

**FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS**

The Committee has adopted the following amended model civil jury instructions effective October 31, 2019.

ADOPTED

M Civ JI 97.36 Definitions

(1) Neglect means harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including, but not limited to, the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

(2) Child neglect means harm or threatened harm to a child's health or welfare by a parent, legal guardian or any other person responsible for the child's health or welfare that occurs through either of the following:

(a) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or by the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter or medical care.

(b) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(3) The legal definition of cruelty is the same as the common understanding of the word cruelty. It implies physical or emotional mistreatment of a child.

(4) Depravity means a morally corrupt act or practice.

(5) The legal definition of criminality is the same as the common understanding of the word criminality. Criminality is present when a person violates the criminal laws of the State of Michigan or of the United States. Whether a violation of the criminal laws of the State of Michigan or of the United States by a parent, guardian, nonparent adult or custodian renders the home or environment of a child an unfit place for the child to live in is for you to decide based on all of the evidence in the case.

(6) A child is without proper custody or guardianship when he or she is: 1) left with, or found in the custody of, a person other than a legal parent, legal guardian or other person authorized by law or court order to have custody of the child, and 2) the child was originally placed, or came to be, in the custody of a person not legally entitled to custody of the child for either an indefinite period of time, no matter how short, or for a definite, but unreasonably long, period of time. What is unreasonably long depends on all the

circumstances. It is proper for a parent or guardian to place his or her child with another person who is legally responsible for the care and maintenance of the child and who is able to and does provide the child with proper care and maintenance. A baby sitter, relative or other care-giver is not legally responsible for the care and maintenance of a child after the previously agreed-upon period of care has ended.

(7) Education means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a child, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(8) A child is abandoned when the child's [parent(s)/guardian/custodian] leave(s) the child for any length of time, no matter how short, with the intention of never returning for the child. The intent of the [parent(s) / guardian / custodian] to abandon the child may be inferred from the [parent's / parents' / guardian's / custodian's] words or actions surrounding the act of leaving the child.

(9) "Commercial sexual activity" means one or more of the following for which anything of value is given or received by any person:

(i) An act of sexual penetration or sexual contact.

(ii) Any conduct constituting child sexually abusive activity or child sexually abusive material.

(iii) Any sexually explicit performance.

Note on Use

Only read those statutory provisions that apply to the facts of the case.

Pursuant to MCL 750.462a(c)(i), sexual penetration or sexual contact are to be defined as in MCL 750.520a. Pursuant to MCL 750.462a(c)(ii), conduct in violation of MCL 750.145c constitutes commercial sexual activity. Pursuant to MCL 750.462a(c)(iii), a sexually explicit performance is to be defined as in MCL 722.673(g).

Comment

MCL 712A.2(b)(1)(B) and (C), MCL 722.602(1)(b),(d); MCL 722.622(k); MCL 750.145c.

History

M Civ JI 97.36 was added March 2005. Amended July 2017, October 2019.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

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Reporter: Timothy J. Raubinger

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