

**324B INVOLUNTARY TERMINATION OF PARENTAL RIGHTS:
CONTINUING NEED OF PROTECTION OR SERVICES [WIS. STAT.
§ 48.415(2)(a)1] (AS AMENDED BY 1997 WISCONSIN ACTS 80, 237, 292,
and 294) (FOR PETITIONS INVOLVING COURT ORDERS GRANTED
BEFORE APRIL 21, 2006 AND WHERE 2017 WISCONSIN ACT 256 DOES
NOT APPLY) (THIS INSTRUCTION WAS PREVIOUSLY NUMBERED 324)**

The petition in this case alleges that (child) is in continuing need of protection or services which is a ground for termination of parental rights. Your role as jurors will be to answer the following questions in the special verdict.

1. Has (child) been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law?

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

2. Did the _____ County Department of Social Services make a reasonable effort to provide the services ordered by the court?

If the answer to question 2 is "yes," answer the following question:

3. Has (parent) failed to meet the conditions established for the safe return of (child) to (parent)'s home?

If the answer to question 3 is "yes," answer the following question:

4. Is there a substantial likelihood that (parent) will not meet these conditions within the twelve-month period following the conclusion of this hearing?

Before (child) may be found to be in continuing need of protection or services, (petitioner) must prove the following four elements by evidence that is clear, satisfactory, and convincing, to a reasonable certainty.

First, that (child) was adjudged to be a child (an unborn child) in need of protection or services and placed or continued in placement outside the home of (parent) for a cumulative period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law. [**Add the following language if there is no dispute as to this element:** Because there is no dispute in the evidence to this question, I have answered this question. My answer has no bearing whatsoever on what your answer should be to the other questions in the special verdict form.]

Second, that (agency) has made a reasonable effort to provide the services ordered by the court. "Reasonable effort" means an earnest and conscientious effort to take good faith steps to provide those services, taking into consideration the characteristics of the parent or child [or of the expectant mother or child], the level of cooperation of the parent [or expectant mother], and other relevant circumstances of the case. You may find the agency's effort was reasonable even though there were minor or insignificant deviations from the court's order. Question 2 of the special verdict addresses this element.

Third, that (parent) has failed to meet the conditions established for the safe return of the child to the home. Question 3 of the special verdict addresses this element. In answering question 3, you must consider the facts and circumstances as they existed on (_____), which was the date on which this petition was filed. Your answer must reflect your finding as of that date.

Fourth, that there is a substantial likelihood that (parent) will not meet the conditions for the safe return of (child) within the twelve-month period following the conclusion of this hearing. "Substantial likelihood" means that there is a real and significant probability rather than a mere possibility that (parent) will not meet the conditions for the safe return within that time period. Question 4 of the special verdict addresses this element. In answering question 4, you may consider all evidence bearing on that question, including evidence of events and conduct occurring since the filing of the petition on (_____). Your answer must reflect your finding as of today's date.

In determining whether (parent) failed to meet the conditions established for the safe return of (child) to the home or whether there is a substantial likelihood that (parent) will not meet the conditions for the safe return of (child) within the twelve-month period following the conclusion of this hearing, you may consider the following: the length of time (child) has been in placement outside the home; the number of times (child) has been removed from the home; the parent's performance in meeting the conditions for return of the child; the parent's cooperation with the social service agency; parental conduct during periods in which (child) had contact with (parent); and all other evidence presented during this hearing which assists you in making these determinations.

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. Has (child) been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law?

Answer: _____
Yes or No

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

2. Did the _____ County Department of Social Services make a reasonable effort to provide the services ordered by the court?

Answer: _____
Yes or No

If the answer to question 2 is "yes," answer the following question:

3. Has (parent) failed to meet the conditions established for the safe return of (child) to (parent)'s home?

Answer: _____
Yes or No

If the answer to question 3 is "yes," answer the following question:

4. Is there a substantial likelihood that (parent) will not meet these conditions within the twelve-month period following the conclusion of this hearing?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 324B was originally approved as Wis JI-Children 324 by the Committee in 1999 and revised in 2001 and 2004. This instruction is to be used for TPR petitions based on court orders granted before April 21, 2006, and where 2017 Wisconsin Act 256 does not apply. This instruction was renumbered to 324B in 2018.

Recent Legislation. 2017 Wisconsin Act 256 removes the requirement of showing that there is a substantial likelihood that the parent will continue to fail for the next twelve months to meet the conditions established for the safe return of the child to the home in a continuing CHIPS TPR proceeding. The act replaces this requirement with a requirement for the petitioner to show that, if the child has been placed outside the home under a CHIPS order for less than 15 of the past 22 months, there is a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the home at the time the child will have been placed outside of the home for 15 of the last 22 months. This instruction Wis JI-Children 324B, (previously numbered Wis JI-Children 324) is retained for petitions involving court orders granted before April 21, 2006 and where 2017 Wisconsin Act 256 does not apply.

Wis. Stat. § 48.415(2) (before the enactment of 2005 Wis. Act 293) read:

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:

(2) Continuing need of protection or services. Continuing need of protection or services, which shall be established by proving any of the following:

(a)1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

This ground was amended in 1995 by shortening the time period for the child being outside the home from 12 months to 6 months. In 2006, the Wisconsin Legislature shortened the period for the likelihood of the parent meeting the conditions for the safe return of the child from 12-months to 9-months. This legislative change is addressed in Wis JI-Children 324A. 2005 Wis. Act 293.

In most cases, there will be a judicial determination as to question 1.

You cannot count time while the child is in utero when calculating the duration of a placement outside the parent's home.

Indian Child Welfare Act Cases. For the use of this instruction in a TPR under the Indian Child Welfare Act, 25 U.S.C. §§1901-1963, see *Brown County v. Shannon R.*, 2005 WI 160, 286 Wis.2d 278, 706 N.W.2d 269. This decision also discussed the burden of proof that applies to the special verdict questions.