

**330 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS: CONTINUING PARENTAL DISABILITY [WIS. STAT. § 48.415(3)]**

Continuing parental disability is a ground for termination of parental rights. Your role as jurors will be to answer the following special verdict questions:

1. Was (parent), as of (date petition was filed), an inpatient at a (hospital) (licensed treatment facility) (state treatment facility) on account of mental illness, developmental disability, or other like incapacities?
2. Has (parent) for a cumulative total period of at least two years within the time period from (date five years prior to filing) to (date of filing) been an inpatient at one or more hospitals, licensed treatment facilities, or state treatment facilities on account of mental illness, developmental disability, or other like incapacities?
3. Is the condition of (parent) likely to continue indefinitely?
4. Has (petitioner) proved that (child) is not being provided adequate care by a relative who has legal custody, by a parent, or by a guardian?

To establish continuing parental disability, the petitioner, \_\_\_\_\_, must prove the following four elements by evidence that is clear, satisfactory, and convincing, to a reasonable certainty.

First, that (parent) was, as of (date of filing), the date the petition was filed, an inpatient at a (hospital) (licensed treatment facility) (state treatment facility) on account of mental illness, developmental disability, or other like incapacities. Question 1 of the special verdict addresses this element.

Second, that (parent) for a cumulative total period of at least two years within the time period from (date five years prior to filing) to (date of filing) has been an inpatient at one or more hospitals, licensed treatment facilities, or state treatment facilities on account of mental illness, developmental disability, or other like incapacities. Question 2 of the special verdict addresses this element.

Third, that the condition of (parent) is likely to continue indefinitely. Question 3 of the special verdict addresses this element.

Fourth, that (child) is not being provided adequate care by a relative who has legal custody, by a parent, or by a guardian. "Adequate care" means the provision of necessary food, clothing, medical care, dental care, shelter, protection, and training. Question 4 of the special verdict addresses this element.

"Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community. It also means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

"Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.

"Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody.

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 (parent) as of (date petition was filed) an inpatient at a (hospital) (licensed treatment facility) (state treatment facility) on account of mental illness, developmental disability, or other like incapacities?

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

2. Has (parent) for a cumulative total period of at least two years within the time period from (date five years prior to filing) to (date of filing) been an inpatient at one or more hospitals, licensed treatment facilities, or state treatment facilities on account of mental illness, developmental disability, or other like incapacities?

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

3. Is the condition of (parent) likely to continue indefinitely?

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

4. Has (petitioner) proved that (child) is not being provided adequate care by a relative who has legal custody, by a parent, or by a guardian?

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

#### COMMENT

Wis JI-Children 330 and comment were originally approved by the Committee in 1996 and revised in 1997, 2008, and 2011. The revision in 2008 was based on 2007 Wisconsin Act 45, effective February 1, 2008.

Wis. Stat. § 48.415(3) (2008) 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:

**(3) CONTINUING PARENTAL DISABILITY.** Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b), developmental disability as defined in s. 55.01 (2), or other like incapacities, as defined in s. 55.01(5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

**Indian Child Welfare Act.** For a termination case involving an Indian child, see Wis JI-Children 420-424.