

**308 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS:  
ABANDONMENT: WHEN CHILD UNDER ONE YEAR: CHIPS  
ABANDONMENT OR CRIMINAL ABANDONMENT [WIS. STAT.  
§ 48.415(1)(a)1r.]**

**NO INSTRUCTION IS RECOMMENDED.**

**COMMENT**

Wis JI-Children 308 comment was approved by the Committee in 1999 and revised in 2004.

Wis. Stat. § 48.415(1)(a)1r 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:

(1) Abandonment. (a) Abandonment, which, subject to par. (c) shall be established by proving that:

1r. That a court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when the child was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

The Committee concludes that a jury instruction for this ground is not necessary nor appropriate. The statute provides that a CHIPS finding based on abandonment or the fact of conviction in an underlying criminal proceeding, as evidenced by the final judgment of conviction, in combination with the fact that the child was under one year of age at the time of abandonment is conclusive in establishing this ground for termination. See *Lee v. State Board of Dental Examiners*, 29 Wis.2d 330, 139 N.W.2d 61 (1966); *In re Estate of Safran*, 102 Wis.2d 79, 306 N.W.2d 27 (1981). Whether the conviction resulted from a trial, guilty plea, or no contest plea, the judgment of conviction is admissible and determinative. *Lee, supra* at 334-35; *Safran, supra* at 97.

**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.

**Time of Adjudication.** The Committee does not believe that the adjudication must occur before the child's first birthday. Instead, the controlling issue is the conduct of the parent in relation to the child. There were three scenarios considered by the Committee: (1) where the adjudication occurs before the child's first birthday, (2) where the criteria for abandonment are met before the child is 1 years old, but the petition is filed after the first birthday, and (3) where the conduct establishing the abandonment straddles the child's first birthday. The Committee concludes that this TPR ground applies in the first two scenarios, but not the third.