

370 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS: HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT [WIS. STAT. § 48.415(8)]

NO INSTRUCTION IS RECOMMENDED.

COMMENT

Wis JI-Children 370 comment was approved by the Committee in 1997 and revised in 1999, 2001, and 2004. The comment was revised in 2011.

Wis. Stat. § 48.415(8) 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:

(8) Homicide or solicitation to commit homicide of parent. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

The Committee concluded that a jury instruction for this ground is neither necessary nor appropriate. The statute provides that the fact of conviction in the underlying criminal proceeding, as evidenced by the final judgment of conviction, 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.

Use of Summary Judgment and Directed Verdicts. The Wisconsin Supreme Court has held that summary judgment is available in the first phase of a TPR proceeding at which parental unfitness is determined. *In re Termination of Parental Rights to Alexander V.*, 2004 WI 47, 271 Wis.2d 1, 678 N.W.2d 856. See Wis JI-Children SM-2 which discusses this decision and the use of summary judgments and directed verdicts.

Conviction. The Wisconsin Court of Appeals has held that the term "conviction," as used in Wis. Stat. § 48.415(5)(a) (child abuse), means a "conviction after the appeal as of right has been exhausted. The appeal as of right is limited to the right to appeal to the court of appeals under sec. 808.03, Stats." *Monroe County v. Jennifer V.*, 200 Wis.2d 678, 690, 548 N.W.2d 837 (Ct. App. 1996).

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