

230 CHIPS: PARENT (GUARDIAN) UNABLE OR NEEDS ASSISTANCE TO CARE FOR [WIS. STAT. § 48.13(4)]

The petition in this case alleges that (parent) (guardian) is unable or in need of assistance to care for (child). Your role as jurors will be to answer the following question in the special verdict:

1. Is (parent) (guardian) unable or in need of assistance to care for (child)?

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

"Unable or in need of assistance to care for" means that (parent) (guardian) is unable to provide the level of care necessary to meet the needs of the child despite reasonable efforts of (parent) (guardian). In making this determination, you may consider all facts and circumstances bearing on the child's need for care and (parent)'s (guardian)'s ability to provide that care, including age, physical conditions, health, and special needs.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that (parent) (guardian) is unable or in need of assistance to care for (child), you should answer the question "yes." If you are not so convinced, you must answer the question "no."

SPECIAL VERDICT

1. Is (parent) (guardian) unable or in need of assistance to care for (child)?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 230 and comment were originally approved by the Committee in 1996 and revised in 1997, 2004, and 2010. The title was revised in 2009. The comment was updated in 2015.

This instruction was amended in 1997 to add "needs assistance" which was added by the legislature as a possible element. 1995 Wisconsin Act 275. Wis. Stat. § 48.13(4) provides for jurisdiction over a child:

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:

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child

This jurisdictional ground provides for two alternative allegations: (1) inability or needs assistance to care for and (2) inability or needs assistance to provide necessary special treatment or care. While the Committee has addressed these allegations separately in Wis JI-Children 230 and 232, parental petitions under this statute frequently allege both problems, and if the court permits both allegations to proceed to trial, the instructions should be combined as appropriate.

The explanation of "unable or in need of assistance to care for" in this instruction was cited with approval in an unpublished opinion in 2014; see *John M.S. v. Marcy J.S.*, Appeal No. 2013AP2644-FT (one-judge decision, March 12, 2014).