

**305 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS:  
ABANDONMENT (60 DAYS) [WIS. STAT. § 48.415(1)(a)1.]**

The petition in this case alleges that (child) has been abandoned which is a ground for termination of parental rights. Your role as jurors in this case will be to answer the following questions in the special verdict:

1. Was (child) left without provision for (his) (her) care or support?
2. Has (petitioner) investigated the circumstances surrounding the absence of (parent)?
3. Was (petitioner), despite reasonable efforts, unable to locate either of (child)'s parents for a period of at least 60 days prior to (date of filing petition)?

Before (child) may be found to have been abandoned, (petitioner) must prove the following three elements by evidence that is clear, satisfactory, and convincing to a reasonable certainty.

First, that (child) was left without provision for the child's care or support. Question 1 of the special verdict addresses this element.

Second, that (petitioner) has investigated the circumstances surrounding the absence of the parent(s). Question 2 of the special verdict addresses this element.

Third, that (petitioner), despite reasonable efforts, was unable to locate either of (child)'s parents for a period of at least 60 days prior to the filing of the petition. Question 3 of the special verdict addresses this element.

Before you may answer any question in the special verdict "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 the question "no."

### SPECIAL VERDICT

1. Was (child) left without provision for (his) (her) care or support?

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

2. Has (petitioner) investigated the circumstances surrounding the absence of (parent)?

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

3. Was (petitioner), despite reasonable efforts, unable to locate either of (child)'s parents for a period of at least 60 days prior to (date of filing petition)?

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

### COMMENT

Wis JI-Children and comment were originally approved by the Committee in 1997 and revised in 1999, 2001, and 2004. The change in 2004 conformed the burden of proof language to Wis JI-Civil 205. The comment was updated in 2005.

Wis. Stat. § 48.415(1)(a) 1. reads:

**48.415. Grounds for involuntary termination of parental rights.** At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) Abandonment. (a) Abandonment, which, subject to par. (c), shall be established by proving that:

1. The child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent

The Committee believes the statute requires an investigation of the whereabouts of the parents during a sixty-day period prior to the filing of a petition for termination on this ground. Reasonable investigative efforts must be undertaken; however, in the Committee's view, they need not be continuous throughout the sixty-day period. While investigative efforts to locate the parents will almost always commence immediately upon the discovery of an abandoned child, a trial court may encounter factual circumstances which require further explanation of this requirement.

The Committee believes the phrase "without provision for care or support" clearly means more than "without *any* provision" and requires provision for *sufficient and adequate* care. Otherwise, a parent who leaves a child in a dumpster might defeat jurisdiction by arguing that the child was wrapped in a blanket and had \$20 tucked in the child's sleeper, and therefore *some* provision had been made. Similarly, "provision for care and support" requires that the parent has actively arranged for care and does not include the expectation that others will find and care for the child. Thus, where the parent otherwise abandons a child, jurisdiction is not defeated simply because parent makes an anonymous phone call to the Department of Social Services and advises them where to find the baby. If appropriate, the jury should be instructed on this matter.

**Biological Parent; Periods of Abandonment Prior to Adjudication as Parent.** See Comment, Wis. JI-Children 314.