

223 CHIPS: SUBSTANTIAL RISK OF ABUSE (MANUFACTURING AMPHETAMINE) [WIS. STAT. § 48.13(3m)]

The petition in this case alleges that (child) is in need of the protection or services of the court because (he) (she) is at substantial risk of becoming the victim of abuse. Your role as jurors will be to answer the following questions in the special verdict:

1. Does reliable and credible information exist that another child in the home of (child) has been the victim of abuse?

If the answer to question 1 is "yes," answer question 2:

2. Is (child) at substantial risk of becoming the victim of abuse?

The burden is on (petitioner) to convince you by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the questions should be answered "yes."

In answering the questions in the special verdict, you should apply the following meanings to the terms and phrases in those questions.

"Reliable information" means information which is accurate, trustworthy, and dependable. "Credible information" means information which in the light of reason and common sense is worthy of belief.

Information may be reliable and credible even though it may not establish the identity of the alleged abuser of another child. In other words, you may be convinced that reliable and credible information exists that another child has been the victim of abuse in the home of (child) even though the information does not establish who committed the abuse.

"Another child in the home" means someone under the age of 18, not (child), who resides or resided in the home of (child) either permanently or temporarily. The other child does not have to be related to (child). In answering question 1, you must consider the facts

and circumstances at they existed on (_____), which was the date on which this petition was filed. Your answer must reflect your finding as of that date.

"Substantial risk" means that a significant and appreciable threat of abuse exists.¹ [In assessing the seriousness of the risk, among the factors you may consider are: (1) the nature and severity of the abuse to the other child in the home; (2) the similarity of the subject child to the abused child, with regard to age, sex, size, health, and intelligence; (3) the similarity or dissimilarity of the subject child to the abused child by way of relationship or position of favor or disfavor in relation to the alleged abuser; and (4) any changes which have occurred in the home since the prior abuse.] In answering question 2, you may consider all evidence bearing on that question, including evidence of events and conduct occurring since the filing of the petition on (_____). Your answer must reflect your finding as of today's date.²

In this case, "abuse" means manufacturing methamphetamine in violation of § 961.41 (1) (e) under any of the following circumstances:

1. With a child physically present during the manufacture.
2. In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home.
3. Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that reliable and credible information exists that another child in the home of (child) has been the victim of abuse, you should answer question 1 in the special verdict "yes." If you are not so convinced, you must answer question 1 "no."

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, based upon that information, that (child) is at substantial risk of becoming a victim of abuse, you should answer question 2 of the special verdict "yes." If you are not so convinced, you must answer question 2 "no."

SPECIAL VERDICT

1. Does reliable and credible information exist that another child in the home of (child) has been the victim of abuse?

Answer: _____
Yes or No

If the answer to question 1 is "yes," answer question 2:

2. Is (child) at substantial risk of becoming the victim of abuse?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 223 and comment were approved in 2007 following the enactment of 2005 Wisconsin Act 293. The verdict was revised in 2009 and revised in 2010. Note 1 was revised in 2010.

Wis. Stat. § 48.13(3m) reads:

48.13. Jurisdiction over children alleged to be in need of protection or services.

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02(1)(a), (b), (c), (d), (e), (f), or (g), including injury that is self- inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse

Summary Judgment. The Committee believes that summary judgment is not available for this ground if the parent disputes the allegation of substantial risk. It has been contended by some that this statutory ground limits the fact finder's role so that if the parent has been the subject of previous court findings, no defense is possible and summary judgment is appropriate. The Committee disagrees.

NOTES

1. The Committee notes that it is important that this CHIPS ground is not simply worded along the lines that this child is living in a home where another child had been living when that other child had been a victim of abuse. In other words, the statute does not assume that there is a substantial risk to the child named in the petition simply by reason of the fact that another child in his or her home has been the victim of abuse. The statute requires that, based on the facts and circumstances of the prior abuse of another child, the child in the petition appears to be at substantial risk of also becoming a victim.

This instruction provides that "substantial risk" means "that a significant and appreciable threat of abuse exists." The statutory language does not advise how to assess that risk, but in thinking about the statute, this Committee has identified a number of factors which a fact finder might consider in trying to assess the seriousness of that risk. Those factors may include the following: (1) the nature and severity of the abuse to the other child in the home; (2) the similarity of the subject child to the abused child, with regard to age, sex, size, health, and intelligence; (3) the similarity or dissimilarity of the subject child to the abused child by way of relationship or position of favor or disfavor in relation to the alleged abuser; and (4) any changes which have occurred in the home since the prior abuse. The addition of these factors to the instruction is discretionary with the trial judge.

The Committee believes it is not a condition requisite that there is an adjudication under Wis. Stat. § 48.13(3) for another child in the home.

2. **Postpetition Evidence.** The Committee believes that evidence of postpetition conduct is relevant to the petition's allegations of "substantial risk" to the child.