

**2174 COMPULSORY SCHOOL ATTENDANCE — § 118.15(1) and (5)****Statutory Definition of the Crime**

Section 118.15 of the Wisconsin Statutes is violated by a person who has under (his) (her) control a child between the ages of 6 and 18 years and fails to cause the child to attend school regularly during the full period and hours that the school is in session until the end of the school term, quarter or semester of school year in which the child becomes 18 years of age.

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant had a child who was between the ages of 6 and 18 years under (his)(her) control.

This requires that the defendant was a person who had the legal right and duty to control the child, that is, the child's parent or guardian.<sup>1</sup>

2. The defendant failed to cause the child to attend school regularly during the full period and hours that the school is in session until the end of the school term, quarter or semester of school year in which the child becomes 18 years of age.

"Regularly" means "constantly and uniformly."<sup>2</sup>

USE THE FOLLOWING CLOSING IF THERE IS NO EVIDENCE OF THE "DISOBEDIENCE" DEFENSE RECOGNIZED IN §118.15(5)(b)2.<sup>3</sup>

**Jury's Decision**

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

USE THE FOLLOWING CLOSING IF THERE IS EVIDENCE OF THE "DISOBEDIENCE" DEFENSE RECOGNIZED IN §118.15(5)(b)2.<sup>4</sup>

**Consider Whether The Defense Is Proved**

Wisconsin law provides that it is a defense to this crime if the defendant was unable to comply with the law because of the disobedience of the child.

The burden is on the defendant to prove by evidence which satisfies you to a reasonable certainty by the greater weight of the credible evidence that this defense is established.<sup>5</sup>

Evidence has greater weight when it has more convincing power than the evidence opposed to it. Credible evidence is evidence which in the light of reason and common sense is worthy of belief.<sup>6</sup>

**Jury's Decision**

If you are satisfied to a reasonable certainty by the greater weight of the credible evidence that this defense is proved, you must find the defendant not guilty.

If you are not satisfied to a reasonable certainty by the greater weight of the credible evidence that this defense is proved, and you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not satisfied that both elements of this offense have been proved, you must find the defendant not guilty.<sup>7</sup>

### COMMENT

Wis JI-Criminal 2174 was approved by the Committee in August 2005.

This instruction is drafted for violations of § 118.15, Compulsory school attendance. The offense is defined primarily in sub. (1)(a); the penalty is set forth in sub. (5). Extensive exceptions are set forth in subs. (1)(b) to (d) and (4) which are not addressed in the instruction.

A related offense is defined in § 948.70, Contributing to truancy. See Wis JI-Criminal 2173.

In State v. White, 180 Wis.2d 203, 509 N.W.2d 434 (Ct. App. 1993), the court of appeals held that § 118.15 was not unconstitutionally vague.

1. State v. McGee, 2005 WI App 97, \_14, 281 Wis.2d 756, 698 N.W.2d 850.
2. State v. White, 180 Wis.2d 203, 215, 509 N.W.2d 434 (Ct. App. 1993).
3. Section 118.15(5)(b)2. provides that "if the defendant proves that he or she is unable to comply with the law because of the disobedience of the child, the action shall be dismissed." If there is evidence of this defense, use the alternative closing provided.
4. Section 118.15(5)(b)2. provides that "if the defendant proves that he or she is unable to comply with the law because of the disobedience of the child, the action shall be dismissed." In State v. McGee, 2005 WI App 97, 281 Wis.2d 756, 698 N.W.2d 850, the court held that "the disobedience exception . . . is an affirmative defense to the charge here and thus should be presented to the fact-finder during the trial for resolution." ¶12. Where there is evidence of this defense in the case, the alternative set of closing paragraphs should be used.
5. Section 118.15(5)(b)2. expressly places the burden of persuasion on the defendant but does not state what that burden is. The Committee concluded that the civil burden of persuasion should apply, as is the case under other criminal statutes that require the defendant to prove a defense.
6. This is a slight revision of the standard description of the civil burden of proof, intended to improve its understandability. No change in meaning is intended.

7. Three concluding paragraphs are used to assure that both options for a not guilty verdict are clearly presented:

- 1) not guilty because the elements are not proven [regardless of the conclusion about the defense]; and,
- 2) not guilty even though the elements are proven, because the defense has been established.