

**202 UNBORN CHILD IN NEED OF PROTECTION OR SERVICES:
PRELIMINARY INSTRUCTION [WIS. STAT. § 48.133]**

This is a fact-finding proceeding on a petition which alleges that an unborn child is in need of protection or services. It is conducted pursuant to the Children's Code of this state. It is a civil, not a criminal, proceeding.

This hearing is a part of a process which was started by the filing of a petition by (petitioner). The petition alleges that (expectant mother) habitually lacks self-control in the use of (alcohol beverages) (controlled substances) (controlled substance analogs) exhibited to a severe degree to the extent that there is a substantial risk that the physical health of her unborn child and of the child when born will be seriously affected or endangered unless (expectant mother) receives prompt and adequate treatment for that habitual lack of self-control.

Your role is to determine whether the allegations in the petition have been proved. In doing so, you should not consider what the final result of this proceeding might be. If you determine that the allegations of the petition have been proved, it is my responsibility to determine what services should be ordered.

The petitioner, _____, is represented in this proceeding by Attorney _____.

[The expectant mother of the unborn child is (_____). She is represented by Attorney _____.] [The father of the unborn child is (_____). He is represented by Attorney _____.]

[The interests of the unborn child will be represented by Attorney _____, who is the unborn child's guardian ad litem.]¹

At the end of this hearing, you will be given a special verdict to answer. I will give you further instructions on the law that applies to the verdict questions.

I want to remind you that the parties have a statutory right to keep their identities confidential. This is why these hearings are closed to the public. You must never disclose the identity of the unborn child or family members to anyone.

COMMENT

Wis JI-Children 202 and comment were approved by the Committee in 1999. An editorial correction was made to paragraph 2 of the instruction in 2005.

This instruction applies to petitions seeking jurisdiction over unborn children in need of protection or services. Wis. Stat. § 48.133. For a jury instruction covering a petition on this ground, see Wis JI-Children 280.

If a minor expectant mother of an unborn child alleged to be in need of protection and services is before the court and it appears that the expectant mother is developmentally disabled, mentally ill, or drug dependent or suffers from alcoholism, the court may proceed under Wis. Stat. Chapter 51 or 55. If the expectant mother is an adult and appears to be drug dependent or suffers from alcoholism, the court may proceed under Chapter 51. Wis. Stat. § 48.135.

An "unborn child" means a human being from the time of fertilization to the time of birth. Wis. Stat. § 48.02(19).

Father as a Party. It is the consensus of the Committee that if the mother is married, the presumptive father should be allowed to participate.

NOTES

1. In jury trials under Chapter 48, the guardian ad litem (GAL) or the court may tell the jury that the GAL represents the interests of the person or unborn child for whom the GAL was appointed. Wis. Stat. § 48.235(6).