

**Frequently Asked Questions Regarding Timelines under  
the Children’s Code (Chapter 48) and Juvenile Justice Code (Chapter 938)  
During a Pandemic**

**Question: When does a Temporary Physical Custody (TPC) hearing need to be held for a Chapter 48 CHIPS case?**

- A TPC hearing for holding a child in custody must be held by a judge or circuit court commissioner within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and legal holidays. Wis. Stat. § 48.21(1)
  - See Wis. Stat. §995.20 for the definition of legal holidays.
  - There are no exceptions to extending this timeframe. Wis. Stat. §§ 48.21(1)(a) and 48.315(2m)(a)

**Question: When does a Temporary Physical Custody (TPC) hearing need to be held for a Chapter 48 UCHIPS case?**

- A TPC hearing for an adult expectant mother of an unborn child shall be conducted by the judge or court commissioner within 48 hours after the custody decision was made, excluding Saturdays, Sundays, and legal holidays. Wis. Stat. § 48.213(1)
  - See Wis. Stat. §995.20 for the definition of legal holidays.
  - There are no exceptions to extending this timeframe. Wis. Stat. § 48.213(1)(a)

**Question: When does a Temporary Physical Custody (TPC) hearing need to be held for a Chapter 938 case to hold a juvenile in custody?**

- A TPC hearing for holding a juvenile in custody must be conducted by the judge or court commissioner within 24 hours after the end of the day the custody decision was made, excluding Saturdays, Sundays, and legal holidays. Wis. Stat. § 938.21(1)
  - See Wis. Stat. §995.20 for the definition of legal holidays.
  - There are no exceptions to extending this timeframe. Wis. Stat. §§ 938.21(1)(a) and 938.315(2m)(a)

**Question: When does a hearing need to be held for an emergency in-home to out-of-home change in placement that occurs post-disposition in a CHIPS, JIPS, or delinquency case?**

- An emergency in-home to out-of-home change in placement hearing must be conducted by the judge or court commissioner within 48 hours after the emergency change in placement is made, excluding Saturdays, Sundays, and legal holidays. Wis. Stat. §§ 48.357(2)(b)2. and 938.357(2)(b)2.
  - See Wis. Stat. §995.20 for the definition of legal holidays.
  - There are no exceptions to extending this timeframe. Wis. Stat. §§ 48.315(2m)(a) and 938.315(2m)(a)

**Question: What is required to adjourn or continue a hearing past the statutory timeframes in juvenile cases (e.g., CHIPS, TPR, JIPS, and delinquency), with the exception of TPC Hearings and emergency in-home to out-of-home change in placement hearings?**

- A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district

attorney/corporation counsel or the parties, interests of any victims, and the interest of the public in the prompt disposition of cases. Wis. Stat. §§ 48.315(2) and 938.315(2)

- In juvenile cases (e.g., CHIPS, TPR, JIPS, and delinquency), the record needs to contain information that there is good cause for the delay and that it is for only as long as necessary. See *State v Robert K. (In re TPR to Moriah K.)*, 2005 WI 152, 286 Wis.2d 143.
- There is additional case law that holds that “on the record” does not require reporting by a court reporter and that a clerk’s minutes satisfy the requirement. See *Waukesha County v. Darlene R.*, 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996).

**Question: When do Permanency Hearings have to be held in Chapter 48 and 938 cases?**

- The permanency plan must be reviewed no later than 6 months after the date of the child’s/juvenile’s removal and every six months from the previous review. The review must be conducted by the court (judge or court commissioner) at a minimum of 12 months from the date of removal and every 12 months from the previous hearing. Wis. Stat. §§ 48.38(5)(a) and 938.38(5)(a)
  - The Permanency Hearing cannot be adjourned if it would prevent the court from making the reasonable efforts to achieve the goal of the permanency plan finding within 12 months of removal or the previous Permanency Hearing. Wis. Stat. §§ 48.315(2m)(b) and 938.315(2m)(b)
  - The Wisconsin Department of Children and Families released *Guidance on Child, Family and Facility Contact During COVID-19 Public Health Emergency*, stating that under federal requirements the court may make the reasonable efforts to achieve the goal of the permanency plan finding based on evidence presented to the court by the child welfare agency without conducting a hearing.
    - <https://dcf.wisconsin.gov/files/press/2020/in-person-child-welfare.pdf>

**Question: Can hearings in Chapters 48 and 938 proceedings be conducted by telephone or video conferencing?**

- The statutes in Chapter 48 and Chapter 938 that specifically reference use of telephone or other audiovisual means are provided below.

48.295 Physical, psychological, mental or developmental examination.

(4) Motions or objections under this section may be heard under s. 807.13.

48.299 Procedures at hearings.

(5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 48.209 (1) (e) [Holding Child in Jail], 48.21 (1) [Temporary Physical Custody Hearing for Child] or 48.213 (1) [Temporary Physical Custody Hearing for Adult Expectant Mother] may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audiovisual means may be made by telephone.

48.30 Plea Hearing.

(10) The court may permit any party to participate in hearings under this section by telephone or live audiovisual means.

48.315 Delays, continuances and extensions.

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

48.335 Dispositional Hearings

(4) At hearings under this section, s. 48.357 [Change in Placement], 48.358 [Trial Reunification], 48.363 [Revision], or 48.365 [Extension], on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

48.41 Voluntary consent to termination of parental rights.

(2)(b)2. On request of the parent, unless good cause to the contrary is shown, admit testimony on the record by telephone or live audiovisual means as prescribed in s. 807.13(2).

48.99 Interstate Compact for the Placement of Children.

(4) Article IV - Jurisdiction

(c) In a case subject to this compact that is before a court, the taking of testimony for a hearing before a judicial officer may occur in person or by telephone, by audio-video conference, or by such other means as may be approved by the rules of the interstate commission. A judicial officer may communicate with another judicial officer or with any other person involved in the interstate process as may be permitted by the codes of judicial conduct governing those judicial officers and any rules promulgated by the interstate commission.

938.295 Physical, psychological, mental or developmental examination.

(4) TELEPHONE OR LIVE AUDIOVISUAL PROCEEDING. Motions or objections under this section may be heard under s. 807.13.

938.297 Motions before trial.

(7) ORAL ARGUMENT BY TELEPHONE. Oral argument permitted on motions under this section may be heard by telephone under s. 807.13 (1).

938.299 Procedures at hearings.

(5) TELEPHONE OR LIVE AUDIOVISUAL HEARINGS. On request of any party, unless good cause to the contrary is shown, any hearing under s. 938.209 (1) (a) 5. [Holding Juvenile in Jail] or 938.21 (1) [Temporary Physical Custody Hearing] may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual means under s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audiovisual means may be made by telephone.

938.30 Plea hearing.

(10) TELEPHONE OR LIVE AUDIOVISUAL PARTICIPATION. The court may permit any party to participate in hearings under this section by telephone or live audiovisual means except a juvenile who intends to admit the facts of the delinquency petition.

938.315 Delays, continuances and extensions.

(2) CONTINUANCE FOR GOOD CAUSE. A continuance may be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the representative of the public under s. 938.09 or the parties, the interests of the victims and the interest of the public in the prompt disposition of cases.

938.335 Dispositional hearings.

[Also includes Change in Placement, Trial Reunification, Revision, and Extension Hearings.]

(4) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. At hearings under this section, s. 938.357 [Change in Placement], 938.358 [Trial Reunification], 938.363 [Revision], or 938.365 [Extension], on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

For questions, feel free to contact Bridget Bauman ([bridget.bauman@wicourts.gov](mailto:bridget.bauman@wicourts.gov) or 608-267-1958) or Kristen Wetzel ([kristen.wetzel@wicourts.gov](mailto:kristen.wetzel@wicourts.gov) or 608-264-6905)