

Dispositional Hearing

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Sparta

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Learning Objectives

- Know the timing and purpose of Dispositional Hearings
- Acquire basic knowledge needed to prepare for and conduct a Chapter 48 Dispositional Hearing
- Know the elements of good case plans
- Identify possible dispositions in a CHIPS case
- Acquire basic knowledge to craft a Dispositional Order

Dispositional Hearing

General law:

- Court Reports § 48.33
- General Hearing Procedures § 48.299
- Dispositional Hearing § 48.335
- Dispositions § 48.345
- Dispositional Order § 48.355

Dispositional Hearing

Question.....

What is the purpose of a
Dispositional Hearing?

Dispositional Hearing

The purpose of a Dispositional Hearing is for the court to determine the proper placement, treatment, and services to order in the case, based on the evidence presented to the court at the hearing

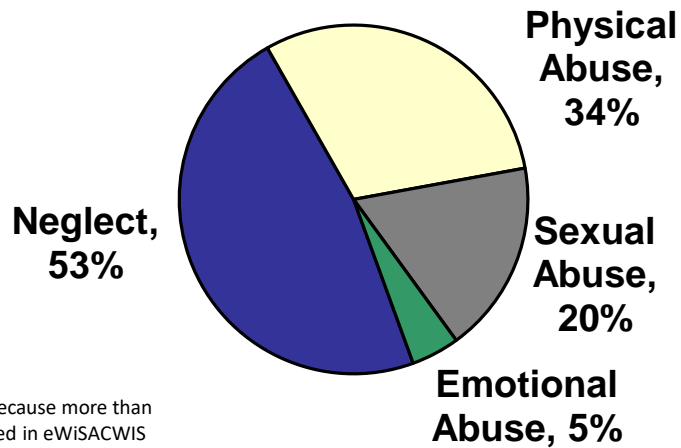
-CCIP Dispositional Hearing E-Learning Activity

Practically speaking...

At a first appearance, a judicial officer may tell the parties, “If there is a problem, we need to find a way to fix it.”

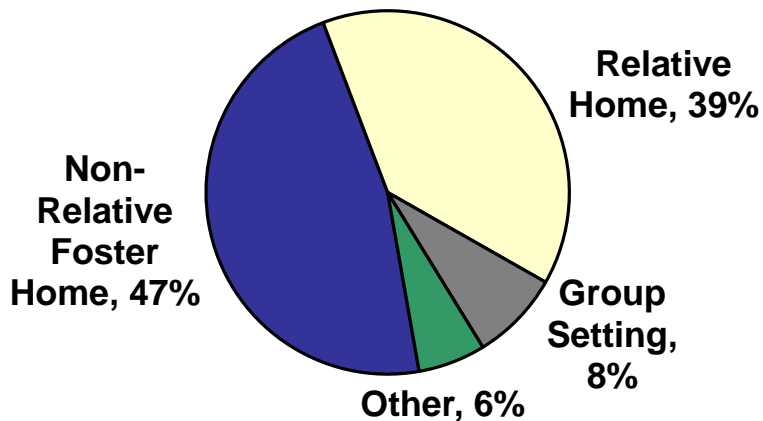
At the dispositional stage, the problem has been identified and the Dispositional Hearing is held to determine “how do we fix it?”

Maltreatment Allegations (3/15/22-3/15/23)



*does not add up to 100% because more than one allegation may be entered in eWISACWIS

Placement Setting for Children in Out-of-Home Care (as of 3/15/2023)



Dispositional Hearing Preparation

- Read the Court Report
- Review the recommendations
 - ▶ Statement of Guardian ad Litem (JD-1799)
- Review file for any other information, like a Permanency Plan, written statements, etc., but be careful of ex parte submissions
- Make arrangements to address any security issues
- Watch the Dispositional Hearing learning activity on the CCIP website (www.wiccuptraining.com)

Court Report

- Required prior to disposition in all CHIPS cases
 - ▶ Available to parties and CASA at least 48 hours before hearing – § 48.293(2) unless a different local rule
 - ▶ Ch. 48 requires written report if out-of-home placement is recommended for child
- Contents of Court Report: § 48.33(1), which includes the “case plan” (services, conditions for return, etc.)

Guardian ad Litem Recommendation

- § 48.235(3): unless granted leave by the court the GAL (personally or through a “trained designee”) must:
 - ▶ Meet with the child
 - ▶ Assess the appropriateness and safety of the child’s environment
 - ▶ If old enough to communicate, interview the child and determine the child’s goals and concerns regarding placement
 - ▶ Make clear and specific recommendations to the court
- Statement of Guardian ad Litem (JD-1799) provides information on if the above requirements were performed and by whom

Dispositional Hearing Procedures

- Hearing must be recorded
- Common law and statutory rules of evidence not binding
- Under Ch. 48, child must be present unless:
 - ▶ Court finds it in best interest of child with counsel’s and GAL’s consent to exclude
 - ▶ Court finds child under seven years of age too young to comprehend and in child’s best interest

Dispositional Hearing Procedures

Due process and due diligence considerations:

- Confirm notice was provided to any party not present (plus child's caregiver if child placed out of the home and, if WICWA applies, also the Indian custodian and tribe)
- If man appears and alleges paternity, Court shall refer matter to child support enforcement agency for determination of paternity in Family Court
- Issue of counsel for parents or child may come up

Dispositional Hearing Procedures

- Confirm all present received documents provided to the court
- Allow evidence to be presented
- Remember, except as stated in § 48.299(4)(b), rules of evidence not apply
- Burden is the greater weight of credible evidence to a reasonable certainty

Dispositional Hearing Procedures

QUESTION.....

If you speak to the child at the Dispositional Hearing, how do you do that?

Dispositional Considerations

- Know what resources are available to you
- Never rubber stamp
- Be creative
- Think outside the box

Dispositional Considerations

- Best interests of the child is of paramount consideration
- Maintain and protect child's well-being
- Use least restrictive means
- Assure care, treatment, or rehabilitation is consistent with protection of the public
- Preserve family unit if appropriate
- Only transfer custody if no alternative

CHIPS Dispositions (§ 48.345)

- Court may counsel child, parent, guardian, or legal custodian
- Court may place child under supervision of DCF (if it approves), an agency, or suitable adult
- Court may place child at home under supervision of DCF (if it approves) or an agency and order agency to provide services

CHIPS Dispositions

- If appropriate, request CASA program to designate CASA for child
- Designate one of the following as placement:
 - ▶ Home of parent, relative, non-relative (less than 30 days)
 - ▶ Foster home
 - ▶ Guardian home
 - ▶ Group home
 - ▶ Residential Treatment Center
 - ▶ Supervised independent living arrangement

CHIPS Dispositions

- Court may transfer legal custody if rehabilitation or treatment cannot be accomplished voluntarily by parent or guardian
- Court may order special treatment and care to be provided by:
 - ▶ Parent
 - ▶ Guardian
 - ▶ Legal custodian

CHIPS Dispositional Orders

- Best interests of child is paramount
- Contents of order – must be in writing
 - ▶ Specific services to be provided by the agency
 - ▶ Child’s placement
 - ▶ Identity of legal custodian
 - ▶ Date of expiration of order
 - ▶ Parent’s contribution to cost of placement, services, and counsel/GAL

Additional Requirements if Out-of-Home Disposition

Written court order must include:

- Finding that continued placement in home would be contrary to welfare of child
- Finding that reasonable efforts made by agency to prevent need to remove child or finding not required under § 48.355(2d)
- If applicable, reasonable efforts made by dep’t or agency to achieve permanency goal of the permanency plan

Conditions for Return

- Conditions for Return must be ordered for each parent when children are placed in out-of-home care
 - Conditions should be tailored to the family
 - There will be more information on Tailored Dispositional Orders
- Judge is not required to return the child if conditions for return have been met
 - Compliance with Dispositional Order Conditions of Return is not dispositive of the child's best interests.
In the Interest of Nadia S., 219 Wis.2d 296 (1998)

Additional Requirements if Out-of-Home Disposition

- If child has siblings in out-of-home care, reasonable efforts to place together, unless placement would be contrary to the safety or well-being of any of the siblings
- Order child into placement and care responsibility of County Dept, DCF, or DMCPSC
 - ▶ Assign that agency primary responsibility for providing services

Additional Requirements if Out-of-Home Disposition

- Name of place or facility where child placed
 - ▶ Except when name of particular foster home is not available
- Court approves placement recommended by agency or if placement other than that recommended by agency, Court has given bona fide consideration to recommendations by agency and all parties relating to placement

Additional Requirements if Out-of-Home Disposition

- Permanency plan
- TPR warnings
 - ▶ Circuit Court forms have been updated to include TPR warnings. These forms end in a “T”.
 - ▶ JD-1753 is also available
- Designation of amount of child support to be paid by parent, guardian, or trustee, or referral to county child support agency

Additional Requirements if Out-of-Home Disposition

- Date of expiration of order, shall be later of:
 - ▶ At end of one year after entry of order
 - ▶ When child reaches 18
 - ▶ When child reaches 19 if qualified full-time student
 - ▶ When child reaches 21 if qualified full-time student
 - ✓ Must have an IEP
 - ✓ Child must be 17 or older when the order is entered
 - ✓ Child or child's guardian must agree
 - ▶ Or Judge can specify earlier date

Additional Requirements if Out-of-Home Disposition

- Agency is required to provide assistance and support in a transition plan from out-of-home care to independent living 90 days prior to the child aging out of care

Additional Requirements if Out-of-Home Disposition in QRTP

- Additional assessment by and recommendation from the agency AND court findings are required for placement in a Qualified Residential Treatment Program (QRTP)
 - ▶ A QRTP is a congregate care placement (group home, RCC) that is certified by DCF
 - ✓ To provide evidence-based treatment for serious mental health or behavioral needs
 - ✓ Only when appropriate services or treatment cannot be provided in home/home-like setting
 - ▶ Findings regarding the appropriateness of the placement are required for the state to receive funding reimbursement for QRTP placements
 - ✓ Can be done as part of placement hearing/order or delayed no later than 60 days from the date the child entered the QRTP placement
 - ✓ Hearing is not required for court to make the findings
 - ✓ Failure to make the findings does not impact ability to place (only reimbursement)

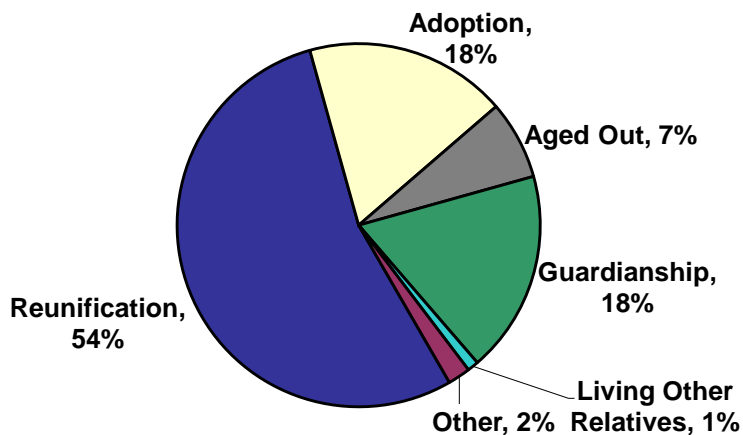
Additional Requirements if Out-of-Home AND WICWA Case

- Finding based upon the testimony of qualified expert witness (QEW)
- Finding that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to child

Additional Requirements if Out-of-Home AND WICWA Case

- Finding that active efforts were made to prevent the breakup of the Indian family but those efforts were unsuccessful
- WICWA placement preferences must be followed unless good cause to the contrary

Reasons for Discharge from Placement (2022)



Concluding the Dispositional Hearing

- Focus on permanency and mandated timeframes
- Engage parents and children
- Make understandable findings, conclusions, and orders in court and on the record
- Set review or permanency hearing and identify tasks to be accomplished

Tailored Dispositional Orders

Where did the Tailored Dispositional Orders Project come from?

Youth Justice Pilot

DCF started a Judicial Workgroup in 2017 that focused on Tailored and Effective Youth Justice Court Orders. It was piloted in Monroe and Rock counties.

CHIPS Pilot

The Program Improvement Plan (PIP) involved the Tailored Dispositional Orders Project for CHIPS conditions. It was piloted in Barron, Manitowoc, and Waukesha counties.

Tailored Dispositional Orders Project

CCIP and DCF are jointly expanding the project statewide and allowing counties to choose to work on CIHPS and/or Youth Justice conditions.

What are Tailored Dispositional Orders?

- Not a standardized list / boilerplate
- Related to behavioral changes
- Conditions are prioritized so parents/youth know where to begin and what is the most important concern
- Do not contain legal or CPS language
- Address specific needs of family/youth
- Parents know what to do to have their child(ren) returned to the home
- Youth know what to do to get off a court order
- Have productive permanency plan and review hearing discussions regarding parent/youth's progress
- If necessary, can be proven at TPR

Research on Tailored Conditions

- Conditions should be specific, enforceable, and clearly understood to be the most effective
- When there are a large number of conditions, they become meaningless, unsuitable, overwhelming, and less likely to be enforced
- Success requires buy-in; drafting conditions should be a collaborative process with all stakeholders

Research on Youth Justice Conditions

- The National Council of Juvenile and Family Court Judges (NCJFCJ) issued a 2017 resolution regarding tailoring Youth Justice conditions
- “Too many juvenile courts and juvenile probation departments impose conditions of probation that are not individualized, have too many requirements, and lead to unnecessary detention or incarceration for technical violations.”

Goals of the Project

1. Tailor the conditions to meet the needs of the individual parent/youth
2. Increase parent/youth participation and engagement
3. CHIPS: Reduce the number of cases and improve time to reunification
4. Youth Justice: Restructure conditions to include positive language and incentives

Tailoring Conditions

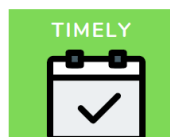
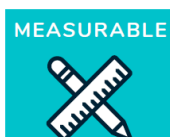
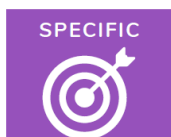
- YASI assessment should be connected to Conditions of Supervision in Youth Justice cases
- Danger threats from the safety assessment should be connected to Conditions for Return in CHIPS cases
- Conditions should not be a catch-all list of services.
- It should only be what is necessary for the youth/parents.

Current CHIPS Conditions for Return

- Most counties have a standardized list of conditions that are boilerplate.
- Most conditions are service-orientated and not behaviorally focused.
- Conditions are written in a checklist format.
- Conditions were either a lengthy paragraph or split up into many bullet points under each condition.

SMART Goals

- The SMART goals framework was utilized to define tailored conditions.
 - ▶ SMART goals are strategically designed to give any project structure, support, and to set out more clearly what you want to achieve and by when. With SMART goals, you get to track your progress and stay motivated.



Youth Justice Conditions of Supervision

Avoid including:

- attend school daily (unless appropriate for specific case)
- follow all school rules and expectations
- refrain from violent behavior toward any person, object, or any event at school or in the community
- cooperate with all evaluations and recommendations
 - ▶ Ex: mental health assessment
- the word 'shall'
 - ▶ Ex: You shall abide by parental house rules.

Suggestions to include:

- follow all municipal, state, or federal laws/ordinances
- participate in developing a case plan that will support your success
- meet with your case manager as directed by your case plan
- when you have successfully met your conditions, you may request early termination of your court-ordered supervision.

Youth Justice Conditions of Supervision Examples

1. I will obey all laws, statutes, and ordinances. I will notify my case manager of any police contact within 48 hours (for assistance and to troubleshoot).
2. I will participate in developing a case plan that will help support my success on supervision. This case plan may require my participation in assessments, treatment, or programming.
3. I will meet with a case manager at least once per month, or as directed in my case plan. I understand that this contact may occur at my home, school, or other settings.
4. Special Conditions:
5. If I meet my conditions successfully my case manager may make a request for early termination of supervision. If I believe I have met my conditions successfully and would be appropriate for early termination, I may write to my judge 90 days before my supervision is set to expire to request early termination.

If supervision is violated, the Court may order:

1. Placement in a secure detention facility (delinquency only) for not more than 10 days per violation.
2. Placement in a shelter or other non-secure facility for up to 10 days per violation
3. Suspension of operating privilege or a hunting or fishing license for not more than 3 years.
4. Detention in my home or current residence for a period of not more than 30 days under rules of supervision specified in the order including Electronic Monitoring.
5. Not more than 25 hours without pay in a supervised work program or other community service.
6. A case manager may take me into custody and place me in a secure detention facility or in a shelter or other non-secure facility without a hearing for 72 hours if I violate the terms of supervision or if I am under investigation for violating the terms of supervision.
7. [Intensive Supervision only] A case manager may take me into custody and place me in non-secure custody for not more than 30 days if I am in need of crisis intervention.

CHIPS Conditions

- Conditions for Return should be separate from Conditions of Supervision / Standard Conditions for every parent
- Some conditions could be grouped together to reduce redundancy
 - ▶ Visitation and Parenting
 - ▶ Therapy and Psychological

Examples of Behaviorally Focused Conditions

- Current conditions do not include the behavior change that we need to see occur for the child to be safely returned to the home.
- Counties are provided with behavioral examples to incorporate into the current conditions. They are not meant to be the condition itself.

Substance Use Disorder (SUD)

1. If you are prescribed medications, follow your doctor's orders and directions on how to take them.
2. Show that you are using treatment providers, community drug or alcohol support groups, and friends and family to stay sober (reach recovery/sobriety).
3. Show/recognize how your use of drugs or alcohol affected your child.
4. Identify situations and people who trigger you to use drugs or alcohol. Create a recovery/relapse plan with the support of professionals, community supports, friends and family.
5. Work with professionals to review recommendations from AODA assessment and make a plan about what needs to be done for sobriety.
6. Show that you can manage your sobriety so that you can safely parent your child.
 - *Define parenting behavior to explain what safely parenting means – supervision, violence, unsafe people in the home, etc.
7. Follow drug and/or alcohol testing requests as part of treatment plan to show that you're managing your sobriety. A refusal is considered a positive result.

Parenting:

1. Show that you can meet your child's needs.
2. Work with providers and school personnel to meet your child's needs.
3. Name and use people to watch your child and keep your child safe, when unavailable.
 - OR - Do not leave your child with unsafe people or take them to unsafe places.
4. Use positive and safe discipline to parent your child.
 - If physical abuse case - Do not harm your child.
5. Provide a safe environment for your child without unsafe items within the child's reach.
 - If the safety concern was the environment for the child, then be specific such as knives, guns, drugs, etc.
 - Provide a safe environment free of violence and criminal activity.
6. Use skills learned from providers to safely parent your child.

AODA Example

- [Parent] will show an understanding of how drug or alcohol abuse affects the safety of your child(ren) and manage recovery and sobriety by:
 - ▶ Participating in an Alcohol and Other Drug Abuse ("AODA") assessment approved by the department, reviewing assessment with your case worker, and determining next steps towards successful treatment of AODA use and abuse.
 - ▶ Participating in community drug or alcohol support groups.
 - ▶ Engaging with friends and family supports.
 - ▶ Participating in alcohol or drug therapy/program.
 - ▶ Identifying situations and people who trigger you to participate in criminal activities, abuse drugs or alcohol, and demonstrate healthy decision-making skills over time.
 - ▶ Cooperating with random drug testing to detect illegal drug use, abuse of prescription or over the counter medication, abuse of other substances and/or alcohol monitoring.

Parenting / Visitation Example

- [Parent] will demonstrate their ability to physically and emotionally provide for all of your child's basic needs by:
 - ▶ Providing food, clothing, and safe home (living environment).
 - ▶ Maintaining sanitary conditions that includes a home free of *clutter, no drug paraphernalia, no animal feces*, including sufficient heat and water available for your child.
 - ▶ Caring for and protecting your child from safety danger threats (and safe individuals), including providing supervision for your child.
 - ▶ Participating in their child(ren)'s medical, educational, and behavioral programming through face-to-face, telephone, or written contact with providers.
 - ▶ Actively participating in *parenting, family counseling, and/or educational support services* to improve skills to best care for and meet your child(ren)'s needs.
 - ▶ Engaging with your child(ren) in visitation and following the Family Interaction Plan.

Standard Conditions (for every parent)

- Signing releases as requested by the caseworker.
- Responding to all of the caseworker's communications.
- Notifying the caseworker of any change in address, phone number, or employment within 72 hours of the change.
- Actively participating in your child's daily activities (visits, appointments, etc.).
- If and when the child is placed in-home, continuing to comply with the conditions for return.
- Following the safety plan and case plan.

PROJECT TIMELINE



- If your county is interested, please contact Kristen.Wetzel@wicourts.gov to schedule an Introductory meeting with judges, prosecutors, and agency supervisors.
- Additional resources are available on www.wicciptraining.com under Resources tab and Training Materials.