

CONSENT DECREE STATUTORY OUTLINE

Statutory Summary - §48.32

- ❖ At any time after a (U)CHIPS petition is filed, a judge or court commissioner may suspend the proceedings and place the child/expectant mother under supervision in the home or the present placement under a consent decree.
- ❖ The consent decree must be in writing and agreed to by the child if 12 or older, the parent, guardian, or legal custodian, the petitioner, child or adult expectant mother, and unborn child's Guardian ad Litem.
- ❖ The court may order conditions for the child, child's parent, guardian, or legal custodian, or child or adult expectant mother.

❖ **Findings**

- If the consent decree orders a placement outside the home, additional out of home findings are required under §48.32(b)(1) a-d.
 - Placement in the home would be contrary to the child's welfare.
 - The agency or department has made reasonable efforts to prevent the child's removal from the home, unless the judge or court commissioner finds that any of the circumstances in §48.355(2d)(b) 1. to 5. applies with respect to a parent (i.e., reasonable efforts are not required).
 - If §48.355(2d)(b) 1. to 5. applies, the judge or circuit court commissioner shall hold a hearing under §48.38(4m) within 30 days after the date of that finding to determine the permanency goal.
 - If the permanency plan has been filed, the agency or department has made reasonable efforts to achieve the permanency goal.
 - If the child has siblings who are also in out-of-home care, the agency or department has made reasonable efforts to place the siblings together unless it is contrary to the safety or well-being of the child or sibling.
- A consent decree without such detailed findings is statutorily insufficient. See §48.32(3).
- **ICWA Findings**
 - In addition to the out of home requirements described above, if the Indian child is placed out of the home, the consent decree shall include:
 - 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);

- 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; and
- 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.

❖ **Timeframes**

- A consent decree shall remain in effect up to 6 months unless order is discharged sooner by the judge or commissioner.
- On a party's motion, the court may extend the decree for up to an additional 6 months in the absence of objection. If the party objects, the judge shall schedule a hearing and make a determination on the issue of extension.
 - An extension of a UCHIPS consent decree may be granted after the child is born.

❖ **Amended Consent Decree**

- The consent decree may be amended at any time using the same procedures for entering the original consent decree. An amended consent decree may revise any of the terms and conditions or change the child's placement. A hearing is only required if the child's placement is being changed from in-home to out-of-home. See §48.32(1)(am).

❖ **Vacating the Consent Decree**

- If, prior to discharge, or the expiration of the consent decree, the court finds that the conditions of the consent decree were not fulfilled, or that the child or expectant mother objects to the continuation of the consent decree, the case may be continued to conclusion as if the consent decree had never been entered.
 - The judge or commissioner shall inform the parties of the right object to the continuation of the consent decree and that the hearing under which the party was placed under the consent decree may be continued to conclusion as if the consent decree had never been entered.
 - A finding that a consent decree has been violated must be made before the consent decree expires.
 - Filing a motion to vacate the consent decree prior to its expiration does not extend the term of the decree and does not prevent the automatic dismissal of the original petition upon the expiration of the decree.

❖ **Inadmissible Information if (U)CHIPS Case Reinstated**

- A court which, under this section, elicits or examines information or material about a child or an expectant mother which would be inadmissible in a hearing

on the allegations of the petition may not, over objections of one of the parties, participate in any subsequent proceedings if any of the following applies:

- The court refuses to enter into a consent decree and the allegations in the petition remain to be decided in a hearing at which one of the parties denies the allegations forming the basis for a (U)CHIPS petition.
- A consent decree is granted but the (U)CHIPS petition is subsequently reinstated.

❖ **CASA**

- The judge or commissioner may request a court-appointed special advocate (CASA) for the child.

❖ **Case Law**

- Under §48.32(3), a finding that a consent decree has been violated must be made before the consent decree expires. Filing a motion to vacate the consent decree prior to its expiration does not extend the term of the decree and does not prevent the automatic dismissal of the original petition upon the expiration of the decree. *Interest of Leif E.N. & Nora M.S.*, 189 Wis. 2d 480, 526 N.W.2d 275 (Ct. App. 1994).