent search and notice were previously conducted within 30 days of the child's removal from custody under the Temporary Physical Custody Order, another search is not required.

➤ **ICWA Findings - §48.355(2)(b)6v.**

- In addition to out of home requirements provided 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 qualified expert witness) that continued custody of the Indian child is likely to 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), to prevent the breakup of the Indian child's family and those efforts have proved unsuccessful.
 - 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.

➤ **Copies of the Dispositional Order - §48.355(2)(d)**

- The CHIPS Dispositional Order shall be provided to the parent, guardian, legal custodian, trustee, the child by adversary counsel or Guardian ad Litem, the child's CASA, and if applicable, the Indian Custodian, and tribe.
- The UCHIPS Dispositional Order shall be provided to the mother, unborn child through the Guardian ad Litem and if applicable, the Indian custodian and tribe.
 - For a child expectant mother, the order shall also be provided to the child's parent, guardian, legal custodian, and trustee.

❖ **Termination of Parental Rights Warnings - §48.356**

- 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 whenever:
 - The court orders a child or expectant mother to be placed outside of the home, or denies a parent visitation under a dispositional, extension, revision, or change in placement order, and
 - The court reviews a permanency plan.

- 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).

❖ **Transferring Legal Custody - §48.345(4)**

- If the child cannot be rehabilitated, treated, or cared for with the voluntary consent of the child's parent/guardian, the court may transfer legal custody to the child's relative, the department or county agency/department, or a licensed child welfare agency.

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 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 48.415 (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.
- ❖ 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.