

**342 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS: ABUSE: PATTERN OF ABUSIVE BEHAVIOR AND PRIOR REMOVAL BY COURT ORDER [WIS. STAT. § 48.415(5)(b)] (REMOVAL OF ABUSED CHILD FROM PARENT'S HOME)**

Child abuse is a ground for the termination of parental rights. Your role as jurors will be to answer the following questions in the special verdict.

1. Has (parent) exhibited a pattern of abusive behavior which is a substantial threat to the health of (child)?
2. Has a child been removed from (parent)'s home pursuant to a court order, after an adjudication that the child is in need of protection or services because (he) (she) (has been the victim of abuse) (is at substantial risk of becoming the victim of abuse).

Before this ground may be established, (petitioner) must prove the following two elements by evidence that is clear, satisfactory, and convincing, to a reasonable certainty.

First, that (parent) has exhibited a pattern of abusive behavior which is a substantial threat to the health of (child). Question 1 of the special verdict addresses this element.

Second, that a child has previously been removed from (parent)'s home pursuant to a court order after an adjudication that the child is in need of protection or services because (he) (she) (has been the victim of abuse) (is at substantial risk of becoming the victim of abuse). The child referred to in this element need not be the same child referred to in the first element. **[Add the following language if there is no dispute as to this element:** Because there is no dispute in the evidence as to this question, I have answered this question. My answer has no bearing whatsoever on what your answers should be to the other questions in the special verdict form.]

"Abusive behavior," as that term is used in the first element, means any conduct by (parent) which causes abuse to another person. A "pattern of abusive behavior" requires more than a single instance of abusive behavior. In determining whether a pattern has been shown, you may consider the number and frequency of incidents, the nature of the parent's behavior, the nature and seriousness of any injuries, and all of the circumstances surrounding any incident of abusive behavior.

While it is not required that the abusive behavior be directed at (child), it is required that the pattern of abusive behavior constitutes a substantial threat to the health of (child). Health includes physical, emotional, or mental health.

**[For cases involving allegations of physical abuse, give the following:**

"Abuse" means physical injury which is intentionally or recklessly caused by another person. "Intentionally" means that the person who causes the physical abuse has the purpose to cause physical abuse or is aware that his or her conduct is practically certain to cause that result. "Recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of another. "Abuse" does not include injury which is inflicted by accident.]

"Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising. It also includes bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

[For cases involving allegations of sexual abuse, give the following: "Abuse" means that a child has been subjected to (sexual intercourse) (sexual contact) (exploitation) (exposure of genitals) (forced viewing of sexual activity) (prostitution).

(Add relevant definition(s) from Wis JI-Children 217, 218, 218A, 218B, 218C, 218D, or 219.)]<sup>1</sup>

Before you may answer either of the questions on 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 (parent) exhibited a pattern of abusive behavior which is a substantial threat to the health of (child)?

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

2. Has a child been removed from (parent)'s home pursuant to a court order, after an adjudication that the child is in need of protection or services because (he) (she) (has been the victim of abuse) (is at substantial risk of becoming the victim of abuse)?

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

### COMMENT

Wis JI-Children 342 and comment were originally approved by the Committee in 1996 and revised in 1997, 1999, 2004. The change in 2004 conformed the burden of proof language to Wis JI-Civil 205. The comment was revised in 2011.

Wis. Stat. § 48.415(5)(b) 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:

(5) Child abuse. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(b) That a child has previously been removed from the parent's home pursuant to a court order under s. 48.345 after an adjudication that the child is in need of protection or services under s. 48.13(3) or (3m).

See also Comment to JI-Children 340.

**Summary Judgments and Directed Verdicts.** See Special Materials, SM-2, at the end of this publication for a discussion of the use of summary judgments and directed verdicts in CHIPS and TPR proceedings.

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

## NOTES

1. If the court has received evidence of "sexual abuse" which includes exploitation, exposure, or other matters discussed in Wis JI-Children 217, 218, 218A, 218B, 218C, 218D, or 219, the definitions used in those instructions should be included as appropriate. However, where the pattern of abuse involves allegations of sexual abuse to an adult, the definition of sexual abuse will need to be modified, because the definitions in the listed instructions (JI-Children 217 to 219) relate to sexual abuse to a *child* and not an adult.