

**410 INDIAN CHILD WELFARE: CHIPS (OUT-OF-HOME CARE PLACEMENT):
VERDICT [WIS. STAT. § 48.028(4)(d)]**

[NOTE: INSERT VERDICT QUESTION(S) COVERING THE CHIPS GROUND(S)]

If the answer to question ____ is "yes," answer the following question:

____. Is continued custody of (child) by (parent or Indian custodian) likely to result in serious emotional damage or serious physical damage to (child)?

Answer: _____
Yes or No

If the answer to question ____ is "yes," answer the following question:

____. Have active efforts been made to provide remedial services and rehabilitative programs designed to prevent the breakup of (Indian child)'s family?

Answer: _____
Yes or No

____. Have the efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of (Indian child)'s family proved unsuccessful?

Answer: _____
Yes or No

COMMENT

The verdict and comment were approved in 2010. The comment was updated in 2015.

Wis. Stat. § 48.028(4)(d) provides:

Out-of-home care placement; serious damage and active efforts. The court may not order an Indian child to be removed from the home of the Indian child's parent or Indian custodian and placed in an out-of-home care placement unless all of the following occur:

1. The court or jury finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed in par. (f), that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
2. The court or jury finds by clear and convincing evidence that active efforts, as described in par. (g) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. The court or jury shall make that finding notwithstanding that a circumstance specified in Wis. Stat. § 48.355(2d)(b)1. to 5. applies.

Burden of Proof. The middle civil burden (by clear and convincing evidence, to a reasonable certainty) applies to the question or questions establishing CHIPS grounds under state law, *i.e.* Wis. Stat. § 48.13.

In 2009, the Wisconsin Legislature created Wis. Stat. § 48.028(4) for court proceedings dealing with out-of-home care placements to Indian children. The statute requires that, in addition to the question or questions necessary to establish the state CHIPS ground(s), the jury answer three additional questions if the child is an Indian child. The burden of proof for these three questions, shown on the suggested verdict, is the middle civil burden. Wis. Stat. § 48.028(4)(d).

Verdict. In CHIPS cases involving an Indian child, agreement by ten (five) of twelve (six) or more jurors is sufficient on all questions in the verdict.