

COLLATERAL ACTIONS

I. CHIPS CASES AND CHILD SEXUAL ASSAULT ALLEGATIONS: OFTEN INTERTWINED.

A. When Does A Chips Case Come Into Play?

The juvenile court has jurisdiction over a child alleged to be in need of protection or services because of allegations of abuse, which is defined as:

1. Sexual intercourse or sexual contact under Sec. 940.225, 948.02 or 948.025.
2. A violation of Sec. 948.05. (Sexual Exploitation of a Child)
3. Permitting, allowing or encouraging a child to violate Sec. 944.30. (Prostitution)
4. A violation of Sec. 948.055. (Causing a Child to View or Listen to Sexual Activity)
5. A violation of Sec. 948.10. (Exposing genitals or pubic area)

(NOTE: This is only a partial list from Sec. 48.02, Wis. Stats.)

B. Opportunities and Pitfalls

In virtually every case involving a parent or stepparent as the defendant there will also be a CHIPS case. This development provides opportunities but also problem areas which require careful discussion with your client. In cases where the parent is the defendant and the named party in the CHIPS case, the parent can obtain reports and social service records very early in the process, which they may then share with you. However, this may also mean that the client will potentially be involved in discussions with social workers, police, prosecutors, foster parents and juvenile court judges during which you are not present to advise them. It is important to explain some basics to a client facing this proceeding.

1. Points of Impact

a. Detention Hearing:

Often there are meetings with social service before the decision is made where to place the child in an allegation of child sex abuse. Usually, the placement will be in foster care, but, occasionally it is possible to get a placement with family. Your client can advocate

for that result but the family member must be approved and willing to abide by the no contact orders.

If your client can get a family placement, maintaining the connection between the child and family may be beneficial to the client in a number of ways. For example, family members are unlikely to contaminate the child with suggestive comments that would potentially harm the client.

b. Pretrial Meetings:

Throughout this process your client must be told not to discuss the allegations with anyone in the juvenile court without consulting you. The client may talk to the workers or others about the child's welfare, school, treatment and is entitled to do so without giving information. The parent is also entitled to be consulted and give approval for treatment, school decisions, and change in placement.

c. Discovery of Your Client:

If the state attempts to conduct discovery with your client, you should advise your client to assert his or her Fifth Amendment right. If there is some nexus between the risk of criminal conviction and the information requested, this will be upheld. *Martin-Trigona v. Gouletas*, 634 F.2d 354, 360 (7th Cir.), cert. denied, 449 U.S. 1025, 101 S.Ct. 593, 66 L.Ed.2d 486 (1980). However, if the case goes to trial the jury may be permitted to draw an adverse inference from it. *Karel v. Conlan* (1913), 155 Wis. 221, 144 N.W. 266, *Milwaukee v. Burns* (1937), 225 Wis. 296, 274 N.W. 273.

2. Client's Discovery Rights

The parent is entitled to demand discovery before entering a plea. You should inform the client of this fact and give the client directions on how to order discovery.

Sec.48.293, Wis. Stats. - Prior to plea hearing.

The client is entitled to the following upon demand. It need not be a formal motion:

- a. Copies of law enforcement officer reports.
- b. The client is also entitled to the videotaped statements of the child before a fact-finding hearing
- c. All records relating to the child which are relevant to the subject matter of a proceeding shall be open to inspection . . . upon demand and upon presentation of releases when necessary, at least 48 hours before the proceedings.
- d. The client may conduct formal discovery as follows:
 - 804.05 Depositions upon oral examination.
 - 804.06 Depositions upon written questions.
 - 804.08 Interrogatories to parties.
 - 804.09 Production of Documents and things and entry upon land for inspection and other purposes.
 - 804.10 Physical and mental examination of parties; inspection of medical documents.

3. Confidentiality Issues

- a. Records relating to CHIPS investigation and court case are confidential. Sec. 48.396 (1), Wis. Stats. but may be requested by the parent, guardian or a legal custodian of a child or with the written consent of the above. This includes police records, court records and social service records. Sec. 48.78 (2)(a) and 48.981 (7); Sec. 48.396(1) (b) and (d); and Sec.48.396 (2) Disclosure of the documents to anyone other than the person designated in the statute is prohibited. Sec. 48.981 (7)(e). A violation is punishable by six months or \$1,000 or both. Sec. 48.981 (7).
- b. A person seeking a court order for the release of juvenile court records in an unrelated case must show relevancy for the request. The juvenile court should conduct an *in-camera* inspection to determine which records are relevant and only those records will be released when faced with a discovery request under Secs. 48.293 (2); 48.396 (2)(a) or 48.78 (2)(a). *In Re Cabb J.F. v. Ramiro*, 269 Wis. 2d 709 (Ct. App. 2004).

4. Pitfalls

- a. Be careful that your client structures any negotiated disposition to avoid unnecessary admissions. Admissions in juvenile court if released to prosecutor may be used as party admissions in a criminal action. *State v. Bellows*, 218 Wis. 2d 614.
- b. In cases of child sex and physical abuse, make sure your client's counseling and treatment providers know that the alleged abuse has been reported and that they need not report the case to the authorities.

II RELATED DETERMINATIONS

A. Child Abuse Substantiation: Sec. 48.981, Wis. Stats., outlines the duties of a county department after a referral is made. Among other duties the county department determines that a specified person has abused or neglected a child, the agency A within 15 days after the date of the determination, shall notify the person in writing of the determination, the person=s right to appeal the determination, and the procedures by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision..." Sec. 48.981(5m), Wis. Stats. Because this decision will affect the ability of clients to work in settings involving patients or children, they should be told about the possibility of an appeal to the decision.

B. Child Abuse Injunctions: Sec. 812.122, Wis. Stats allows for an injunction where there are reasonable grounds to believe that the child has been subjected to abuse, including sexual abuse. Even when there is an injunction visitation should continue unless it is found to be harmful to the child. Sec. 813.22, (5)(b), Wis. Stats. The order can also set child support and transfer custody in some instances. Sec. 813.122(6)(4), Wis. Stats.; *In re Scott M.H. v. Kathleen M.H.*, 218 Wis. 2d 605, 611 (Ct. App. 1998).