

241 CHIPS: INADEQUATE CARE DURING PERIOD OF PARENTAL ABSENCE (INCARCERATED) [WIS. STAT. § 48.13(8)]

The petition in this case alleges that (child) is receiving inadequate care during a period of time that a parent is incarcerated. Your role as jurors will be to answer the following question in the special verdict:

1. Is (child) receiving inadequate care during a period of time that a parent of (child) is incarcerated?

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."

"Inadequate care" means less care than is reasonably necessary to provide sufficient food, clothing, housing, medical and dental services, education, or to meet the special needs of (child). In determining what constitutes inadequate care, you may consider all the facts and circumstances bearing on (child)'s need for care, including age, physical condition, and special needs.

"Incarcerated" means that the parent is an inmate in a jail, Huber facility, house of correction, prison, or any other correctional facility located either in Wisconsin or elsewhere.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that (child) is receiving inadequate care during a period of time that a parent is incarcerated, you should answer the question "yes." If you are not so convinced, you must answer the question "no."

SPECIAL VERDICT

1. Is (child) receiving inadequate care during a period of time that a parent of (child) is incarcerated?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 241 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.

Wis. Stat. § 48.13(8) 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:

- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized

The Committee believes this CHIPS ground does not apply to remove a child from a single parent's home.

The appropriate date for evaluating the care is the date of the petition.