



Forensic Interviews and Family Court Proceedings in Wisconsin

The [Office of Juvenile Justice and Delinquency Prevention](#) defines a forensic interview (FI) as “a developmentally sensitive and legally sound method of gathering factual information regarding allegations of abuse or exposure to violence. This interview is conducted by a competently trained, neutral professional utilizing research and practice-informed techniques as part of a larger investigative process.” The goals of a forensic interview are to minimize trauma, maximize accurate information, minimize contamination, and maintain the integrity of the investigative process. They are intended to be used in any context where decisions are being made relevant to child and/or community safety. Forensic interviews are reliable because they seek to gather information that will either confirm or refute alternative hypothesis. The tools and techniques used in a forensic interview are counter suggestible and elicit information that cannot be accurately elicited or assessed in other contexts.

Testifying may have a significant impact on children, and forensic interviews can be utilized in lieu of having children repeat statements previously made that provide necessary context to their wishes about placement and custody.

The rules of evidence apply in family court. Parties in family court proceedings have a right to call relevant witnesses. In Wisconsin, every person is deemed to be competent to testify in court. A witness must have knowledge about the subject they are testifying about. They must be able to communicate the information they possess, and they must take an oath or affirmation. If they can do these things, they are permitted to testify. Demonstration of these concepts is embedded into forensic interview procedures, but theories of admissibility related to forensic interviews do not require children to testify, particularly in civil proceedings where there is no right to confrontation. In addition, the family court can consider the wishes of the child as communicated through the child’s GAL or another appropriate professional.

Utilization of information provided in forensic interviews is essential to prevent erroneous decisions in the family court environment when there are overlapping or

historically relevant child maltreatment or domestic violence investigations, yet many family law professionals face barriers in gaining access to the information or utilizing recordings of children’s statements during proceedings. The following guidance is intended to be used for communities to develop policy and procedures that reduce the barriers and increases utilization of this tool to ensure sound and fair decisions in the family court arena.

OBJECTIVES

1. To ensure that to most accurate and reliable information pertinent to child safety is considered during custody and placement decisions.
2. To reduce the barriers to utilizing forensic interviews in civil proceedings impacting child safety.
3. To create a pathway for ensuring that children’s wishes AND the reasons underlying their wishes can be considered by the court without additional impact on the child.

BARRIERS AND RECCOMENDATIONS

Barriers to Utilizing Forensic Interviews in Family Court Settings	Recommendations/Considerations
Guardian ad Litem is unaware that a forensic interview exists.	<ul style="list-style-type: none">• Routinely check with investigative agencies to determine whether a FI has been conducted on any current or previous investigation involving the parents.
Previous or concurrent investigation was “unsubstantiated” or labeled “unfounded” or “baseless”.	<ul style="list-style-type: none">• These terms are misleading without additional context. For example, a decision to “unsubstantiate” does not mean that the abuse did not occur or that the child did not report

	<p>information that was concerning for abuse in a forensic interview.</p> <ul style="list-style-type: none"> • Review forensic interview to determine whether the child's statements should be considered.
There is no open investigation within which a forensic interview could be requested.	<ul style="list-style-type: none"> • A FI can only be conducted at the request of an investigative agency during an open investigation. • Utilize the tool/addendum on questioning children and report any information that is concerning for abuse per 48.981 (2)(c). • If investigation is opened, connect with investigative agencies to ensure that you will have access to the FI after it is conducted. • Ensure investigative agencies are aware of what information you will need to provide the court regarding custody and placement.
Confidentiality	<ul style="list-style-type: none"> • Child Advocacy Centers (CACs) should routinely ask about GAL and family court involvement when an allegation is against a parent that has custody and/or placement. • CACs should obtain a release for the GAL when involvement is identified. It is good practice to notify the GAL of the FI

	<p><i>See: In the matter of Kinast 192 Wis.2d 36 (1995)</i></p> <ul style="list-style-type: none"> • CACs should make an effort to have a Release of Information (ROI) signed by the parent or guardian of each child identified in the FI. • If other children are identified and a ROI cannot be obtained, the GAL should view only the portions pertaining to the child indicated in the ROI. • GAL should ensure that Forensic Interviews are sealed and protected (see addendum)
Obtaining the forensic interview (For communities with a CAC, consult the CAC directly for specific policies and guidelines)	<ul style="list-style-type: none"> • ROI to view onsite with the FI • Subpoena (fees may apply) • Court order • Request to investigative agency to view the forensic interview • Discovery through CHIPS proceedings
Admitting the FI	<ul style="list-style-type: none"> • Wis. Stat. 908.08 (while not expressly stated that interviews are admissible in these proceedings, other civil proceedings with relevance to child safety are mentioned such as Revocation Hearings, Parole, CHIPS, Delinquency) • Residual hearsay exception Wis. Stat. 908.03(24) • The GAL is required to consider express the child’s “wishes” and, unless otherwise requested by

	<p>the child, communicate to the court the wishes of the child Wis. Stat. 767.407(4)</p> <ul style="list-style-type: none"> • Excited Utterance Wis. Stat. 908.03(2)
Determining whether the child will testify	<ul style="list-style-type: none"> • Does the child have additional information that will be relevant to their own placement or will assist in understanding their wishes? • OR will the child just be restating things that are already stated in a forensic interview? • Does the child want to testify and is the child openly sharing about the issues of underlying their wishes? • Will the way in which the child will be questioned prioritize concerns that are mitigated by forensic interview utilization (see definition and goals of a FI above)? • Does the parent want their child to testify?
Impact on concurrent investigation or prosecution	<ul style="list-style-type: none"> • Collaborate with investigative agencies to ensure that the alleged offending parent can be interviewed before having access to the FI. • Wait until discovery has been provided in the criminal case to utilize the child's FI. • Develop a process with child abuse related multidisciplinary

	teams for identifying and utilizing FIs .
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