

**235 CHIPS: PLACED FOR CARE IN VIOLATION OF LAW [WIS. STAT. § 48.13(5)]**

The petition in this case alleges that (child) has been placed for care in violation of law. Your role as jurors will be to answer the following question in the special verdict:

1. Has (child) been placed for care in violation of law?

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."

(Petitioner) alleges that (child) was placed by (parent) for care with (insert placement) and that this placement violated Wisconsin (federal) law because \_\_\_\_\_.

Wisconsin (Federal) law provides (insert appropriate restriction on placement).

A child is placed for care when (he) (she) is left by a parent with (another person) (an agency) (a facility) (who) (which) accepts the responsibility for the care and support of the child] [provides the child's care and support on a temporary or permanent basis].

Before you may answer the special verdict question "yes," you must be convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the question should be answered "yes." If you are not so convinced, you must answer this question "no."

**SPECIAL VERDICT**

1. Has (child) been placed for care in violation of law?

Answer: \_\_\_\_\_  
Yes or No

**COMMENT**

Wis JI-Children and comment were approved by the Committee in 1999 and revised in 2004. The change in 2004 conformed the burden of proof language to Wis JI-Civil 205.

Wis. Stat. § 48.13(5) provides:

**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:

(5) Who has been placed for care or adoption in violation of law

The Committee believes this CHIPS statute, covers four situations: (1) where the court orders a placement and the order expires or for some other reason is procedurally deficient; (2) where a parent, realizing he or she cannot adequately care for his or her child places the child with a child care agency or facility; (3) where a parent, similar to the previous scenario, "gives" the child to a friend for care; (4) where the child is placed with another person or an agency for adoption and the placement or the adoptive process is flawed or violates state law. The Committee believes a jury instruction on the first scenario is not necessary since a defective court-ordered placement can be remedied by a new placement order. The second and third scenarios are covered by this instruction while the fourth scenario is covered by Wis JI-Children 236.

**Elements.** This instruction covers two elements. First, there must be a placement of a child by his or her parent. Second, this placement must violate law. The instruction must be adapted to allegations of the CHIPS petition in which the petitioner will indicate with whom the child has been placed and why the placement violates law.

**Nature of Placement.** The statutes lack any guidance on the nature of the placement envisioned by the drafters. The Committee believes that the niche this CHIPS ground fills is a situation in which the parent, realizing his or her inability to adequately provide care, gives the child to another person (or an agency) who can provide for the child's care. In this scenario, abandonment may not have occurred if the parent retains some involvement in the child's life. The child has not been abandoned, nor has the child been neglected under § 48.13(10), since the parent has arranged or agreed to have the child cared for and the child is not endangered from a lack of care.

**Placement Violations.** Wis. Stat. § 48.62 and § 48.63 impose licensing requirements and restrictions on placements. A relative who provides care and maintenance for a child is not required to obtain a license to operate a foster home.