NOTICE TO USERS

For information on the status of the Committee's drafting of new or revised instructions, please contact the University of Wisconsin Law School: 975 Bascom Mall, Madison, WI 53706-1399, 6082623833; www.law.wisc.edu/clew/

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FOREWORD

Since 1959, the University of Wisconsin Law School has joined with Wisconsin trial judges to develop uniform jury instructions for civil and criminal cases. This partnership has produced over one thousand jury instructions to assist judges, lawyers, and, most importantly, jurors in understanding what the jury must decide at the conclusion of a trial. These instructions are published by the law school in ***Wisconsin Jury Instructions - Criminal***, ***Wisconsin Jury Instructions - Civil***, and ***Wisconsin Jury Instructions - Children***.

With the publication of ***Wisconsin Jury Instructions - Children***, we are proud to be involved in what has been simply and eloquently termed "law in action." The instructions in this publication respond to a need for a comprehensive set of instructions to assist judges, juries, and lawyers in performing their role in child in need of protection or services (CHIPS) cases and involuntary termination of parental rights (TPR) cases. Each of the three sets of jury instructions published by the law school share the same objective—they strive for a careful blending of the substantive law and the collective wisdom and courtroom experiences of the Committee members.

The criminal and civil sets have been enriched for over 59 years, and the children set for over 26 years, by valuable suggestions from the judges and lawyers who have used the instructions in trials. We hope this set will continue to receive the same valuable scrutiny from those who use it.

We are proud of this publication and of the cooperative effort that it represents. We hope those who use it find it valuable.

May 2019   **Bryce Pierson**
                                                          Committee Reporter
                                                                 Law School
                                                  University of Wisconsin

INTRODUCTION TO THE 2019 EDITION

This 2019 edition updates the 2018 edition. In preparing the new edition, the Committee reviewed appellate decisions and legislative changes between January 6, 2018 and May 10, 2019.

Suggestions. As in prior years, the Committee has benefitted from suggestions and input from judges and lawyers. As we begin work on the next edition, we again welcome your comments and suggestions about these instructions. To submit suggestions, comments, and proposed revisions to the Committee: please contact Bryce Pierson at the University of Wisconsin Law School: 975 Bascom Mall, Rm. 2340, Madison, WI 53706-1399, 6082623833.

May 2019   **Wisconsin Juvenile Jury Instructions Committee**

EXPLANATION OF THE INSTRUCTIONS IN *WISCONSIN JURY INSTRUCTIONSCHILDREN*

[FROM "INTRODUCTION TO 1997 EDITION"]

The Juvenile Jury Instructions Committee was formally established in October 1991 as a one-year study committee of the Judicial Conference. In 1992, the Committee's term was extended for an additional four years. As with the civil and criminal jury instructions committees, this Committee's efforts have been a joint project between the Judicial Conference and the University of Wisconsin Law School. The Committee's first meeting was held on December 11, 1991, and thereafter has met about four times a year, generally for one and one-half days at a time.

The idea for this Committee began at a Family and Juvenile Law Section meeting at the 1990 Judicial Conference in Stevens Point where it was agreed that preparing standard jury instruction for trials under the Children's Code would provide valuable assistance to trial judges, particularly those who may encounter such a trial only on rare occasions. The Committee's primary mission has been to draft standard jury instructions for use in trials based on petitions which allege that a child is need of protection or services (CHIPS) under Wis. Stat. § 48.13 and petitions seeking the termination of parental rights (TPR) under Wis. Stat. § 48.415.

The first edition of **Wisconsin Jury InstructionsChildren** was published by the University of Wisconsin Law School in May 1996. This volume is the second edition. In addition to some general instructions, the Committee has included recommended instructions for most CHIPS and TPR grounds, including those grounds most likely to result in a jury trial. The Committee intends to complete work on the remaining jurisdictional grounds within the next year. These instructions represent a consensus of the full Committee, although most were arrived at only after many hours of disagreement and debate. The Committee recognizes, of course, that the facts of an individual case under the Children's Code may often require considerable modification and adaptation of these recommended instructions. As with the civil and criminal instructions, these instructions are suggested models. Their use is not required.

Instruction 100 provides a brief introduction for the jury panel in a Children's Code trial, and the "100" series is reserved for other general instructions applicable to both CHIPS and TPR cases. Instructions for trials based on CHIPS petitions are numbered in a series beginning with 200, and those for trials based on TPR petitions are numbered in a series beginning with 300. A composite instruction incorporating standard civil and criminal instructions is presented in Instruction 150. Consistent with the format used by the other instruction committees, the recommended instruction language is set forth first, followed by general comments and specific

notes where appropriate. When the instruction itself does not recite the special verdict questions, recommended special verdict language is also included.

The jurisdictional grounds in the Children's Code often contain ordinary terms such as "neglect," "inadequate," or "substantial risk of physical harm," which have no particular legal meaning. As a general rule, the Committee has sought to avoid defining ordinary words or phrases when the definition adds no clarity to the statutory terms. If a judge prefers to provide more by way of definitions, however, we do not mean to suggest that it would be error to expand upon terms defined in the instructions.

To avoid the many alternative designations necessary to accommodate the variety of parties who might be present for a CHIPS or TPR trial, the Committee decided that the instructions would be more readable and useful if all were drafted for a one parent-one child case. Thus, instead of "[Parent(s)/Guardian(s)] [is/are]," the instructions simply read "(Parent) is." Instead of "Child(ren) (has/have)," the instructions read "(Child) has."

While the comments and endnotes address some of the legal issues pertinent to these instructions, the Committee has not attempted to identify or discuss all of the questions which might arise as to a particular jurisdictional ground and tried not to duplicate the resource material in the *Juvenile Benchbook*.

Following the enactment of 1995 Wisconsin Act 275 in May 1996, the Committee reviewed each of the instructions published in the first edition. New CHIPS and TPR instructions were added, many existing instructions were revised, and some instructions were no longer required. However, because the legislation applied to petitions filed on or after 1996, the instructions published in the first edition will still apply to petitions pending before that effective date. (An analysis of the effective dates of the provisions of 1995 Wisconsin Act 275 appears in the "Special Materials" section, following Wis JI-Children 375. While the Committee will attempt to issue revised instructions to address material changes in the law, judges should remain alert to any legislation passed after the issuing date of an instruction.

Each member who volunteered for service on this Committee has considerable experience with the Children's Code and was forewarned about the many ambiguities and contradictions in Wis. Stat. Ch. 48. Even so, the endeavor to reduce these jurisdictional requirements to jury instructions has proved more daunting and difficult than anyone imagined. It is with considerable satisfaction and pride that the Committee offers this published volume to the trial judges of Wisconsin. The Committee, of course, welcomes your comments and suggestions about these instructions and about any additions you might find helpful.

October 1997   **Wisconsin Juvenile Jury Instructions Committee**