

CHILD IN NEED OF PROTECTION OR SERVICES: COMPREHENSIVE OVERVIEW OF A CHIPS PROCEEDING

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Terms:

- **CHIPS** - “CHIPS” stands for child in need of protection or services. This is a juvenile court proceeding involving minors under the age of 18 for issues such as abuse, neglect, or abandonment.
- **Out of Home Placement** - An out-of-home placement for purposes of court findings and permanency planning is when a child/juvenile is temporarily living in the custody of (placed) anyone except a parent.

COMPREHENSIVE OVERVIEW OF THE CHIPS PROCEEDING

1. TEMPORARY PHYSICAL CUSTODY HEARING (Wis. Stat. § [48.21](#))

This step can happen at any stage of the CHIPS proceeding or may not happen at all. In a temporary physical custody hearing, the child has been removed from their home, is being held in the custody of the state, and has not been released under the options of Wis. Stat. § [48.20](#) (to their guardians, parents, authorized home, unsupervised in certain circumstances). A hearing must take place in front of a judge or court commissioner within 48 hours of the decision to hold the child in custody (excludes Saturdays, Sundays, and legal holidays) to determine if the child should continue to be held in custody (and where that child should be held) for a reason under Wis. Stat. §§ [48.205-48.209](#). A CHIPS petition must be filed by the time of the hearing. See Wis. Stat. § [48.25](#) (petition requirements).

In this hearing, the authorized agency will ask the parents for names of possible placements if the child will not remain in the home. The Court will also ask the authorized agency to locate relatives for possible placement if the child will be removed from the home. If a parent is not present at the detention hearing and can show good cause as to why they were not able to attend, they can be granted a rehearing. Wis. Stat. § [48.21\(1\)\(a\)](#). The court then issues a temporary order determining where the child should stay.

If there is no hearing, or if no CHIPS petition is filed under Wis. Stat. § [48.25](#) (see below), within the 48 hour window (excluding weekends and legal holidays), then the child should be released, except if the case falls under Wis. Stat. § [48.21\(1\)\(b\)](#). Under section § [48.21\(1\)\(b\)](#), the court may approve holding a child for an additional 72 hours (excluding weekends and legal holidays) even if no petition has been filed at the time of the hearing if there is probable cause to believe any of the following:

1. Case requires additional time to determine if filing a petition is necessary;
2. The child is an imminent danger to himself/herself or others;
3. The child's parent/guardian/responsible adult is neglecting, refusing, unable, or unavailable to adequately supervise and care for the child; OR
4. The child is an expectant mother and there is probable cause to believe that if the expectant mother is not held in custody, that the unborn child or newborn child once it is born is likely to be seriously affected or endangered by the expectant mother's abuse of alcohol or controlled substances.

An extension under section (b) can only be granted once per petition, and if after the extension is granted, there is still no petition filed, then the judge or court commissioner must order the immediate release of the child from custody. Wis. Stat. § [48.21\(1\)\(bm\)](#).

Note: A temporary physical custody hearing could happen at any stage in the CHIPS proceeding. But there are many cases that don't require a temporary physical custody hearing. In cases where the child remains in the home of a parent or guardian, a temporary physical custody hearing is not applicable.

2. PETITION (Wis. Stat. § [48.25](#))

To begin a CHIPS proceeding, a petition must be filed with the court stating why the child is in need of protection or services and by alleging one or more of the CHIPS grounds under section [48.13](#). The petition must be correctly formatted and contain the information described in section 48.255. Wis. Stat. § [48.255](#). After the petition is filed, the parents and the other individuals listed in section [48.255](#) receive a copy of the petition.

The petition must be signed by someone who has knowledge of the facts alleged in the petition, or someone who has been informed of the facts in the petition and believes the facts are true. The district attorney, corporation counsel, or other appropriate official may file a petition under section 48.13 (jurisdiction over children alleged to be in need of protection or services) or section [48.133](#) (jurisdiction over unborn children in need of protection and their expectant mothers). The attorney or Guardian ad Litem (GAL) for a parent, child, guardian, or relative may file a petition in CHIPS cases under section 48.13 or [48.14](#).

For proceedings under 48.13 or 48.133, the appropriate official shall file the petition, close the case, or refer the case back to intake within 20 days after the date the intake worker's request was filed. Wis. Stat. § [48.25](#). The statute provides guidance regarding how and when the official shall take each action and allows for extensions of the time limitation only if the court finds that the party showed good cause. *Id.*

If the district attorney, corporate counsel, or other appropriate official refuses to file the petition, then anyone can request that the judge order the petition filed and hold a hearing. The judge may also order the petition filed on their own motion, but in that case, the judge who orders the filing of the petition cannot also be the judge who hears the case.

If a petition is filed under section 48.13, any party, or governmental/social agency may file for a temporary restraining order or injunction under § 813.122 (child abuse TRO/injunction) or § 813.125 (harassment TRO/injunction), and the petitioner does not have to pay the fees for filing under § 813.122 or § 813.125. Wis. Stat. § [48.25\(6\)](#).

3. PLEA HEARING (Wis. Stat. § [48.30](#))

Once the petition is filed, the non-petitioning parties – the parents, the child (depending on their age), guardian, legal custodian, expectant mother, and the attorney for the child – may contest the allegations in the petition at the plea hearing. The plea hearing should occur within 30 days after filing the petition if the child is not being held in custody, and within 10 days after filing the petition if the child is being held in secure custody. Wis. Stat. § 48.30.

During the plea hearing, the child and the parent, guardian, legal custodian, or Indian custodian must be told of their rights under section 48.243 (basic rights/duty of intake worker), and be informed that if they want to have a jury trial or a substitution of judge for the case, that they must request it before the end of the plea hearing or the option will be waived. See Wis. Stat. § 48.29. If a non-petitioning party (including the child) wants time to review the options of a jury trial and a substitution of judge with an attorney, the court should grant them a continuance of the plea hearing.

If a party contests the petition, the court will schedule a fact-finding hearing. The court must set a date for the fact-finding hearing that allows the parties reasonable time to prepare, but that is no more than 20 days after the plea hearing if the child is in secure custody, and no more than 30 days after the plea hearing if the child is not in secure custody.

If none of the parties contest the petition, the judge will schedule a dispositional hearing, which allows the parties reasonable time to prepare, but that is no more than 10 days after the plea hearing if the child is in secure custody, or no more than 30 days after the plea hearing if the child is not in secure custody.

4. FACT-FINDING HEARING (Wis. Stat. § [48.31](#))

This hearing determines whether the allegations in the petition under sections 48.13 (CHIPS) or 48.133 (unborn child) are proved by clear and convincing evidence. This

hearing will be in front of the court unless the child, child's parent, guardian, or legal custodian has exercised their right to demand a jury trial. See Wis. Stat. § [48.31\(2\)](#). In addition, the court must determine whether or not the child is in need of protection or services that can be ordered by the court.

If the child is determined to be in need of protection or services, the court will schedule a dispositional hearing, allowing the parties reasonable time to prepare, but that is no more than 10 days after the fact-finding hearing if the child is being held in secure custody, and no more than 30 days after the fact-finding hearing if the child is not being held in secure custody. Wis. Stat. §48.31(7)(a). If the court or jury finds that the facts in the petition have not been proven, then the court must dismiss the petition with prejudice.

5. DISPOSITIONAL COURT REPORT (Wis. Stat. § [48.33](#))

Prior to a dispositional hearing, the court must designate an agency, as defined in section [48.38\(1\)\(a\)](#), to write a dispositional report that describes the family and makes recommendations to the court regarding needed services and conditions for court supervision. Section [48.33\(1\)\(a\)-\(f\)](#) describes the required contents of the report. A report that recommends the child remain in their home may be presented orally at the dispositional hearing if the parties consent.

Reports recommending out-of-home placements must be in writing. It shall include a permanency plan, recommendation for child support, information showing that the continued placement of the child in their home would be contrary to the welfare of the child, and information on the recommended out-of-home placement. If the report recommends a foster parent, their name and address usually must be provided to the court and child's parent/guardian unless the court finds that disclosure would result in imminent danger to the child or the foster parent.

6. DISPOSITIONAL HEARING (Wis. Stat. § [48.335](#))

After a court has determined that a child requires protection or services under sections 48.13 (CHIPS) or 48.133 (unborn child), the next step is to hold a dispositional hearing. In a dispositional hearing the court determines how to dispose of the case – how to provide for safety and protection for the child, and if services and treatment for the family should be provided. At a dispositional hearing, any party can present evidence relevant to the disposition and can present alternative disposition recommendations.

If the agency is recommending a placement in a foster home, group home, or residential care center for children and youth, in the home of a relative other than a parent, in the home of like-kin, in the home of a guardian, or in a supervised

independent living arrangement, the agency must give the court specific evidence of all of the following:

1. Continued placement of the child in their home is contrary to their welfare.
2. That the county department, department or the agency who has the primary responsibility for providing services for the child has made reasonable efforts to prevent removal of the child from his/her home, while prioritizing child's health and welfare.
3. If a permanency plan had previously been prepared for the child, that the county department, department, or agency made reasonable efforts to achieve the permanency goal of that permanency plan.
4. That the agency has made reasonable efforts to place the child in a placement that would allow their sibling group to remain together, unless joint placement of the siblings would be contrary to their safety and well-being.

If the disposition order places the child outside of the home, and the parent is present at the hearing, the court shall ask the parent to provide the names and information of three adults for the court to consider as placements for the child, unless already provided.

7. DISPOSITIONAL COURT ORDER (Wis. Stat. § [48.355](#))

After the dispositional hearing, the court will issue a written dispositional order.

The dispositional order should protect the safety and well-being of the child using means that are the least restrictive of the rights of the child's parent(s) and the child, and that ensure care, treatment and rehabilitation for the child and family, consistent with protecting the public. Wis. Stat. § [48.355\(1\)](#).

Among other requirements, the order must include:

1. Specific services to be provided to the child and family.
2. If the child is placed outside the home or if the court denies visitation, the court must include in its written order a notification of applicable grounds for termination of parental rights and conditions necessary for the child to be returned home or to grant parents visitation. Wis. Stat. § [48.356\(2\)](#).
3. That continued placement of the child in his/her home would be contrary to their welfare.
3. If the child is outside of the home, the name of the place or facility. If the child is in a foster home, and the information about the placement is not available at the time of the hearing, the name and address of the foster parent must be given to the court within 21 days after the order. If after a hearing on the issue of whether or not to disclose the location of the foster home, with proper notice given the child's parent and guardian, the judge finds that disclosing the identity of the foster parent would result in imminent danger to the child or foster parent, the judge can order the name and address of the foster parent kept

- from the child's parent or guardian.
4. The date when the dispositional order will expire.
 5. Information relating to child support. See Wis. Stat. § 48.355(2)(b)(4-4m).
 6. If the child has been placed outside of the home, the order must contain a permanency plan if one has been prepared.
 7. That the county department, department or the agency who has the primary responsibility for providing services for the child has made reasonable efforts to prevent removal of the child from their home, while making the child's health and welfare the main concern. If there was a permanency plan that had previously been prepared for the child, that the county department, department, or agency has made reasonable efforts to achieve the permanency goal of that permanency plan.
 8. If the child is placed outside the home under the supervision of the county department or department, there must be an order included ordering the child into the placement and care of the department and assigning the department with the primary responsibility for providing services for the child.
 9. If the child has siblings and the siblings have been removed from the home, that the county department, department, or agency has made reasonable efforts to put the child in a placement that would allow the sibling group to remain together.
 10. Statement of the conditions with which the child or expectant mother must comply.

For a complete list of everything the disposition court order must contain, see section [48.355](#).

8. PERMANENCY PLAN (Wis. Stat. § [48.38](#))

The last major step in the CHIPS proceeding is the permanency plan. A permanency plan is a plan designed to help the child be reunited with their family, or to help the child find a way to quickly obtain a placement or home that will provide long term stability. The permanency plan must contain one or more of the following goals for the child: return home, adoption, placement with a guardian, placement with a fit and willing relative, or some other planned permanent living arrangement.

What conditions require a permanency plan:

There are required elements that must be included in a permanency plan. In general, when a child is living in a foster home, group home, residential care center for children and youth, juvenile detention facility, or shelter care facility, the agency who placed the child there, arranged for the placement, or has the primary responsibility for the child, must prepare a written permanency plan if any of the following conditions are present. If the child is living in the home of a guardian or a relative other than a parent, the agency or department must prepare a written permanency plan if any of conditions 1-5

below apply:

1. The child is being held in physical custody under sections 48.207, 48.208, 48.209.
2. The child is in the legal custody of the agency.
3. The child is under the supervision of the agency, under a consent decree, or under a court order under section 48.355.
4. The child was placed under a voluntary agreement between the agency and the child's parent or a voluntary transition-to-independent-living agreement.
5. The child is under the guardianship of the agency.
6. The child's care would be paid for by the provision for aid to families with dependent children.
7. The child's parent is placed in a foster home, group home, residential care center for children and youth, juvenile detention facility, or shelter care facility and the child is residing with that parent.

When must a permanency plan be prepared?

In general, the agency must file a permanency plan with the court within 60 days after the date that the child was first removed from his or her home.

What must be included in a permanency plan?

Section 48.38(4) describes the required contents of a permanency plan prepared by a department or agency.

When must the permanency plan be reviewed?

The court or an appointed panel must review the permanency plan within 6 months from the date the child was removed from the home, and every 6 months following for as long as the child is placed out of the home. In addition, the Court must conduct a hearing on the permanency plan every 12 months. Wis. Stat. § 48.38(5)-(5)(m).

What is concurrent planning and when is it required?

The child will have one permanency goal unless the agency is engaging in concurrent planning, which is defined as making appropriate efforts to work simultaneously towards achieving more than one of the permanency goals. See Wis. Stat. [48.355\(2b\)](#). If the agency determines it should engage in concurrent planning, the plan must explain that determination and describe the concurrent plan.

Note: This may not be the last step in the process because there may be more post-dispositional hearing action. For example, there may be extensions filed under section [48.365](#), revisions to the dispositional order under section [48.363](#), changes of placement under section [48.57](#), and trial reunifications under section [48.358](#).