

Temporary Physical Custody Hearings

CHIPS Training
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Objectives

- Understand importance of removal
 - Understand and be prepared to apply Wisconsin law at Temporary Physical Custody hearings
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High Emotions + Critical Decisions = TPC

High Emotions

- First time parents will be in front of court - sets tone for how case will progress
- Children have already been removed means high likelihood of trauma

Critical Decisions

- Court will make many decisions, including whether children will remain out of home
- Court will seek information from parents

What you can do!

- Remain calm yourself
- Seek a place to meet with parent
- Understand their emotions
- Consider ways to help them remember what happened

Preparing for TPC hearing

- Review the TPC request
- Meet with client (think about where, how, etc.)
- Talk to prosecutor and social worker - identify main issues
- View TPC e-learning activity at www.cciptraining.com



Meeting with client:

- Discuss purpose of hearing
- Is child an Indian child?
- Identify 3 relative or like-kin placements
- Get contact information

Ask social worker:

- When is next scheduled family interaction??

Ready, Set, Go!

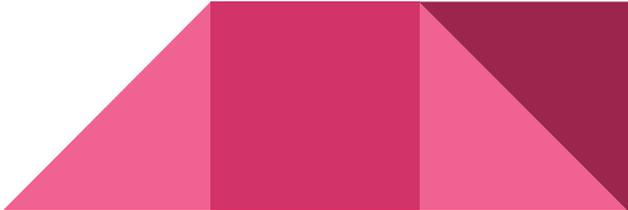


Child taken into custody

TPC must take place within
48 hours, excluding
weekends & legal holidays

If TPC not held within 48
hours, child released from
custody

Persons Allowed to Attend

- Parents - Counsel for Parents
 - Child - Guardian ad Litem for child under 12, SPD-Appointed counsel for child 12 and older - appearance can be waived by GAL
 - Child's foster parent or other physical custodian
 - Other persons with proper interest in case or work with the court (including media)
 - Court-appointed special advocate (CASA)
 - Client can object to other persons - speak to client in advance of hearing
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Resources made available to decision makers:

- TPC Hearing Preparation Guide
- SPD TPC Checklist

TEMPORARY PHYSICAL CUSTODY HEARING PREPARATION GUIDE – CHAPTER 48

This guide is designed as a resource to assist caseworkers prepare for a Temporary Physical Custody Hearing in child in need of protection or services (CHIPS) cases, and includes questions that may be addressed by the court at the hearing. It is not intended to be filed with the court or provided to the parties.

WISCONSIN INDIAN CHILD WELFARE ACT INQUIRY

- Inquiry made to determine if the child is an Indian child
- Placement preferences were followed
- Placement is necessary to prevent imminent physical damage or harm to the child
- Notice of the hearing provided to the tribe (if known)

NOTICE AND RIGHTS PROVIDED TO PARTIES

	Mother	Father	Child (12+)	Guardian, Legal Custodian, or Indian Custodian
Notice of Rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hearing Time & Place	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PREHEARING PREPARATION

- Temporary physical custody request (JC-1608) and supplement (JC-1609), if applicable:
 - Filed with court
 - Copies provided to parties and tribe
- Caseworker has requested parents provide names of at least 3 relatives or adults for contact/placement
- Paternity information sought, if non-marital child
- Caseworker has discussed the hearing with the family
- Hearing arrangements made:
 - Child's attendance, unless excused by the court
 - Phone or video appearance for any case participant
 - Interpreter for child or parents
 - Court informed of any security issues or other special circumstances
 - County practice followed for arranging legal representation

INFORMATION CONSIDERED FOR OUT-OF-HOME PLACEMENT

- Contrary to the welfare of the child to be placed in the home
- Reasonable efforts to prevent removal and return home (active efforts for an Indian child)
- Determination that the child is unsafe:
 - Presence of present or impending danger threat
 - Child is vulnerable to identified danger threat
 - Parent lacks sufficient protective capacities to keep child safe from danger threat
- Safety plan is not sufficient/feasible/sustainable to keep child safe in the home

ADDITIONAL INFORMATION TO BE DISCUSSED

- Information to support probable cause
- Efforts to locate missing or absent parties
- Why the child cannot return home today
- Actions or conditions needed for safety to be managed in the parental home
- Child well-being:
 - Relative placement
 - Placement with siblings
 - School/daycare continuity
 - Special needs of the child
 - Placement least restrictive based on child's needs
 - Pro-social activities
- Family interaction (parents, siblings, others)
- Special conditions requested by the agency
- All parties understand the next steps and the results of the hearing



Case Study Overview & Demonstration

Procedural Deep-Dive



Advise of Rights

Court should address the parties of the nature of the allegations and of their rights, including but not limited to, right to counsel; provide names of relatives; oppose allegations; present & cross-examine witnesses.

Determine Probable Cause

2 Step Process

Does the Court have jurisdiction under 48.13?

Is there probable cause that child may either injure self or be injured, is being neglected by parent, or will runaway or be taken away?

Other Out-of-Home Findings

“Magic Phrases”

Is placement in home contrary to child’s welfare?

Have reasonable efforts been made?

Probable Cause to Continue Holding Child

Is there jurisdiction under Wis. Stat. 48.13? Which subsection?

- Practice tip: Print Jury Instructions for all 48.13 subsections

Is there probable cause under Wis. Stat. 48.205(1) that child 1) may either injure self or be injured, is neglected, or will runaway or be take away?

- Practice tip: Parents have right to evidentiary hearing
48.21(1)(b)

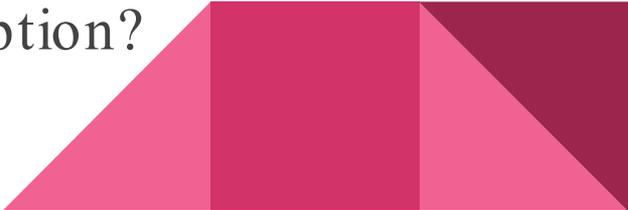
Out-of-home Placement Findings

Reasonable efforts to prevent removal:

- Practice tip: Don't just allow court to say "magic words"
 - Ask:
 - What services could be put in place to prevent removal?
 - Why are those services not available?
 - What services could parent engage in to allow return of the child to the home?
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Out-of-home Placement Findings - Cont'd

Continued placement in home is “contrary to child’s welfare”

- Practice tip: Don’t just allow court to say “magic words”
 - Ask:
 - Why can the child not return home today?
 - Is the placement least restrictive based on the child’s needs? - consider protective capacities of child
 - Why is an in-home safety plan not an option?
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Other Issues:

Sibling placements:

- Have reasonable efforts been made to keep siblings together?
- If joint placement is unavailable or contrary to the children's welfare, what reasonable efforts are being made for frequent visitation?



Other Issues:

Relative search :

- Ask the Court to Order the agency to provide notice to all relatives of the child or other adults named by the parents within 30 days after child's removal, unless reason to believe it would be dangerous to the child.



Family Interaction

What is the family interaction plan for the parent to have contact with the child until the next hearing? Telephone calls? Face-to-face?

(WI Intake/Access Standards require face-to-face family interaction within 5 business days of placement, weekly ongoing face-to-face, and weekly other contact. See p. 51.)

Practice tip: If conditions set for family interaction, must be related to safety



Is Petition filed at TPC?

If not, the petitioner may be granted one 72-hour extension to file the petition IF any of the following apply:

1. Additional time is required to determine whether the filing of a petition is necessary.
 2. Child is in imminent danger to himself/herself or to others.
 3. Probable cause to believe parent/guardian/legal custodian is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.
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Appointed counsel after the TPC hearing?

Review TPC request and Order and review with client

Parents can ask for a rehearing pursuant to Wis. Stat. 48.21(3)(am)

