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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### **CHIPS: CHILDREN IN NEED OF PROTECTION OR SERVICES**

The Children's Code, [ch. 48, Stats.](#), provides children's courts with exclusive jurisdiction over children who may be abused or neglected by their parents or caregivers. Wisconsin law refers to children involved in these cases as children in need of protection or services (CHIPS).<sup>1</sup>

Very generally, if the children's court finds that it has jurisdiction over a child in need of protection or services, based on facts alleged in a CHIPS petition, it may order placement, care, or treatment options for the child and the child's family.<sup>2</sup> This information memorandum provides a broad overview of the legal procedures involved in CHIPS adjudications in Wisconsin.<sup>3</sup>

### **INITIATING CHIPS PROCEEDINGS**

The CHIPS process generally begins when an intake worker at an agency performing child protective services (CPS) substantiates an allegation that abuse or neglect has occurred or is likely to occur. If CPS determines that the child cannot remain safely in his or her home while the CHIPS proceedings are pending, CPS may take custody of the child and place him or her in out-of-home care (e.g., the home of a relative, foster care, group home, or residential care). [ss. [48.067 \(3\)](#), [48.205 \(1\)](#), and [48.207 \(1\)](#), Stats.; Department of Children and Families (DCF), [An Overview of the CPS Process.](#)]

### **THE CHIPS PETITION**

A CHIPS petition must be filed to formally initiate CHIPS proceedings. If CPS has taken the child into custody, the petition must be filed by a district attorney, the county's corporation counsel, a lawyer or guardian ad litem for an involved party, or a court-designated individual before the temporary physical custody (TPC) hearing is held. At the TPC hearing, the court determines whether the child must continue to be held in CPS custody. The TPC hearing must be held within 48 hours of the time the decision to hold the child was made. [ss. [48.21 \(1\) \(a\)](#) and [\(b\)](#) and [48.25](#), Stats.]

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<sup>1</sup> The law also provides protections for unborn children in need of protection or services (UCHIPS). While there are some similarities between the proceedings for CHIPS and UCHIPS cases, there are also some differences. This information memorandum only focuses on generally applicable CHIPS laws in the Children's Code and does not discuss these differences.

<sup>2</sup> If the child involved is an Indian child, the Indian Child Welfare Act (ICWA) and the Wisconsin Indian Child Welfare Act (WICWA) apply to the child custody proceeding. For more information on ICWA and WICWA, see Legislative Council, [The Indian Child Welfare Act](#), Information Memorandum (August 2013).

<sup>3</sup> In many ways, the procedures in the Children's Code are defined by a number of federal laws that Wisconsin must follow to receive federal funds. For information on these federal laws, see U.S. Department of Health and Human Services, Administration on Children, Youth and Families, [Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption](#) (May 2019).

If CPS started the intake process, but the child was never held in CPS custody, or is released from custody before the TPC hearing, the district attorney must file a CHIPS petition within 20 days from the date of the intake worker's referral, formally close the case, or refer the case back to a CPS intake worker. [s. [48.25 \(2\)](#), Stats.]

Even if the facts of a particular case do not meet the legal standard to initiate formal CHIPS proceedings, services may still be provided if the CPS intake worker determines that maltreatment has occurred: CPS may initiate informal disposition proceedings, provide voluntary services, or refer the family to community services. [DCF, [Maltreatment Determination and Case Disposition Review](#), p.1 (2020); s. [48.245](#), Stats.; DCF, [An Overview of the CPS Process](#).]

## **JURISDICTION**

A children's court has exclusive original jurisdiction over any CHIPS petition that alleges that a child is in need of protection or services. Specifically, the children's court has jurisdiction to order protection or services for the child if specific grounds apply, such as:

- The child is without a parent or guardian, has been abandoned, or custody has been relinquished under Wisconsin's "safe haven" law.<sup>4</sup>
- The child has been, or is at substantial risk of being, a victim of abuse, including injury that is self-inflicted or inflicted by another.
- The child's parent or guardian is unable or needs assistance to care for or provide necessary special treatment or care for the child.
- The child has unlawfully been placed for care or adoption.
- The child is receiving inadequate care while a parent is missing, incarcerated, hospitalized, or institutionalized.
- The child's parent, guardian, or legal custodian neglects, refuses, or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child, or is at substantial risk of such neglect, refusal, or inability.
- The child is suffering emotional damage for which the parent, guardian, or legal custodian has neglected, refused, or been unable or is neglecting, refusing, or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms.
- The child is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian, or legal custodian is neglecting, refusing, or unable to provide treatment.
- The child has not been immunized as required by statute and is not exempted pursuant to certain current law waiver provisions for reasons of health, religion, or personal conviction.
- The child's parent is residing in a qualifying residential family-based treatment facility, signs the CHIPS petition requesting jurisdiction, and, with the department's consent, requests

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<sup>4</sup> Commonly referred to as the "safe haven" law, state law allows a parent to relinquish custody of an infant that is up to 72 hours old to certain individuals, such as law enforcement or hospital staff. The law generally allows the parent, and any person assisting the parent, to remain anonymous, and sets forth certain protections for, and procedures that must be followed by, the person to whom the infant is relinquished. [s. [48.195](#), Stats.]

that the child reside with him or her at the qualifying residential family-based treatment facility.

[s. [48.13](#), Stats.]

The CHIPS petition must contain reliable and credible information to show that the children's court has jurisdiction based upon at least one of the grounds listed above. The information must also provide reasonable notice of the conduct or circumstances to be considered by the children's court, together with a statement that the child is in need of supervision, services, care, or rehabilitation. [s. [48.255 \(1\) \(e\)](#), Stats.]

## **CHIPS PROCEEDINGS**

Formal CHIPS proceedings begin after the CHIPS petition is filed. Formal proceedings generally involve two stages: (1) the fact-finding stage; and (2) the dispositional stage. During the fact-finding stage, the children's court determines whether the allegations in the CHIPS petition have been proven, thus giving the children's court jurisdictional grounds to order protection or services. During the dispositional stage, the children's court determines the child's future care and treatment.

The fact-finding stage is only necessary if the allegations in the CHIPS petition are contested. If the CHIPS petition is not contested, or if the children's court determines that it has jurisdiction to order protection or services, the case proceeds to the dispositional stage. [ss. [48.30 \(1\) and \(2\)](#), [48.31 \(2\) to \(7\)](#), and [48.30 \(6\) \(a\)](#), Stats.]

### **THE CHIPS FACT-FINDING STAGE**

After a CHIPS petition is filed, the children's court must hold a hearing to advise the child, and the parent, legal guardian, or legal custodian, of their rights,<sup>5</sup> and to determine whether any party wishes to contest the CHIPS petition. This hearing is referred to as the "plea hearing." The plea hearing must be held within 30 days after the CHIPS petition is filed, or within 10 days if the child is being held in secure custody. If the allegations in the CHIPS petition are contested, the case then proceeds to the fact-finding hearing. [s. [48.30 \(1\) to \(3\)](#), Stats.]

At the fact-finding hearing, the children's court determines whether the child is in need of protection or services that may be ordered by the court. This determination requires the facts in the CHIPS petition to be proven by "clear and convincing evidence."<sup>6</sup> [s. [48.31 \(1\) and \(2\)](#), Stats.]

If the children's court determines that it does not have jurisdiction over the child based on the CHIPS petition, that the child is not in need of protection or services that may be ordered by the court, or that the facts alleged in the CHIPS petition are not proven, the CHIPS petition is dismissed "with prejudice," which means the petition may not be refiled. If the children's court finds that the child is in need of protection or services and that it has the jurisdiction to order

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<sup>5</sup> While the fact-finding hearing commonly takes place in front of a judge, the child and the parent, guardian, or legal custodian have a right to request a jury trial. At the commencement of the plea hearing, the child and the parent, guardian, or legal custodian must be informed that a request for a jury trial must be made before the end of the plea hearing or else the right is waived. [s. [48.30 \(2\)](#), Stats.]

<sup>6</sup> The "clear and convincing evidence" standard generally refers to a finding that is far more than likely to be true. This standard is a higher burden of proof than that required in civil cases (reasonable certainty by the greater weight of the credible evidence), but lesser than that required in criminal cases (beyond a reasonable doubt). [*Kruse v. Horlamus Indus.*, 130 Wis.2d 357, 363-64 (1986).]

protection or services, or if the CHIPS petition was not contested at the plea hearing, the CHIPS case then proceeds to the dispositional stage. [ss. [48.30](#) and [48.31](#), Stats.]

## **THE CHIPS DISPOSITIONAL STAGE**

After the child has been found in need of court-ordered protection or services, the children's court determines the child's future care and treatment. At the CHIPS dispositional hearing, any party may present evidence that either supports or opposes the proposed dispositional recommendations, which are generally provided in a court report that CPS or a designated agency submits before the hearing. [ss. [48.345 \(intro.\)](#), [48.335 \(3\)](#), and [48.33](#), Stats.]

At the end of the dispositional hearing, the children's court must enter a dispositional order. The ultimate goal of the dispositional order is to protect the child and preserve the family unit, if in the child's best interest, by ordering assistive family services. [ss. [48.347 \(intro.\)](#) and [48.355 \(1\)](#), Stats.]

### **Dispositional Options**

The children's court has a variety of dispositional options, including all of the following:

- Counsel the child or the parent, guardian, or legal custodian.
- Place the child under a licensed child welfare agency's or CPS' supervision, or in other out-of-home placement.
- Order in-home placement and agency-provided services for the child, the child's family, or both. These services may include parenting classes and services, family or group counseling, or housing assistance, if it is in the child's best interest.
- Transfer legal custody if the parent or guardian will not voluntarily consent to the ordered protection and services.
- Order special treatment or care, including rehabilitative services for a child's substance abuse.
- Allow children 17 years of age and older to live independently.
- Order that the child attend educational programs.
- Order that the child enroll in outpatient treatment or educational programs to address potential issues with alcohol and drug use.

[s. [48.345](#), Stats.]

The placement and treatment plan in the resulting dispositional order must protect the child's best interests and not restrict the rights of the parent and child. Additionally, the order must contain the specific services and treatment plan that will be provided to the family, the date of the order's expiration, and the conditions with which the child and parents must comply. [s. [48.355 \(1\)](#) and [\(2\) \(b\) 1. to 7.](#), Stats.]

If the dispositional order places the child outside of the home, the order must also contain specific information about that placement, a parental visitation schedule if it is in the best interest of the child, a finding that CPS or the agency responsible for providing services has

made reasonable efforts<sup>7</sup> to prevent the removal of the child from the home, and a permanency plan, which is discussed below. [s. [48.355 \(2\) \(b\)](#), [\(2c\) \(a\)](#), and [\(3\)](#), Stats.]

Additionally, if the child is placed outside of the home, the parent, guardian, or legal custodian must be warned if any grounds for terminating parental rights might apply. The warning must be made both verbally at the hearing and through a written attachment to the dispositional order. The children's court must also inform the parent, guardian, or legal custodian of any necessary conditions for reunification or visitation. [s. [48.356 \(1\)](#), Stats.]

### **Termination of Dispositional Orders**

A CHIPS dispositional order that is made before the child reaches 18 years of age and places or continues to place the child in his or her home, must terminate within one year after the order is granted, unless the children's court orders a shorter period of time or terminates the order sooner. However, if the order places or continues placement of the child in out-of-home care, the order must terminate on the latest of the following, unless the children's court specifies a shorter period of time or terminates the order sooner:

- The date on which the child reaches 18 years of age.
- One year after the date on which the order is granted.
- The date on which the child is granted a high school diploma or high school equivalency diploma or the date on which the child reaches 19 years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is expected to complete the program before reaching 19 years of age.
- The date on which the child is granted a high school diploma or high school equivalency diploma or the date on which the child reaches 21 years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and if the child is participating in an individualized education program.<sup>8</sup>

Once the child is 18 years of age or older, he or she may also request to terminate the order at any time, and the court must terminate the order without a hearing.

[s. [48.355 \(4\) \(a\) and \(b\)](#), Stats.]

## **POST-CHIPS PROCEEDINGS: PERMANENCY PLANNING FOR CHILDREN IN OUT-OF-HOME PLACEMENTS**

When a CHIPS dispositional order places the child outside of the home, the children's court, the relevant CPS agency, and the district attorney or corporation counsel remain involved in the child's welfare until either the dispositional order terminates or the child has a permanent placement (commonly referred to as "achieving permanency"). As part of this involvement, CPS must prepare a permanency plan for the child that is subject to regular review before the children's court.

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<sup>7</sup> This finding is not required if certain aggravated circumstances apply. [s. [48.355 \(2d\)](#), Stats.]

<sup>8</sup> The court may only terminate an order under these conditions if the child is 17 years of age or older when the order is granted and the child, or the child's guardian on behalf of the child, agrees to the order. [s. [48.355 \(4\) \(b\)4](#), Stats.]

## THE PERMANENCY PLAN

When a dispositional order places the child outside of the home, CPS must file a permanency plan either at the dispositional hearing or within 60 days from the date the child is removed from the home. Permanency plans are designed to ensure long-term stability for the child. [s. [48.355 \(2e\) \(a\)](#), Stats.]

CPS must include a permanency goal or concurrent permanency goals in the permanency plan. Reunifying the child with his or her family (commonly referred to as “reunification”) is the primary goal whenever appropriate. CPS also has the following permanency goal options: (1) adoption<sup>9</sup>; (2) guardianship<sup>10</sup>; (3) permanent placement with a fit and willing relative<sup>11</sup>; and (4) if the child is 16 years of age or older, some other planned permanent living arrangement (OPPLA) that includes an appropriate, enduring relationship with an adult.<sup>12</sup> [s. [48.38 \(1\) \(b\)](#), [\(3\)](#), and [\(4\) \(fg\)](#), Stats.]

In addition to a permanency goal or concurrent permanency goals, a permanency plan includes other information relevant to pursuing permanence for the child. Examples of what must be contained in the permanency plan include the following:

- A description of the services that CPS offered and provided in an effort to prevent the child’s removal from the home and to achieve the permanency goal of reunification.<sup>13</sup>
- The basis for placing the child in out-of-home care, including a statement regarding the availability of safe and appropriate placement options with fit and willing relatives.
- The location wherein the child is currently placed, and the location where the child will be placed in the future. If the location is more than 60 miles from the child’s home, the plan must include documentation that placement within 60 miles of the child’s home is either unavailable, inappropriate, or not in the child’s best interests.
- Specific information about the child’s education, health care, and medical history.
- A plan for ensuring the safety and appropriateness of the placement.
- A description of services that will be provided to the child, the family, and the child’s out-of-home-caretaker to accomplish the proper care and treatment of the child, promote safety and stability in the out-of-home placement, meet the child’s needs, and help facilitate reunification or, if appropriate, other permanent placement.

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<sup>9</sup> For more information on the adoption process in Wisconsin, see Legislative Council, [Adoption in Wisconsin](#), Information Memorandum (March 2021).

<sup>10</sup> For more information on minor guardianships in Wisconsin, see pages 1-3 in the Wisconsin Department of Public Instruction and DCF’s guide, [Understanding Guardianships, Legal Custody, and Physical Custody for School Professionals in Wisconsin](#) (February 2022).

<sup>11</sup> For more information on placement with a fit and willing relative, see Legislative Council, [Permanency for Children in the Child Welfare System](#), Staff Brief, p.17 (June 2012).

<sup>12</sup> If CPS determines that there is a compelling reason why reunification, adoption, guardianship, or placement with a fit and willing relative is not in the best interest of a child 16 years of age or older, the permanency plan must include the efforts made to meet this permanency goal. [s. [48.38 \(4\) \(fm\)](#), Stats.]

<sup>13</sup> This information does not need to be included in the permanency plan if any aggravating circumstances under s. [48.355 \(2d\)](#), Stats., apply or if the child is at least 18 years of age. [s. [48.38 \(4\) \(ar\) 1 and 2](#), Stats.]

- If OPPLA is the permanency goal, efforts made to achieve that goal and a plan to ensure that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities in accordance with the “reasonable and prudent parent standard.”<sup>14</sup>
- The conditions for reunification, including required changes to the parent’s or child’s conduct, or to the home.
- If the child is 14 years or older, a plan describing the programs and services that will be provided to assist the child in preparing for transition from out-of-home care to a successful adulthood.

[s. [48.38 \(4\)](#), Stats.]

## PERMANENCY PLAN PROCEEDINGS

The children’s court or an appointed panel must review the permanency plan no later than six months after the date on which the child is removed from the home. Permanency reviews must be held every six months after the first review, for as long as the child is placed outside the home. [s. [48.38 \(5\) \(a\)](#), Stats.]

The children’s court may also elect to hold a permanency hearing in addition to or instead of the permanency plan review. Permanency hearings are mandatory, however, not later than 12 months after the date on which the child was first removed from the home and at least every 12 months after the first permanency hearing, for as long as the child is placed outside the home. [s. [48.38 \(5\) \(a\)](#) and [\(5m\) \(a\)](#), Stats.]

Beyond the difference in time constraints, permanency reviews and permanency hearings are procedurally very similar. The same individuals<sup>15</sup> are required to receive notice about, and have a right to be heard at, both permanency reviews and permanency hearings. [s. [48.38 \(5\) \(b\)](#) and [\(bm\)](#) and [\(5m\) \(b\)](#) and [\(c\)](#), Stats.]

At a permanency review or hearing, the court or the panel,<sup>16</sup> must make multiple determinations relating to the information in the permanency plan, including the appropriateness of the child’s placement, the extent of compliance with the permanency plan, the efforts made by CPS to achieve the permanency goals, and the overall progress made towards achieving permanency for the child. [s. [48.38 \(5\) \(c\)](#) and [\(5m\) \(e\)](#), Stats.]

This information memorandum was prepared by Annie Gonring, Legal Intern, and Melissa Schmidt, Principal Attorney, on June 15, 2022.

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<sup>14</sup> The “reasonable and prudent parent standard” is a decision-making standard that allows out-of-home caretakers to make certain parenting decisions for children placed in their care. [s. [48.383](#), Stats.] For more information, see DCF, *Reasonable and Prudent Parent Standard*, p.2, (2019).

<sup>15</sup> Generally, the individuals or groups of individuals who are required to be notified and have a right to be heard are as follows: (a) the child; (b) the child’s parent, guardian, and legal custodian; (c) the child’s out-of-home caretaker; (d) the person representing the interests of the public, the child’s counsel, the child’s guardian ad litem, the child’s court-appointed special advocate, if any; and (e) the child’s school. [s. [48.38 \(5\) \(b\)](#) and [\(bm\)](#) and [\(5m\) \(b\)](#) and [\(c\)](#), Stats.]

<sup>16</sup> Permanency hearings require both factual and legal findings about the determinations that are made. Thus, the children’s court must conduct permanency hearings itself, but may appoint a panel to conduct permanency reviews. [s. [48.38\(5\) \(ag\)](#) and [\(5m\) \(e\)](#), Stats.]