



# Temporary Physical Custody Hearing

**Comm'r Kevin Costello**  
Waukesha County Circuit Court  
Waukesha

**Hon. Wendy J.N. Klicko**  
Sauk County Circuit Court  
Baraboo

## Learning Objectives

- Identify the process and timeline for holding a child in custody
- Prepare for and conduct a Temporary Physical Custody Hearing
- Ensure that you have sufficient information to make an informed decision about custody
- Understand and apply recommended best practices at a Temporary Physical Custody Hearing
- Enter a Temporary Physical Custody Order

## Significance of TPC Hearing

- TPC Hearing is one of the most significant and critical hearings in a CHIPS case
- Removal of children from their home is highly traumatic; they should not be removed, nor continued to be held outside their home, unless their safety demands it (§ 48.355(1))
- Usually the first time parents will be in front of the court
  - ▶ Emotional event for parents
  - ▶ Sets tone for how case will progress
  - ▶ Opportunity to engage and motivate the parties

## Overview of the TPC Hearing

- Determine if child removed from the home by law enforcement or intake worker should continue in temporary physical custody
- Typically occurs at the beginning of the case prior to CHIPS petition (but child can be taken into custody at any stage of a CHIPS case)
- Judge can act as intake worker, but rare and judge who does can no longer continue to hear the case

## Effective TPC Hearing

- Are thorough and meaningful
- Engage parents who are present, identify those who are not, and determine the agency's efforts to locate them
- Ensure early, active participation of parties
- Should avoid or strictly limit continuances
- Set a problem-solving tone
- Have a judge who actively engages parties who are present
  - ▶ Sets clear expectations moving forward
  - ▶ Establishes a focus on child well-being

## Focus on Child Well-Being

As early as the TPC Hearing, Judges/Court Commissioners can set the stage for case planning moving forward and set clear expectations for parties and advocates regarding the court's focus on child well-being

## General TPC Hearing Law and Procedure

- See § 48.21
- See also § 48.299



## TPC Time Limits

- Hearing must be held within 48 hours of child being taken into custody in CHIPS cases
  - ▶ 24 hours from end of the day in delinquency & JIPS cases
- Time limit excludes Saturdays, Sundays, and **legal** holidays (§ 995.20 provides definition)
  - ▶ “Legal holidays” not always same as county holidays
- If the hearing is not held within 48 hours, the child must be released from custody

## Preparing for a TPC Hearing

- Review TPC request (JC-1608 or IW-1608) and
- TPC Request Supplement (JC-1609) and, if filed, the CHIPS Petition
- Review prior court history, but advise parties if you do so
- View TPC Hearing learning activity on the CCIP E-Learning Project Website [www.wiccuptraining.com](http://www.wiccuptraining.com)

## Additional Considerations

- Security issues
- Need for interpreter
- Paternity
- Incarcerated parent

## Additional Considerations

- Counsel or GAL for minor child
- GAL for parent whose cognitive or mental abilities are in question
- Wisconsin Indian Child Welfare Act (WICWA) does not apply at TPC, but must make inquiry and advisements per federal ICWA regulations (§ 48.028(2)(e))

## Persons Entitled to Notice

- Parent
- Guardian
- Legal custodian
- Indian custodian
- Child (12 years or older)

## **Manner of Notice and Whom Given By**

- Notice normally given by the intake worker
- Statute does not specify how or when notice is to be given

## **Persons Allowed to Attend**

- Parties
- Counsel or Guardian ad Litem
- Court appointed special advocate (CASA)
- Child's foster parent or other physical custodian
- Other persons with proper interest in case or work of the court (including media)

## Courts can make sure that parties and key witnesses are present and participate by:

- Requiring quick and diligent notification efforts by the agency
- Requiring both oral and written notification in a language understandable to every person entitled to notice
- Requiring notice (including tribal notice) to include the reason for removal, purpose of the hearing, and the availability of legal assistance in a language and form that is understandable to each person entitled to notice
- Requiring caseworkers and/or protective service investigators to facilitate attendance of children, parents, relatives (paternal and maternal), fictive kin and other parties
- Ensuring that the judge, not the bailiff or court staff, makes the determination about who is allowed to be in the courtroom
- Asking the parties, especially the child, if present, and the parents, if there is someone else who should be present
- Facilitating telephonic or video conferencing appearance at hearings

## Case Participants

- Petitioner
  - ▶ Typically, District Attorney or Corporation Counsel
  - ▶ Occasionally filed privately by parent, guardian, or child
- Non-Petitioning Parties
  - ▶ Child
  - ▶ Legal Custodian
  - ▶ Parents
  - ▶ Indian Custodian
  - ▶ Guardian
  - ▶ Tribe (no right to enter plea, request substitution, jury trial)
- Other Case Participants
  - ▶ Initial assessment/caseworker
  - ▶ Attorney for any party
  - ▶ Caregiver (right to notice of hearings & opportunity to be heard)



## Counsel/GAL for Child

- Child does not have to be represented at time of TPC Hearing
- Guardian ad Litem
  - ▶ Represents best interests of child
  - ▶ GAL is appointed for child under 12
- Counsel for Child
  - ▶ Advocates for child's wishes
  - ▶ State Public Defender's Office will appoint for children 12 and older (or for younger children if ordered by the court)
- In some cases, you may need both counsel and GAL

## Counsel for Parents

- Need not be represented at TPC Hearing, but advise parents of right to hire counsel and right to petition for court-appointed counsel
- Public defender will not represent unless WICWA applies or in five-county pilot program
- Court has discretion to appoint counsel under *Joni B.*, 202 Wis. 2d 1 (1996) and § 48.23(3)

## Inquiries of Parties

- Did all parties receive a copy of the TPC request, including both TPC Request form, JC-1608 and TPC Request Supplement, JC-1609, if applicable?
- Did all parties receive a copy of the Petition, if filed?
- Is there anyone else who should be present?

## Advise the Parties

- Right to counsel as provided under § 48.23
- Allegations contained in the TPC Request
- The right to present, confront, and cross-examine witnesses
- The nature and possible consequences of the TPC Hearing
- Right to oppose the request
- Form JD-1716 or IW-1716, Notice of Rights and Obligations

## Circuit Court Form JD-1716 or IW-1716

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF	
Name _____	Case No. _____
Date of Birth _____	
<p>If a petition has not yet been filed, a referral may result in a petition to the court.</p> <p>The child/juvenile is alleged to either:</p> <p><input type="checkbox"/> be in need of protection or services;</p> <p><input type="checkbox"/> have committed a delinquent act: _____</p>	
<p>You have the right to:</p> <ul style="list-style-type: none"> <li>• a substitution of judge if the request is made before the end of the plea hearing and the law does not otherwise prohibit a substitution.</li> <li>• an attorney:               <ul style="list-style-type: none"> <li>○ If the child/juvenile wants to be represented by an attorney, the public defender shall appoint an attorney. Parents may be required to reimburse the state or county for the attorney and to contribute toward the expenses of post-adjudication services to the child/juvenile, including alcohol or drug treatment or education.</li> <li>○ If a parent desires to be represented by an attorney, the parent may be appointed counsel subject to §48.23, Wis. Stats. The parent may be required to reimburse the state or county for the attorney. The parent may hire an attorney at their own expense.</li> </ul> </li> <li>• remain silent.               <ul style="list-style-type: none"> <li>○ The silence of the juvenile in a delinquency proceeding shall not be adversely considered by the court.</li> <li>○ The silence of any party in a non-delinquency proceeding may be relevant and considered by the court.</li> </ul> </li> <li>• a trial:               <ul style="list-style-type: none"> <li>○ In delinquency proceedings: to the court.</li> <li>○ In juvenile in need of protection or services proceedings: to the court</li> <li>○ In child in need of protection or services proceedings: to the court or a jury (if demanded before the end of the plea hearing).</li> </ul> </li> <li>• present and subpoena witnesses.</li> <li>• confront and cross-examine witnesses.</li> <li>• have the allegations proven:               <ul style="list-style-type: none"> <li>○ In a delinquency proceeding: beyond a reasonable doubt.</li> <li>○ In all other proceedings: by clear and convincing evidence.</li> </ul> </li> <li>• know the nature and possible consequences of the proceedings;</li> <li>• custody hearing: to determine whether the child/juvenile should be placed or remain in custody;</li> <li>• future hearings: to determine if the allegations are true and whether any disposition should be imposed.</li> <li>• request counseling.</li> <li>• additional rights may exist under the Indian Child Welfare Act. (For an Indian child who is placed out-of-home, use the Indian Child Welfare Act version (IW-1716) of this form.)</li> </ul> <p>If the juvenile is ordered to pay a forfeiture or restitution and fails to do so, the amount of the unpaid forfeiture or restitution may be entered and docketed as a judgment against the juvenile and the parent with custody.</p> <p>If it is alleged that the juvenile has committed an act which resulted in personal injury or damage to or loss of property or another, the following information may be disclosed to and used by each victim in a civil action against the parent or the juvenile:</p> <ul style="list-style-type: none"> <li>• the identity of the juvenile and parent;</li> <li>• the juvenile's police record;</li> <li>• the outcome of the proceedings.</li> </ul> <p>Parents may be liable for damages to property, the value of unrecovered stolen property or personal injury attributable to a willful, malicious or wanton act of the juvenile.</p> <p>The amount of recovery from any parent or parents depends upon which statute applies to the delinquent act.</p> <p>I have received a written copy of the above rights and obligations.</p>	
<p>▶ Signature _____</p> <p>Name Printed or Typed _____</p> <p>Address _____</p> <p>Email Address _____ Telephone Number _____</p> <p>Date _____ State Bar No (if any) _____</p>	<p>▶ Signature _____</p> <p>Name Printed or Typed _____</p> <p>Address _____</p> <p>Email Address _____ Telephone Number _____</p> <p>Date _____ State Bar No (if any) _____</p>
<p>JD-1716, 1/1/20 Notice of Rights and Obligations §48.21(2m), 48.21(3)(b), 48.24(1m), 48.24(3), 48.31(2), 895.035, 938.21(3)(b), and 938.243, Wisconsin Statutes</p> <p>This form shall not be modified. It may be supplemented with additional material.</p>	

## Jurisdiction and Custody

- Is the child within the court's jurisdiction?
- Is there a request to continue the child in custody?
- What are the parties' positions?

## Probable Cause to Continue Holding the Child

- Court must find jurisdiction under § 48.13  
AND
- That child may injure self or be injured, is neglected, will runaway, or be taken away

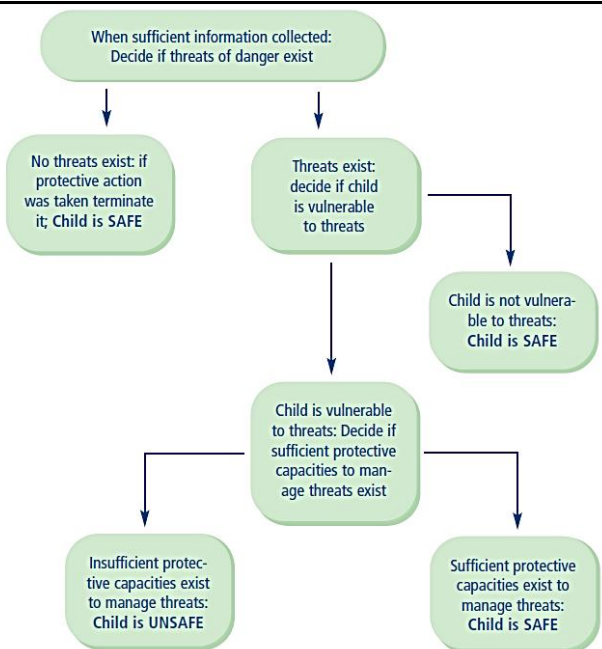
## Taking Testimony

- If any party objects to continued custody, may take testimony and receive evidence
- Rules of evidence do not apply
- Telephone or audio/visual participation is allowed

## If decided to continue child in custody:

- In-home with a parent  
OR
- Out-of-home with:
  - ▶ Guardian, Relative, Person Not a Relative (30 days + 30 days), Foster Home, Group Home, Shelter Care, Hospital, Juvenile Detention (§ 48.207)

## Removal Decision: Safe or Unsafe?



## Purpose of the Child Safety Decision-Making Model

- Statutes do not define safety
- Eliminate gut feelings, hunches
- More meaningful and focused discussion in hearings
- Immediate focus on changes needed to be made by parents for better engagement
- **The right kids are in the right beds**

**INSUFFICIENT INFORMATION**

**=**

**POOR DECISIONS**

**=**

**POOR OUTCOMES**

## Children are Unsafe

- They are exposed to a **Present Danger Threat** or an **Impending Danger Threat**  
**AND**
- They are **Vulnerable**  
**AND**
- Their parent or caregiver's **Parental Protective Capacity** is insufficient to assure the child is shielded from danger.

## The Safety Equation

**Present** or Impending Danger

+ Vulnerable Child

- Sufficient Parental Protective Capacities

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= Unsafe Child

## Present Danger Threat

Immediate, significant and clearly observable family condition that is actively occurring or “in process” of occurring at the point of contact with a family and will likely result in severe harm to a child





# Present Danger Threats

## Maltreatment

- ☐ Child is being maltreated at the time of the report or contact
- ☐ Severe to extreme maltreatment of the child is suspected, observed or confirmed
- ☐ Child has multiple or different kinds of injuries
- ☐ Child has injuries to the face or head
- ☐ Child has unexplained injuries
- ☐ The maltreatment demonstrates extreme cruelty (e.g., torture or extreme emotional abuse)
- ☐ The maltreatment of several victims is suspected, observed or confirmed
- ☐ The maltreatment appears premeditated
- ☐ Life threatening living arrangements are present

# Present Danger Threats

## Child

- ☐ Parent's/caregiver's viewpoint of the child is dangerous for the child
- ☐ Child is unsupervised and unable to care for self
- ☐ The child's immediate health needs are not being met
- ☐ Child is profoundly fearful of the home situation or people within the home

## Parent

- ☐ Parent's/caregiver's intoxicated behavior (alcohol or other drugs) which is occurring now or consistently over time, is impacting their ability to provide basic, necessary care and supervision
- ☐ A parent/caregiver cannot/will not manage their own behaviors which impacts their ability to provide basic, necessary care, and supervision
- ☐ Parent is demonstrating extremely unusual or unexpected behaviors (e.g., incoherent or inappropriate)
- ☐ Parent/caregiver is not providing basic, necessary care and supervision based on the child's individual developmental needs
- ☐ Parent is acting dangerous now or is described as dangerous
- ☐ Parent/caregiver is not able to be located or contacted
- ☐ One or both parents/caregivers overtly reject intervention

## Family

- ☐ The family may flee
- ☐ The family hides the child
- ☐ Child is subject to present/active domestic violence

## BENCHCARD B1

### Present Danger Threats

*A clearly observable family condition, that is significant, immediate – occurring or “in process” of occurring at the point of contact with the family, and will likely results in severe harm to a child.*

#### Present Danger Threats – Maltreatment

The child is currently being maltreated at the time of the report or contact.  
This means the child is being maltreated at the time the report is being made, maltreatment has occurred the same day as the contact, or maltreatment is in process at the time of contact.

**Severe to extreme maltreatment of the child is suspected, observed, or confirmed.**  
This includes severe or extreme forms of maltreatment and can include severe injuries, serious unmet health needs, cruel treatment and psychological torture.

**The child has multiple or different kinds of injuries.**  
This generally refers to different kinds of injuries, such as bruising and burns, but it is acceptable to consider one type of injury on different parts of the body.

**The child has injuries to the face or head.**  
This includes physical injury to the face or head of the child alleged to be the result of maltreatment.

**The child has unexplained injuries.**  
This refers to a serious injury which parents/caregivers and others cannot or will not explain. It includes circumstances where the injury is known to be non-accidental and maltreater is unknown.

**The maltreatment demonstrates extreme cruelty.**  
This includes such things as locking up children, torture, extreme emotional abuse, etc.

**The maltreatment of several victims is suspected, observed, or confirmed.**  
This refers to the identification of more than one child currently being maltreated by the same caregiver.

**The maltreatment appears premeditated.**  
The maltreatment appears to be the result of a deliberate, preconceived plan or intent.

**Life threatening living arrangements are present.**  
This is based on specific reported information which indicates that a child's living situation is an immediate threat to his/her safety, for reasons other than poverty. This includes serious health and safety circumstances like unsafe buildings, serious fire hazards, accessible weapons, unsafe heating or wiring, etc. Child welfare professionals must consider how poverty may or may not be impacting living arrangements and how potential connections to resources, instead of CPS intervention, may mitigate the concerns with the living arrangements.

Benchcard B1  
(see folder)

## The Safety Equation

Present or **Impending Danger**

+ **Vulnerable Child**

- **Sufficient Parental Protective Capacities**

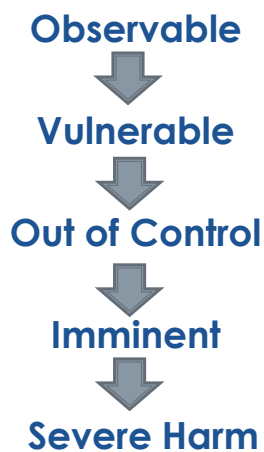
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= **Unsafe Child**

## Impending Danger Threat

A foreseeable state of danger in which family behavior, attitude, motives emotion or situation that can be anticipated to have severe effects on a child at any time in the near future and requires safety intervention

## Impending Danger Threats



# Impending Danger Threats

- ☐ No adult in the home will perform parental duties and responsibilities in line with the child's individual developmental needs
- ☐ One or both parent's/caregiver's behavior shows a pattern of violence
- ☐ One or both parents/caregivers has impulsive behavior that they cannot/will not control
- ☐ One or both parents/caregivers have exaggerated, negative perceptions of the child
- ☐ Family does not use known, available, and accessible resources to assure the child's essential needs for food, clothing, and/or shelter are met
- ☐ One or both parents/caregivers fear they will maltreat the child and/or request placement
- ☐ One or both parents/caregivers intend(ed) to seriously hurt the child
- ☐ One or both parents/caregivers lack parenting knowledge, skills, or motivation necessary to assure the child's basic needs are met
- ☐ The child has exceptional needs which the parents/caregivers cannot or will not meet
- ☐ Living arrangements seriously endanger the child's physical health
- ☐ The child is profoundly fearful of the home situation or people within the home

## BENCHCARD B2

### Impending Danger Threats

*A foreseeable state of danger in which a family behaviors, values, motives, emotions, and/or situations pose a threat that may not be currently active but can be anticipated to have severe effects on a child at any time in the near future and requires safety intervention.*

- Observable
- Out-of-Control

- Imminent
- Severity

#### 1. No adult in the home will perform parental duties and responsibilities in line with the child's individual developmental needs.

This refers only to adults (not children) in a caregiving role. Duties and responsibilities related to the provision of food, clothing, shelter, and supervision are considered at a basic level. Child welfare professionals shall consider whether short-term or limited-time education or support to the parent/caregiver would mitigate the threat or if further intervention is needed.

**2. One or both parent's/caregiver's behaviors shows a pattern of violence.**  
Pattern of violence means ongoing violent behaviors which result in situations where a child is unsafe or is likely to be unsafe. Violent behaviors include physical fighting, hitting, beating, physically assaulting a child, significant other or another adult member of the household. It may be immediately observable, regularly active or in a constant state of unpredictability.

**3. One or both parents/caregivers have exaggerated, negative perceptions of the child.**  
This threat describes a negative perception that is so exaggerated that the parent/caregiver is likely to have a dangerous response that will have severe harm for the child.

#### 4. One or both parents/caregivers has impulsive behavior that they cannot/will not control.

This threat is about self-control (e.g., a person's ability to postpone or set aside needs, plan, be dependable, avoid destructive behavior, use good judgment, not act on impulses, exert energy and action or manage emotions. Parent's/caregiver's lack of self-control places vulnerable children in jeopardy. This threat includes parents/caregivers who are incapacitated or not controlling their behavior because of mental health or substance abuse issues. Poor impulse control or lack of self-control includes behaviors other than aggression and can lead to severe harm to a child.

#### 5. Family does not use known, available, and accessible resources to assure the child's essential needs for food, clothing, and/or shelter are met.

This threat only refers to essential needs for food, clothing, and/or shelter that is chronically unmet and will likely result in serious harm to the child.

#### 6. One or both parents/caregivers fear they will maltreat the child and/or request placement.

This refers to caregivers who express anxiety and dread about their ability to control their emotions and reactions toward their child. This expression represents a parent's distraught/extreme "call for help." A request for placement is extreme evidence with respect to a caregiver's conclusion that the child can only be safe if he or she is away from the caregiver.

Benchcard B2  
(see folder)

## Present Danger Threat

- Pretty easily identified
- Now
- List of 23
- Requires Protective Plan

## Impending Danger Threat

- Requires more information to judge
- Near future
- List of 11
- Requires Safety Plan

## The Safety Equation

Present or Impending Danger

+ **Vulnerable Child**

- Sufficient Parental Protective Capacities

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= Unsafe Child

# Child Vulnerability in WI Standards

- Age (0-6 *Always Vulnerable*)
- Powerless
- Invisible
- Provoking Behaviors

- Physical Disability
- Illness
- Defenseless
- Non-assertive
- Mental Disability

## BENCHMARK C

### Vulnerability

A child is vulnerable when they lack the capacity to self-protect. This nonexhaustive list are issues that determine or increase a child's vulnerability:

- A child lacks capacity to self-protect
- A child is susceptible to harm based on size, mobility, social/emotional state
- Young children (generally 0-6 years of age)
- A child has physical or mental developmental disabilities
- A child is isolated from the community
- A child lacks the ability to anticipate and judge presence of danger
- A child consciously or unknowingly provokes or stimulates threats and reactions
- A child is in poor physical health, has limited physical capacity, is frail
- Emotional vulnerability of the child
- Impact of prior maltreatment
- Feelings toward the parent – attachment, fear, insecurity or security
- Ability to articulate problems and danger

#### Questions the judge can ask.

- Has the child demonstrated self-protection by responding to these threats? (Self-protection means recognizing danger and acting to secure safety for one's self; it is not calling 911, CPS, or the school *after* an event.)
- Besides defending herself from threats, can the child care for her own basic needs?
- How does the judge find this child *not vulnerable* given the threats?
- Is vulnerability of all children, not just the victim, considered?
- Are there issues preventing this child from self-protecting?
- What plan would this child carry out to protect himself from threats?
- Can the child describe how she will know a threatening situation is developing, rather than recognizing it once it is happening?
- What has been learned about this child's functioning? How comprehensive is the information? How much time did the worker or other parties talk to the child about self-protecting? Is there information about this family and the way threats operate *arguing* against the child self-protecting?
- Are there ways the child behaves and responds, that escalate the threats to the child?

Benchmark C  
(see folder)

## The Safety Equation

Present or Impending Danger

+ Vulnerable Child

- **Sufficient Parental Protective Capacities**

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= Unsafe Child

## Parental Protective Capacities

- Definition: Personal and parenting characteristics that can specifically and directly be associated with a person being protective of his or her child
- A specific quality that can be observed, understood and demonstrated as part of the way a parent thinks, feels and acts that makes him or her protective
- 3 areas: behavioral, cognitive and emotional

# Why Are They Important To Understand?

- Not based upon outward appearances or the number of protective capacities they possess
- Need the right ones for the threat identified

Benchcard D  
(see folder)

## BENCHCARD D

### Protective Capacities

#### Cognitive Protective Capacities

Cognitive protective capacity refers to *knowledge, understanding, and perceptions* contributing to protective vigilance. Although this aspect of protective capacities has some relationship to intellectual or cognitive functioning, parents with low intellectual functioning can still protect their children. This has to do with the parent recognizing she is responsible for her child, and recognizing clues or alerts that danger is pending.

*Cognitive protective capacities can be demonstrated when the parent:*

- articulates a plan to protect the child
- is aligned with the child
- has adequate knowledge to fulfill care-giving responsibilities and tasks
- is reality oriented; perceives reality accurately
- has accurate perceptions of the child
- understands his/her protective role
- is self-aware as a caregiver

#### Behavioral Protective Capacities

Behavioral protective capacity refers to *actions, activities, and performance* that result in protective vigilance. Behavioral aspects show it is not enough to know what must be done, or recognize what might be dangerous to a child; the parent must *act*.

*Behavioral protective capacities can be demonstrated when the parent:*

- is physically able
- has a history of protecting others
- acts to correct problems or challenges
- demonstrates impulse control
- demonstrates adequate skill to fulfill care-giving responsibilities
- possesses adequate energy
- sets aside her/his needs in favor of a child
- is adaptive and assertive
- uses resources necessary to meet the child's basic needs

#### Emotional Protective Capacities

Emotional protective capacity refers to *feelings, attitudes and identification* with the child and motivation resulting in protective vigilance. Two issues influence the strength of emotional protective capacity: the attachment between parent and child, and the parent's own emotional strength.

*Emotional protective capacities can be demonstrated when the parent:*

- is able to meet own emotional needs

- is emotionally able to intervene to protect the child
- realizes the child cannot produce gratification and self-esteem for the parent
- is tolerant as a parent
- displays concern for the child and the child's experience and is intent on emotionally protecting the child
- has a strong bond with the child, knows a parent's first priority is well-being of the child
- expresses love, empathy and sensitivity toward the child; experiences specific empathy with the child's perspective and feelings

#### Questions the judge can ask.

- Has the parent demonstrated the ability to protect the child in the past under similar circumstances and family conditions? (*Behavioral Protective Capacity*)
- Has the parent arranged for the child to not be left alone with the adult parent maltreater or source of danger? (This could include having another adult present aware of the protective concerns and able to protect the child). (*Cognitive and Behavioral Protective Capacity*)
- Is the parent intellectually, emotionally and physically able to protect the child given the threats? (*Cognitive, Behavioral and Emotional Protective Capacity*)
- Is the parent free from needs which might affect the ability to protect such as severe depression, lack of impulse control, or medical needs? (*Behavioral and Emotional Protective Capacity*)
- Does the parent have resources to meet the child's basic needs in light of the other changes the court is expecting from the family? (*Behavioral Protective Capacity*)
- Is the parent cooperating with the caseworker's efforts to provide services and assess family needs? (*Cognitive and Behavioral Protective Capacity*)
- Does the parent display concern for the child's experience? Is the parent intent on emotionally protecting the child? (*Emotional Protective Capacity*)
- Can the caregiver specifically articulate a feasible, realistic plan to protect the child, such as the maltreating adult leaving when a situation escalates, calling the police in the event the

*continued on back...*



## The Safety Equation

Present or Impending Danger

+ Vulnerable Child

- Sufficient Parental Protective Capacities

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= **Unsafe Child**

## TPC Request Supplement (JC-1609)

- TPC Supplement was created to capture child safety framework:
  - ▶ Present danger threats
  - ▶ Impending danger threats
  - ▶ Child vulnerable to danger threats
  - ▶ Parents' protective capacities
- Provides additional information to judges and court commissioners to make TPC decisions
- Ask county agency to use form if not doing so already

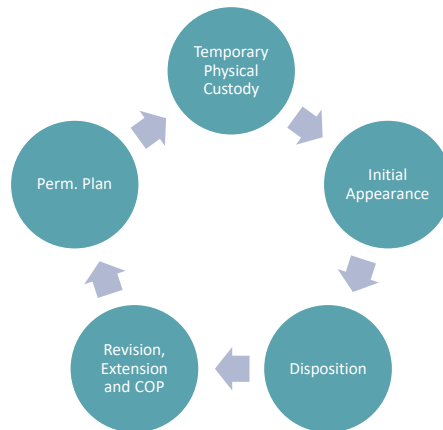
# Unsafe!

## Automatic Removal?

### Protective or Safety Plan

- Sufficient, feasible, and sustainable
- Controls or manages threat of danger
- Immediate effect
- People and services for control *must* be available and accessible
- Concrete and action-oriented
- Does NOT rely upon promises

## Child Safety Applies at Every Stage of the Case



## Findings for Out-of-Home Placement

- Continued placement with parent is contrary to child's welfare
- Reasonable efforts to prevent removal and return home
- Agency with placement and care responsibility
- Reasonable efforts to place siblings together

## ASFA Findings – § 48.21(5)

Contrary to the  
Welfare Findings



Present or Impending Welfare  
Threats

Reasonable Efforts  
Findings



Protective Planning

## Reasonable Efforts Not Required

- Prior involuntary TPR
- Child relinquished within 72 hours of birth
- Parent has subjected the child to aggravated circumstances
- Parent has committed certain crimes against the child or another child
- Parent has sex trafficked a child of that parent

## For Out-of-Home Placement

- May impose reasonable restrictions on parent and child
- Address family interaction
- Consider the stability of the child's educational setting

## Other Issues if Child Placed Out-of-Home

- Request parents provide three names for placement
- Order agency to locate and provide notice to relatives
- Order agency to locate and provide notice to other adults named by parents
- Order agency to provide sibling interaction

## Filing of CHIPS Petition

- If not filed by the time of the TPC Hearing:
  - ▶ Court may grant 72 hour extension to file if:
    - ✓ Additional time required
    - ✓ Imminent danger
    - ✓ Inadequate supervision or care
  - ▶ Only one extension may be granted
  - ▶ Must order release of child if not filed within 72 hours

## If Petition has already been filed:

- Court may order evaluation of child, parent, guardian, or legal custodian (§ 48.295)
  - ▶ Physical
  - ▶ Psychological
  - ▶ Mental
  - ▶ Developmental
  - ▶ AODA

## Set the stage for the next Hearing

Case management starts now!

- Court sets the tone and controls case management
- Schedule next hearing in court and give everyone notice
- Order parents to appear and cooperate with counsel and the Court, and warn of possible default
- Follow time limits – Plea Hearing within 30 days, but 10 days if in secure custody
- Make good cause finding if go beyond the time limits
- Set expectations for compliance with court's orders

## Change in Placement under TPC Order

- Creates procedure for changes in placement that occur while child is under a TPC Order (§ 48.217)
  - ▶ Mirrors procedures and timeframes already contained in § 48.357 & § 938.357
  - ▶ Use JD-1754 (Notice of Change in Placement) or JD-1766 (Request to Change Placement)
- Clarifies TPC order is in effect until petition withdrawn/dismissed, dispositional order/consent decree entered, or court terminates order
- If authorized by the Chief Judge, a court commissioner may order a change in placement for a child/juvenile subject to a TPC Order

## Change in Placement under TPC Order

- § 48.217
- Caseworker or prosecutor:
  - ▶ Provide notice of change in placement 10 days prior or 48 hours after an emergency change
  - ▶ Hold hearing if objection is filed by participant
- Other parties:
  - ▶ Child, GAL/attorney, parents, guardian, legal custodian, Indian custodian, or court may request change in placement
  - ▶ Hearing required unless written waivers of objection

**Questions or Comments?**