

**350 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS: INCESTUOUS PARENTHOOD [WIS. STAT. § 48.415(7)]**

Incestuous parenthood is a ground for termination of parental rights. Your role as jurors will be to answer the following special verdict question:

1. Are (mother) and (father) of (child) related by (blood) (adoption) in a degree of kinship closer than second cousin?

Before you may answer this question "yes," (petitioner) must prove by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the (mother) (father) of (child) is related, either by blood or adoption, to (child)'s (father) (mother) in a degree of kinship closer than second cousin.

"Degree of kinship" means the distance or degree which separates two persons who are descended from a common ancestor. [(If appropriate) add: Under the law governing this ground for termination of parental rights, a person who is adopted is considered to have the same degree of kinship to related persons as if that person had been a natural child.] (Insert specific kinship from list in the comment) is a degree of kinship closer than second cousin.

If you find that the parents of (child) are related to each other by (blood) (adoption) in a degree of kinship closer than second cousin, you should answer the question "yes." Otherwise, you must answer the question "no."

**SPECIAL VERDICT**

1. Are (mother) and (father) of (child) related by (blood) (adoption) in a degree of kinship closer than second cousin?

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

**COMMENT**

Wis JI-Children 350 and comment were originally approved by the Committee in 1996 and revised in 1997. The comment was revised in 2004, 2005, and 2011.

Wis. Stat. § 48.415(7) 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:

(7) Incestuous parenthood. Incestuous parenthood, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

**Degrees of Kinship.** "Second cousin" is defined in *Black's Law Dictionary* (4<sup>th</sup> edition) as: "Persons who are related to each other by descending from the same great-grandfather or great-grandmother."

Some degrees of kinship closer than second cousin are (see Wis. Stat. § 990.001(16) and Wis. JI-Criminal 2130):

Parent	Grandparent	Grandparent	Grandchild
Child	Uncle, Aunt	Great Uncle, Aunt	Great Grandchild
Brother	Nephew, Niece	First Cousin Once Removed	Grand Nephew, Niece
Sister	First Cousin	Great Grandparent	Great Grand Nephew, Niece

**Paternity.** There may be circumstances in which paternity is an issue. If so, add the following question to the special verdict and give Wis JI-Civil 5001, Paternity.

Is (respondent) the father of (child) born on \_\_\_\_\_, 20\_\_?

**Constitutionality.** In *Monroe County Department of Human Services v. Kelli B.*, 2004 WI 48, 271 Wis.2d 51, 678 N.W.2d 831, the supreme court ruled that the application of this ground to a parent who was "victimized" in an incestuous relationship was unconstitutional.

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