

INTRODUCTION TO THE 1962 EDITION

The Wisconsin Board of Criminal Court Judges, realizing that no ready reference work was available to assist the bench and bar of the State of Wisconsin in the preparation of jury instructions in criminal cases, authorized and directed our committee, consisting of five trial judges, to study the problem and submit to the Board such suggested instructions as, in the committee's opinion, would assist judges and trial lawyers in the submission of criminal cases to juries.

Prof. Frank J. Remington, of The University of Wisconsin Law School, and Mr. William Platz, Assistant Attorney General of Wisconsin, graciously accepted our invitation to become unofficial members of the committee and have made substantial contributions to what success we may have achieved. The University of Wisconsin Extension Law Department, under the direction of Prof. William Bradford Smith, has provided research assistants and has paid all expenses necessarily incurred in the preparation of these instructions.

The committee has met on an average of once a month for the past three years, such meetings lasting from one to three days. All members, both official and unofficial, have been most regular in their attendance at meetings. These were the committee's principal objectives:

1. To prepare instructions that would accurately and concisely state the law in a way that would be meaningful and helpful to a jury.
2. To make readily available such instructions as a trial judge would likely need in the trial of a criminal case to a jury.
3. To revise instructions that had been in general use prior to the enactment of the Criminal Code of Wisconsin, which became effective July 1, 1956, and to make such changes therein as seemed advisable as a result of such enactment; and generally, to relate the instructions to the new Criminal Code.
4. To make certain that all such instructions were in conformity with the decisions of the Wisconsin Supreme Court.

In the progress of our work the research staff presented proposed drafts. These drafts were prepared after a study of all available material. At our meetings the committee analyzed every instruction minutely, giving thorough consideration to every word and phrase in the prepared draft and to all available

authorities and precedents which seemed to be pertinent. Many instructions were corrected and rewritten many times. Finally, each instruction had the unanimous approval of the committee. Certainly, we make no claim that these instructions are free from error. We proposed to continue our work as a permanent committee, adding new instructions from time to time, and correcting previously approved instructions when errors are called to our attention. We invite suggestions from the bench and bar. We hope this work will, to some extent at least, achieve its objectives.

Gerald J. Boileau, Chairman
Committee on Jury Instructions -
Criminal

PREFACE TO THE 1962 EDITION

Wisconsin Jury Instructions-Criminal is published in loose-leaf form to facilitate additions, revisions, and corrections to the instructions. The committee on criminal instructions is continuing its work and is actively engaged in drafting additional instructions. The Committee intends to submit for publication an instruction covering each of the substantive offenses in the criminal code for which a jury instruction is needed. When the instructions for the criminal code are completed, the committee plans to draft instructions on those offenses covered by the motor vehicle code which are most frequently involved in a jury trial.

In addition to the general instructions, instructions on defenses to criminal liability, and instructions on certain crimes, this book includes instructions on paternity proceedings and ordinance violations.

Unlike instructions drafted for the purpose of a particular case, each instruction was, necessarily, drafted to cover the particular rule of law involved without reference to a specific fact situation. While the general instructions and the instructions on defenses and defensive matters may frequently be used without change, instructions on the substantive offenses may often have to be modified to fit the needs of the particular case. The user, therefore, should consider each instruction a model to be examined carefully before use for the purpose of determining what modifications are necessitated by the facts of the particular case. In addition, the effect of the instructions upon each other must be considered. When, for example, conspiracy or solicitation is submitted, or where separate included offenses are submitted, it may be necessary to modify the instructions.

It is suggested that the comment and the footnotes to the instructions be read fully and carefully before the instruction is used, in order that the user be informed of any conditions prerequisite to its use, alternative material for particular cases, and of other cautionary information. Words and phrases which are to be used alternatively appear in parentheses and italics. Words and phrases which are not appropriate to every case, but which should be given in some fact situations, are in brackets. Editorial directions which alert the user to alternatives or to the need to insert material or other instructions are found in brackets in the body of the instructions or in the comment.

To the extent possible, the organization of the instructions follows the organization of the criminal code. A comparative table of criminal code or statute section numbers and corresponding instruction numbers is found at the beginning of the book for convenient reference. Thus, the user can readily find

the instruction or instructions covering the particular criminal code section or statute involved.

The book itself may be cited as "Wis JI-Criminal" and each instruction by adding the appropriate number. For example, "FIRST DEGREE MURDER: CAUSE NOT IN ISSUE" may be cited as "Wis JI-Criminal 1100." It is suggested, however, that these instructions be referred to by their citations only when the user requests that the instruction be given verbatim. If the attorney modifies one of these instructions, it is requested that he point out the nature of the change and the reason therefore.

John H. Bowers
Editor