

220 CHIPS: ABUSE: ADVISORY VERDICT AS TO AN ALLEGED ABUSER

It is not necessary for (petitioner) to establish the identity of the person (or persons) who committed the alleged abuse. However, it may be helpful to the court, if it is necessary to determine what protection or services to order, to know the identity of that person (or persons). Therefore, if you find that (child) was a victim of abuse, you should also answer the following question:

Can the jury identify who committed the abuse by evidence that is clear, satisfactory, and convincing, to a reasonable certainty?

You should answer this question either "yes" or "no." If you answer this question "yes," you should write the name (or names) of the person(s) on the lines provided.

Please keep in mind that the question whether the child is a victim of abuse is completely independent of and unrelated to the question as to the identity of the person(s) who committed the abuse. A child can be found to be a victim of abuse even if the identity of (that person) (those persons) is unknown.

SPECIAL VERDICT

1. Can the jury identify who committed the abuse by evidence that is clear, satisfactory, and convincing, to a reasonable certainty?

Answer: _____
Yes or No

If you answered yes above, list name(s) here:

COMMENT

Wis JI-Children 220 and comment were originally approved by the Committee in 1996 and revised in 1997 and 2004. The change in 2004 conformed the burden of proof language to Wis JI-Civil 205. An editorial correction was made in 2005 to the instruction. The title and comment were revised in 2010.

This instruction is for use in a CHIPS physical or sexual abuse case under Wis. Stat. § 48.13(3) if the court determines that it is appropriate to have an advisory verdict as to the identity of the alleged abuser or abusers. While CHIPS jurisdiction does not depend on identification of the alleged abuser in a subsequent termination of parental rights case, the identity of the person who committed the abuse may be critical in determining the appropriate disposition. While in some cases this identity may be uncertain or unknown, in others a finding of abuse may be indistinguishable from a finding that a particular person was responsible.

Advance notice of any such advisory verdict should be given to the parties, and the Committee recommends that this instruction only be used if the parties agree. This is not an issue on which parties are required to present evidence, and a party might reasonably object that it should not be required to present evidence on an advisory verdict which it does not wish to present otherwise. The identity of the alleged abuser is more logically an issue for disposition, and the Committee recommends that, whether or not there has been an advisory verdict, the court make a finding on this issue after jurisdiction is established and after the parties have been given the opportunity to present evidence at a dispositional hearing.