

# Dispositional Hearing

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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?”

## Dispositional Hearing Preparation

- Read the Court Report
- Review the proposed conditions
  - ▶ 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](http://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) (discovery statute) 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, proposed conditions, 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 do 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

## Out-of-Home Placement Findings – Funding Implications

- **Contrary to the welfare**
  - ▶ Finding must be made at hearing authorizing removal or funding cannot be claimed for entire stay in out-of-home care
- **Reasonable efforts to prevent removal**
  - ▶ Finding must be made within 60 days from the date of removal or funding cannot be claimed for entire stay in out-of-home care
- **Reasonable efforts to achieve permanency goal:**
  - ▶ Finding must be made no later than 12 month after removal and 12 months of the previous finding
  - ▶ If not made, Title IV-E funding is only delayed until finding is made

## 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 DMCPSP
  - ▶ 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
- Designation of amount of child support to be paid by parent, guardian, or trustee, or referral to county child support agency
  - ▶ Judge may refer case to child support agency instead of setting a specific amount

## TPR Warnings

- Judge must orally inform parents who appear **and** include in order:
  - ▶ Any grounds for TPR which may be applicable and
  - ▶ Conditions for return or to be granted visitation
- TPR warnings are required when (§ 48.356):
  - ▶ Child is placed outside his/her home
    - ✓ Dispositional Hearing, Out of Home Change in Placement, Extension Hearing, Revision Hearing, etc.
  - ▶ A parent is denied visitation, and
  - ▶ Permanency hearings
- Circuit court forms were updated to include TPR warnings (versus attaching them)
  - ▶ Use “T” versions or attach JD-1753

## Expiration Date for 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 and:
    - ✓ 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 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

## **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

## CHIPS Conditions

- The danger threats from the safety assessment that are keeping the child in out-of-home care should be connected to the Conditions for Return
  - ▶ Historically, Conditions for Return were a checklist of services that parents needed to complete but did not include any behavioral changes.
- CCIP and DCF have also suggested separating out:
  - ▶ Conditions for Return – what a parent needs to do to have their child returned to the home
  - ▶ Conditions of Supervision / Standard Conditions for every parent
    - ✓ Ex: signing releases, updating your address, keeping in contact with caseworker

## AODA Example

1. **[Parent] will show an understanding of how drug or alcohol abuse affects the safety of your child(ren) and manage recovery and sobriety by:**
  - Completing an Alcohol and Other Drug Abuse (AODA) assessment with an approved provider.
  - Working with professionals to review recommendations from AODA assessment and making a plan about what needs to be done to support your sobriety and recovery.
  - Actively engaging in AODA treatment.
  - Identifying situations and people that trigger you to use substances.
  - Creating a recovery/relapse prevention plan with the support of professionals and positive community supports.
  - Showing that you can manage your sobriety so that you can safely parent and protect your child.
  - Following drug and/or alcohol testing requests to show that you are managing your sobriety. Missed tests, refusals, and tampered tests will be considered a positive result.

## Parenting / Visitation Example

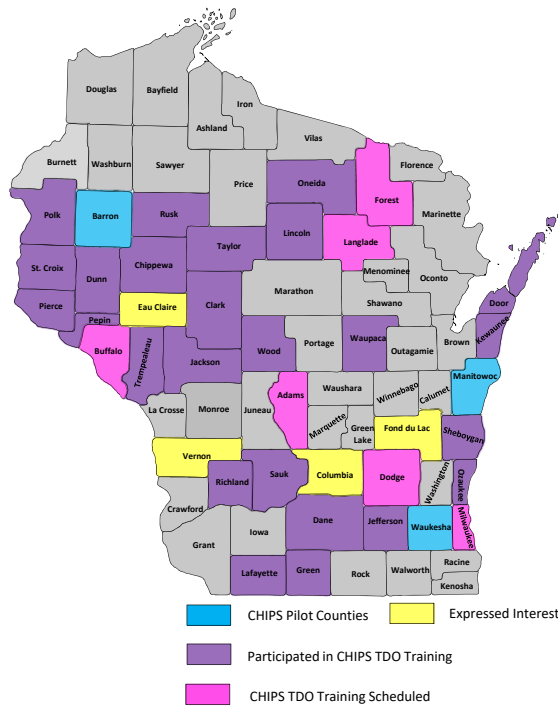
### **2. [Parent] will demonstrate their ability to physically and emotionally provide for all of your child's basic needs by:**

- Providing food, clothing, and safe home (living environment).
- Utilizing necessary financial resources to ensure your child's basic needs are met.
- 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.
- Showing an understanding of how to ensure (*child's name*) safety.

## General Conditions For Every Parent / Conditions of Supervision Examples

- Sign releases so the caseworker can determine if safety can be maintained in the home.
- Keep in contact with the caseworker and share the truth so safety can be assessed.
- Update your address and phone number with the caseworker so they can communicate with you.
- Take advantage of all opportunities to be a part of (*child's name*) daily activities (visits, appointments, etc.).

## CHIPS Tailored Dispositional Orders Project



## Youth Justice Conditions

- The YASI – Youth Assessment & Screening Instrument should inform the Conditions of Supervision in Youth Justice cases
- The services recommendations should be matched to the youth’s identified needs
- If adjudication and disposition are held together, there may not be time for a full YASI assessment to be completed

# 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.

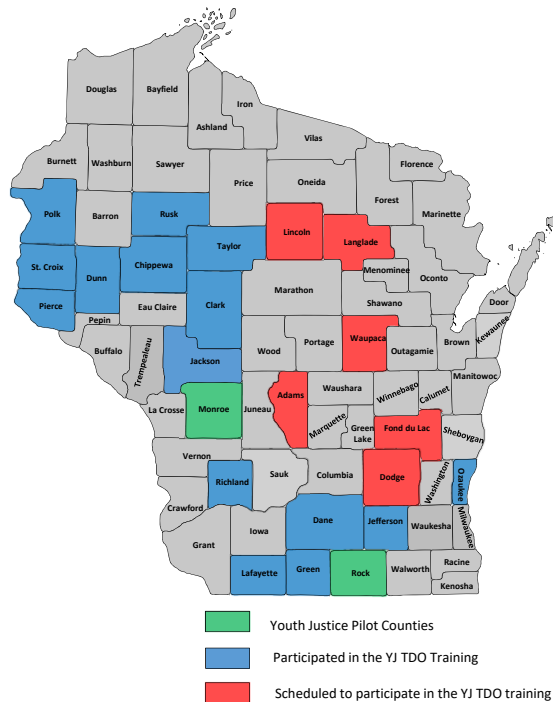
# Youth Justice Conditions of Supervision Examples

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.

## Youth Justice Tailored Dispositional Orders Project





## Multi-disciplinary Training

- The CHIPS training includes Child Safety Decision-Making training
- The Youth Justice training include training on the YASI – Youth Assessment & Screening Instrument
- Counties can choose to work on CHIPS, Youth Justice conditions, or both.

### PROJECT TIMELINE



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

## Concluding Thoughts: Comments or Questions?



*"Happy," –Fareed, age 6*