

200 CHIPS: PRELIMINARY INSTRUCTION

This is a fact-finding proceeding on a petition which alleges that a 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 (child) (insert grounds under Wis. Stat. § 48.13).

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 mother of (child) is (_____). She is represented by Attorney _____.] [The father of (child) is (_____). He is represented by Attorney _____.]¹

[The interests of (child) will be represented by Attorney _____, who is the child's guardian ad litem.] [(Child) will be represented by Attorney _____.]²
 [(Child) is not in the courtroom because the laws governing this proceeding do not require that (he) (she) attend.]

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 (child) and (his) (her) family 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 child or family members to anyone.

COMMENT

Wis JI-Children 200 and comment were approved by the Committee in 1996.

The Committee considered at great length the extent to which a jury should be advised about its role in a CHIPS case. While appellate courts have not specifically endorsed such informational instructions, the trial judge clearly has the discretion to provide some legal background for the case, provided the information is accurate. See *P.M.H. v. Kenosha County*, 166 Wis.2d 1052 (1991); *In re C.E.W.*, 124 Wis.2d 47, 368 N.W.2d 47 (1985).

As a general rule, the Committee felt that jurors should be aware of their function and purpose and that it must be presumed that they will follow the law in reaching a verdict. While there is always the risk that informing the jurors about the impact of their decision might affect that decision, the Committee believes the greater risk is that jurors might be inclined to speculate incorrectly about the consequences of their verdict. The instruction, therefore, advises the jury, in very brief terms, as to their role in the process, indicating that their verdict is not dispositive on the question of termination. While additional information might not be harmful, the Committee considered and rejected more detailed comment about possible subsequent proceedings and about the specific dispositional options available to the court.

NOTES

1. If a parent is not present, jurors may logically wonder about his or her absence, and the court should consider providing some explanation about the absence or at least acknowledge that the parent is not participating as a party in the case. In most cases, the evidence will indicate the absent parent's circumstances or, perhaps, indicate that the parent is completely out of the picture or has otherwise failed to respond to notices from the court. If there is no dispute about the circumstances, it might be helpful to explain them to the jury at the outset.

2. 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).