

**307 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS:  
ABANDONMENT: LEFT WITHOUT PROVISION FOR CARE [WIS. STAT.  
§ 48.415(1)(a)1m.]**

The petition in this case alleges that on (date) (parent) abandoned (child) by leaving (him) (her) without providing for (his) (her) care or support in a place or manner that exposed the child to a substantial risk of either great bodily harm or death. This is a ground for termination of parental rights. Your role as jurors will be to answer the following questions in the special verdict:

1. On ( \_\_\_\_\_ ), was (child) left by (parent) without provision for the child's care or support?

**If the answer to question 1 is "yes," answer the following question:**

2. Was (child) left by (parent) in a (place) (manner) that exposed the child to a substantial risk of either great bodily harm or death?

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

First, that (child) was left by (parent) without provision for the child's care or support. This means that (parent) physically removed (himself) (herself) from the child under circumstances which demonstrated that (he) (she) was relinquishing parental responsibility for the child and that the parent failed to provide for the child's care and support. Question 1 of the special verdict addresses this element.

Second, that (child) was left by (parent) in a place or manner that exposed the child to a substantial risk of either great bodily harm or death. "Substantial risk" means a threat which is significant and appreciable. "Great bodily harm" means serious bodily injury. Question 2 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. On (\_\_\_\_\_), was (child) left by (parent) without provision for the child's care or support?

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

**If the answer to question 1 is "yes," answer the following question:**

2. Was (child) left by (parent) in a (place) (manner) that exposed the child to a substantial risk of either great bodily harm or death?

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

### **COMMENT**

Wis JI-Children 307 and comment were originally approved by the Committee in 1997 and revised in 2001 and 2004. The change in 2004 conformed the burden of proof language to Wis JI-Civil 205. Editorial corrections were made to the instruction and verdict in 2005. The comment was updated in 2005. The verdict was revised in 2009.

This instruction is intended for use in connection with § 48.415(1)(a)1m., which creates the following ground for the termination of parental rights:

**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 . . . shall be established by proving that:

1m. The child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in § 939.22 (14), or death

The Committee engaged in an extensive debate as to the scope of this ground. Read broadly, it applies to any physical "leaving" of a child, however momentary and regardless of any intent to return. The narrow reading assumes a legislative intent to include only the leaving of a child which is accompanied by a relinquishment of parental responsibility. This discussion focused both on the meaning of the word "left," as well the entire phrase "left without provision for care and support."

Under the broad view, many brief physical separations could become grounds for possible termination if the separation involved sufficient risk to the child, such as the parent who steps away from the infant child in the bathtub to answer the phone or leaves a child in a locked car on a hot day to run into the grocery store. Another example might be the parent who leaves young children alone and heads for the tavern. These have been traditional grounds for CHIPS jurisdiction but have not previously been considered grounds for termination.

Ultimately, the Committee concluded that the law intended to require some relinquishment of parental responsibility. The ground is, after all, a means of establishing "abandonment," a term which clearly involves more than brief physical separation. The parents in the examples above may have been terribly reckless but in no reasonable sense have they abandoned their children. Moreover, termination of parental rights requires more egregious actions or omissions by the parent than actions which allow for the exercise of CHIPS jurisdiction.

The Committee also felt that 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.