

## CHIPS POST-DISPOSITION OUTLINE

### ❖ CHANGE IN PLACEMENT

#### ➤ Emergency Changes in Placement

##### ▪ **Out-of-home to Out-of-home, Out-of-home to In-home, or In-home to In-home - §48.357(1)(c)**

- If emergency conditions necessitate an immediate change in placement of a child, the person or agency responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without prior notice.
- Notice of the emergency change in placement shall be sent within 48 hours after the emergency change in placement to the child, child's parent, guardian, and legal custodian of the child, district attorney or corporation counsel, any foster parent, or other physical custodian and the child's court appointed special advocate, and if the child is an Indian child, the Indian custodian and tribe.
  - Any party receiving notice may demand a hearing by filing an objection within 10 days after receipt of the notice.

##### ▪ **In-home to Out-of-home - §48.357(2)(b)**

- If emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the person or agency responsible for implementing the dispositional order may remove the child to a new placement, whether or not authorized by the existing dispositional order, without first requesting a change in placement.
- The court shall hold a hearing on the emergency change in placement within 48 hours after the emergency change in placement is made.
- The agency, district attorney, or corporation counsel must file a formal request for change in placement by the time of the hearing. If all parties consent to waive the notice requirements, the court may hear the request immediately in lieu of conducting the emergency change in placement hearing.

#### ➤ **Requests by Agency or District Attorney/Corporation Counsel - §48.357(1)**

- For a change from an **in-home to out-of-home** placement, a hearing must occur.
  - The request shall contain:
    - Name and address of the new placement.
    - Reasons for the change.
    - Why the new placement is preferable.

- How the new placement satisfies the objectives of the treatment plan.
- Why continued in-home placement is contrary to the welfare of the child.
- Information showing that reasonable efforts to prevent removal have been made.
- For an Indian child, the in-home to out-of-home request must also contain:
  - Specific information showing that continued in home placement is likely to result in serious emotional or physical damage to the child.
  - That efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful.
  - That order of placement preference requirements have been met, and if not, that there is good cause for departing from that order.
  - See §§48.357(1)(am)1-1g, 48.357(1)(c); 48.028(4)(d)1-2, 48.028(7)(b),(c),(e).
- Notice of the hearing shall be given to the child, the parent, guardian, and legal custodian, the child's court appointed special advocate, and all parties bound by the dispositional order at least 3 days prior to the hearing.
  - For an Indian child, no hearing shall be held until at least 10 days after receipt of the notice by the parents, Indian custodian, and tribe (or 15 days after receipt by the Secretary of the Interior if the identity or location is unknown).
- For **out-of-home to out-of-home, out-of-home to in-home, and in-home to in-home** changes in placement under §48.357(1), a hearing is only required if there is an objection by one of the participants or the court.
  - Written notice of the proposed change in placement shall be sent to the child, the parent, guardian, and legal custodian, any foster parent, or other physical custodian, and the child's court appointed special advocate, and if the child is an Indian child, to the Indian custodian and tribe.
  - The notice of change in placement shall contain:
    - Name and address of the new placement.
    - Reasons for the change.
    - Why the new placement is preferable and how the new placement satisfies the of the treatment plan.
    - For an Indian child, the out-of-home to out-of-home request must also contain information that order of placement preference

requirements have been met, and if not, that there is good cause for departing from that order.

- Any person entitled to notice, other than the child's CASA, may obtain a hearing by filing an objection within 10 days of receiving notice.
- If a hearing is held, the foster parent, relative, or other physical custodian whose home the child is being removed from has the right to make a written or oral statement during the hearing or submit a statement prior to the hearing. This does not give them party status except as provided in §48.64.
- Placements may not be changed until 10 days after the notice is given unless it is an emergency change in placement (see above), OR the change was authorized in the dispositional order, OR the parent, guardian, legal custodian, Indian custodian and tribe (if an Indian child), child, if 12 years of age or older, or unborn child by GAL, sign written waivers of objection.
  - A hearing for a change authorized in the dispositional order is only required when an objection alleges there is new information available that affects the advisability of the court's dispositional order.
- See §48.357(1)(am) and §48.357(2r).

➤ **Requests by Other Case Participants - §48.357(2m)**

- The child, the parent, guardian, legal custodian or Indian custodian of the child, an expectant mother, an unborn child by the GAL, any person or agency primarily bound by the dispositional order, or the court on its own motion may request a change in placement.
- The request shall contain:
  - Name and address of the new placement.
  - What new information is available that affects the advisability of the current placement.
  - For a change in placement from in-home to out-of-home:
    - Why continued in home placement is contrary to the welfare of the child.
    - Information showing that the agency has made reasonable efforts to prevent removal.
    - For an Indian child, the in-home to out-of-home request shall also contain:
      - Specific information showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
      - That active efforts have been made, unsuccessfully, to prevent the breakup of the Indian child's family.

- A statement as to whether the new placement is in compliance with the order of placement preference, or a statement showing good cause for departing from that order.
  - The court shall hold a hearing on the matter if the request alleges that there is new information that affects the advisability of the current placement.
    - A hearing may be waived, except for an in-home to out-of-home change in placement, if written waivers of objection are signed by the child, the parent, guardian, and legal custodian of the child, the Indian custodian, any foster parent, or other physical custodian of the child and the court approves.
  - Notice of the hearing shall be provided to the child, the parent, guardian, and legal custodian, any the child's court appointed special advocate, all parties bound by the dispositional order, Indian custodian and tribe, at least 3 days prior to the hearing.
    - For an in-home to out-of-home change in placement involving an Indian child, no hearing shall be held until at least 10 days after receipt of the notice by the parents, Indian custodian, and tribe (or 15 days after receipt by the Secretary of the Interior if the identity or location is unknown).
  - The foster parent, relative, or other physical custodian whose home the child is being removed from has the right to make a written or oral statement during the hearing or submit a statement prior to the hearing. This does not give them party status except as provided in §48.64.
- **Prohibited Placements - §48.357(4d)**
- The court may not change a child's placement to a placement in the home of a person convicted of 1<sup>st</sup> degree or 2<sup>nd</sup> degree intentional homicide of a parent of the child, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the child.
- **Child Support - §48.357(5m).**
- If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide financial information to the court or the person or agency primarily responsible for implementing the dispositional order.
- **Out-of-Home Placement Findings**
- A hearing is required anytime a child's placement is changed from in-home to out-of-home, where the court must make the following findings:
    - It is contrary to the welfare of the child to remain in the parental home.

- Reasonable efforts have been made to prevent the removal of the child from the home, unless the court has found that reasonable efforts are not required under §48.355(2d)(b)1. to 5.
- Reasonable efforts have been made to finalize the permanency plan (if filed at time of hearing).
- If the child has siblings in out-of-home care, reasonable efforts have been made to place the sibling group together unless it is contrary to the safety or well-being of any of the children.
- At the hearing, the parent must provide to the court the names of three relatives or other individuals over 18 for the court to consider for placement. The court shall order the 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

❖ **CASE CLOSURE ORDERS - §48.355(4g)**

- Where a child is subject to a juvenile court dispositional order and the child is placed/will be placed with a parent:
  - The child's counsel, GAL, parent, guardian, legal custodian, or Indian custodian, the agency, district attorney or corporation counsel, or the court, on its own motion, may file a petition requesting that the juvenile court issue an order that would both:
    - Modify the existing or pending family court order (e.g., divorce or paternity) consistent with the CHIPS dispositional order; and
    - Terminate the current juvenile court order.
  - The juvenile court judge may modify/establish paternity, legal custody, periods of physical placement, visitation rights, child support, and coverage of health care expenses.
  - The juvenile court judge may not transfer legal custody of the child to a relative or an agency under §767.41(3).
  - Future modifications of the family court order by any party to that order are made using the regular Ch. 767 procedures.

❖ **REVISIONS - §48.363(1)(a)**

- A revision of a dispositional order can be requested by the child, child's parent, guardian or legal custodian, Indian custodian, an expectant mother, an unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel or the court on its own motion.
  - A revision cannot change the child's placement. The change in placement procedures described above must be followed. A revision may be filed in conjunction with a change in placement request (e.g., to establish conditions for return).

- A hearing shall be held if the request indicates that new information is available which affects the advisability of the dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.
- If a hearing is held, the court shall notify the child, the child's parent, guardian and legal custodian, Indian custodian, all parties bound by the dispositional order, the child's foster parent or other physical custodian, the child's court-appointed special advocate, and the district attorney or corporation counsel, and the Indian tribe, at least 3 days prior to the hearing.
  - A copy of the request shall be attached to the notice.
  - If all parties consent, the court may proceed immediately with the hearing.
  - If the proposed revision includes a request to change child support, the court shall order the child's parent to provide financial information and provide a copy to the county department. See §48.363(1)(c) and §48.363(1)(d).

❖ **EXTENSIONS - §48.365(1m)**

- An extension of a dispositional may be requested by the parent, child, guardian, legal custodian, Indian custodian, expectant mother, unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel or the court on its own motion.
- No dispositional order may be extended without a hearing.
  - However, if a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days.
  - Failure to object if a hearing is not held within a time period under this section waives any challenge to the court's competency to act on the request. See §48.365(2) and §48.365(6).
- The court shall notify the child, the child's parents, guardian, legal custodian, and Indian custodian, all parties present at the original hearing, the child's foster parents or other physical custodian, the child's court-appointed special advocate, the district attorney or corporation counsel, and tribe, of the time and place of the hearing. See §48.365(2).
  - The statutes do not provide a timeframe for providing notice of the hearing.
- At the hearing, the person or agency primarily responsible for providing services to the child shall file a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the rehabilitation or care and treatment of the child. See §48.365(2g)(a).
  - If the child is placed outside his or her home, the report shall also contain:
    - Information about the child's adjustment and progress.
    - Suggestions for amendments to the permanency plan.

- If the child has been placed outside of the home for 15 of the most recent 22 months, a statement about whether or not a recommendation has been made for termination of parental rights and a copy of the review of the permanency plan and the agency's response.
- If the child is an Indian child, the report shall also contain specific information showing that active efforts have been made, unsuccessfully, to prevent the breakup of the Indian child's family. See §48.365(2g)(4) & §48.028(4)(d)2.
- If the child is NOT placed outside his or her home, the report shall contain:
  - A description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation.
  - An explanation of why these efforts have not yet succeeded in meeting the objectives.
  - Anticipated future planning for the child.
- If the child is placed outside the home, the agency shall present evidence showing the agency has made reasonable efforts to achieve the permanency plan.
  - For an Indian child, evidence must be presented showing that the agency has made reasonable efforts to prevent the breakup of the Indian family and those efforts have been unsuccessful.
- The judge shall make findings of fact and conclusions of law based on the evidence.
  - The judge shall determine which dispositions are to be considered for extension.
  - The judge shall establish a new expiration date for the dispositional order. See §48.365(5).
    - An in-home order for extension shall be for a specified length of time not to exceed one year after its date of entry.
    - An out-of-home order for extension shall be for a specified length of time not to exceed the later of the following:
      - Date the child turns 18.
      - One year after the date of entry of the order.
      - If the child is a full-time student in high school or its equivalent and is reasonably expected to complete the program before reaching 19, the date on which the child reaches 19 or graduates, whichever comes first.
      - Date child turns 21 or graduates high school, whichever comes first, if:
        - Child is a full-time student in high school or its equivalent;

- Child has an individualized education program (IEP) in effect;
- Child is at least 17 years old when the order is entered; and
- Child or child's guardian agrees to the order.

#### ❖ HEARING PROCEDURES

- The general public shall be excluded from the hearing. The only persons entitled to be present are the parties and their counsel or guardian ad litem, the court appointed special advocate for the child, the child's foster parent or other physical custodian, witnesses and other persons requested by a party and approved by the court.
- A child, with the consent of the child's counsel or guardian ad litem, may be temporarily excluded from the court.
- Except as provided in §901.05, neither common law nor statutory rules of evidence are binding. See §48.299.
  - The court should admit all testimony having reasonable probative value.
  - Telephone or live audiovisual means may be used.
  - Hearsay evidence may be admitted.
  - The court shall give effect to the rules of privilege recognized by law.
- Any party may present evidence relevant to the issue/request.
- A foster parent or physical custodian has a right to make a written or oral statement during the hearing or submit a statement prior to the hearing.

#### ❖ 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, or
  - 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).

## Case Law

### Change in Placement

- ❖ A foster parent is entitled to a hearing under s. 48.64 (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. *Bingenheimer v. DHSS*, 129 Wis. 2d 100, 383 N.W.2d 898 (1986).

### Case Closure Orders

- ❖ The circuit court erred by failing to appoint a GAL for the child in order to provide an opinion regarding the best interests related to the allocation of legal custody and physical placement between his parents. The court had in error utilized a contract analysis to allocate custody and placement. *In the interest of ARB*, 2019 WI App 26 - Wis: Court of Appeals, 3rd Dist. (2019).

### Extensions

- ❖ Extension order that was signed after termination of dispositional order for children in need of protection or services was valid; extension was based on timely oral decision in extension hearing held before termination; and oral, newly granted extension was effective and ran from date that disposition would otherwise terminate. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.
- ❖ Thirty-day extension of dispositional order for children in need of protection or services was valid, even though 30-day extension was ordered before petitions for extension were filed; request for extension was made before dispositional order terminated. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.
- ❖ Gap between effective dates of extensions of dispositional order for children in need of protection or services did not deprive court of subject matter jurisdiction. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.
- ❖ One-year extension of dispositional order for children in need of protection or services ran from termination date of valid, 30-day extension. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.
- ❖ Dispositional order for children in need of protection or services could not be extended for 30 days after it had already been extended for one year and 30 days, even though second 30-day extension had been ordered as continuance without objection and due to court's calendar. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.
- ❖ Parents' failure to challenge competency of trial court to enter into more than one 30-day extension of dispositional order for children in need of protection or services and to enter another one-year extension precluded them from

challenging court's competency at expiration of one-year extension; parties had ample opportunity to litigate competency to proceed before grant of one-year extension and in Court of Appeals by timely appeal; and public interest in protecting adoption strongly supported ruling that parents were precluded from litigating trial court's competency to grant dispositional extension, except in proceeding granting extension or an appeal. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.

- ❖ Order granting or denying extension of dispositional order for children in need of protection or services is appealable as of right. *In Interest of L.M.C.*, 146 Wis. 2d 377, 432 N.W.2d 588 (Ct. App. 1988), *review denied*, 145 Wis. 2d 918, 430 N.W.2d 352.
- ❖ While purpose of hearing on application to extend dispositional order, entered after children were found to be in need of protection and services due to neglect, was to determine best interests of children, it was petitioning, and not objecting, party which had primary obligation to move case along in timely fashion to get to that hearing. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).
- ❖ Circuit court loses its competence to exercise jurisdiction over petition to extend dispositional order, affecting children adjudged to be in need of protection and services due to neglect, by its failure to hold hearing before expiration of 30-day temporary extension of dispositional order; 30-day temporary extension period cannot be enlarged by statute governing delays, continuances, and extensions. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).
- ❖ Dispositional order, entered after children were found to be in need of protection and services due to neglect, expired once 30-day temporary extension of dispositional order elapsed, and circuit court was no longer competent to consider county's petition to extend dispositional order for another year, though original hearing date was properly set and it was parent's attorney who sought to reschedule hearing due to scheduling conflict, absent any evidence explaining why county was unable to file early enough so as to enable circuit court to hear matter prior to expiration of 30-day extension or why it failed to alert circuit court to necessity of holding hearing prior to expiration of 30-day extension. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).
- ❖ Circuit court's loss of competency to consider county's petition to extend dispositional order entered after children were determined to be in need of protection and services, resulting from circuit court's failure to hold hearing before 30-day temporary extension elapsed, could not be waived by any of the parties. *In Interest of B.J.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991).
  - **Note:** Section 48.365(6) has since been amended to so that "Failure to object if a hearing is not held within the time period under this subsection waives any challenge to the court's competency to act on the request."

## TPR Warnings

- ❖ 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.