

233 CHIPS: PARENT FAILS TO PROVIDE CARE [WIS. STAT. § 48.13(9)]

The petition in this case alleges that (child who is the subject of the petition) is in need of special treatment or care and (parent) (guardian) (legal custodian) (is) (unwilling) (neglecting) (unable or in need of assistance) to provide that special treatment or care. Your role as jurors will be to answer the following questions in the special verdict:

1. Is (child who is the subject of the petition) in need of special treatment or care?
2. Is (parent) (guardian) (legal custodian) (unwilling) (neglecting) or (unable or in need of assistance) to provide that special treatment or care?

The burden of proof 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."

"Special treatment or care" means professional services which need to be provided to (child) or (child)'s family to protect the well-being of (child), to prevent placement of the child outside of the home, or to meet the special needs of (child). This term includes, but is not limited to, medical, psychological, or psychiatric treatment; alcohol or other drug abuse treatment; or other services that are necessary and appropriate.

"Unwilling" means a willful and intentional failure to provide. "Neglecting" means a failure to provide that is neither intentional nor due to incapacity but rather is due to an inattentive state of mind. "Unable or needs assistance to provide" means that (parent) (guardian) (legal custodian) is unable to provide the special treatment or care necessary to meet the needs of (child) despite reasonable efforts of (parent) (guardian) (legal custodian). In making this determination, you may consider all facts and circumstances bearing on (child)'s need for special treatment or care and (parent)'s (guardian)'s (legal custodian)'s ability to provide that care.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that (parent) (guardian) (legal custodian) is (unwilling) (neglecting) (unable or in need of assistance) to provide special treatment or 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 (child who is the subject of the petition) in need of special treatment or care?

Answer: _____
Yes or No

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

2. Is (parent) (guardian) (legal custodian) (unwilling) (neglecting) or (unable or in need of assistance) to provide that special treatment or care?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 233 and comment were approved by the Committee in 1997 and revised in 2004 and 2009. The title was revised in 2009. Editorial corrections were made in 2010.

Wis. Stat. § 48.13(9) 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:

- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide

In the Committee's view, this section was not intended to allow a parent who has made insignificant or minimal effort to obtain jurisdiction by claiming "inability." The phrase "despite reasonable efforts" was included to make it clear that "unable to care for" means more than "unwilling" and presumes some reasonable effort by the parent.