

Colorado Jury Instructions, 4th - Civil  
April 2016 Update

Colorado Supreme Court Committee on Civil Jury Instructions

Chapter 41. Children's Code—Dependency and Neglect

41:10 Environment Injurious to Child's Welfare—Defined

A child's environment is injurious to (his) (her) welfare when all the following exist:

- (1) The environment is harmful to the welfare of the child;
- (2) The environment is under the control of, or is subject to change by, the child's (parents) (guardian) (or) (legal custodian); and
- (3) The environment is sufficiently injurious to the child's welfare that any reasonable (parents) (guardian) (or) (legal custodian) would act to change it.

Notes on Use

1. Use whichever parenthesized words or phrases are appropriate.
2. This instruction should be given whenever numbered Question 4 in Instructions 41:17 and 41:18 is submitted to the jury.

Source and Authority

This instruction, defining more specifically the terms used in § 19-3-102(1)(c), C.R.S., is based on 2 H. CLARK, DOMESTIC RELATIONS § 21.7 (2d ed. Practitioner's ed. 1987). *See also* **People in Interest of S.N.**, 2014 CO 64, ¶12 (courts may consider potential prospective harm in determining whether environment is injurious to child's health); **People in Interest of D.L.R.**, 638 P.2d 39 (Colo. 1981) (evidence held sufficient even though the child, an infant, had never been in the custody of its parents); **People in Interest of V.A.E.Y.H.D.**, 199 Colo. 148, 605 P.2d 916 (1980) (statutory language is not unconstitutionally vague nor overly broad); **People in Interest of T. H.**, 197 Colo. 247, 593 P.2d 346 (1979) (evidence of injurious environment held insufficient); **People in Interest of S.G.L.**, 214 P.3d 580 (Colo.App. 2009) (no support for finding of injurious environment as to father based solely on harmful conduct of mother, who lived in a different home); **People in Interest of T.T.**, 128 P.3d 328 (Colo.App. 2005), *cert. denied* (2006) (infant with special needs could be in injurious environment in mother's home, while older more independent child was not); **People in Interest of T.R.W.**, 759 P.2d 768 (Colo.App.), *cert. denied* (1988) (citing with approval this instruction as it was previously worded).

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Chapter 41. Children's Code—Dependency and Neglect

41:17 Special Verdict—Mechanics for Submitting

You are instructed to answer the following question(s) that will be on a form for Special Verdict:

(QUESTION 1: Did the respondent, *[name]*, abandon *[name of child]*?)

(QUESTION 2: Did the respondent, *[name]*, [mistreat or abuse (*name of child*)] [or] [tolerate or allow another person to mistreat or abuse (*name of child*)] without taking lawful means to stop such mistreatment or abuse and prevent it from being repeated[?])

(QUESTION 3: Is *[name of child]* lacking proper parental care as a result of respondent, *[name]*'s, acts or failures to act?)

(QUESTION 4: Is *[name of child]*'s environment injurious to [his] [her] welfare as a result of the respondent, *[name's]*, acts or failures to act?)

(QUESTION 5: Is the respondent, *[name]*, failing or refusing to provide *[name of child]* with proper or necessary subsistence, education, medical care, or any other care necessary for [his] [her] health, guidance, or well-being?)

(QUESTION 6: Is *[name of child]* [homeless] [or] [without proper care], through no fault of the respondent, *[name]*?)

(QUESTION 7: Is *[name of child]* not living at home with the respondent, *[name]*, through no fault of the respondent?)

(QUESTION 8: Did *[name of child]* run away from home or is [he] [she] otherwise beyond the control of the respondent, *[name]*?)

(QUESTION 9: Did *[name of child]* test positive at birth for [a schedule I] [a schedule II] controlled substance[?])

(QUESTION 10: Is *[name of child]* dependent or neglected based upon a pattern of habitual abuse?)

Before you return the Special Verdict answering (this) (these) question(s), you must all agree upon the answer(s) to (each of) the question(s). Upon arriving at such agreement, your foreperson will insert (the) (each) answer in the verdict form and then he or she and all the jurors will sign it (upon completion of all answers).

**Notes on Use**

1. The court should use only those numbered questions on which there is sufficient evidence, renumbering the questions as is necessary and using those bracketed or parenthesized words or phrases which are appropriate.

2. For instructions defining the operative terms in questions 1, 3, 4, 8 and 9 of this instruction, see Instructions 41:6, 41:7, 41:10, 41:13, 41:14, and 41:15, respectively.

3. If Question 9 is applicable, an additional instruction should be used defining a schedule I or schedule II controlled substance as is appropriate to the case. *See* § 19-3-102(1)(g), C.R.S.

4. Under numbered paragraph 7, a non-custodial parent may not use his or her own admission that the child is not living with him or her through no fault of his or her own to have the child adjudicated neglected or dependent with respect to the custodial parent, although the literal language of the statute would seem to permit it. **People in Interest of T.R.W.**, 759 P.2d 768 (Colo.App.), *cert. denied* (1988) (construing previous version of § 19-3-102(1)(e), C.R.S.).

5. Note 4 of Notes on Use to Instruction 4:4 is also applicable to this instruction, as is Note 4 of Notes on Use to Instruction 4:15.

6. In cases involving more than one parent and/or more than one child, this instruction must be modified to require the jury to consider, for each child, the actions or omissions of each parent and each parent's availability, ability, and willingness to provide reasonable parental care. **People In Interest of J.G.**, 2014 COA 182, ¶31, *cert. granted* (2015).

7. In cases involving more than one parent, this instruction must be modified to require the jury to identify the parent whose circumstances created the injurious environment to the child, if any. **People In Interest of J.G.**, 2014 COA 182, ¶32, *cert. granted* (2015).

#### Source and Authority

This instruction is based on § 19-3-102, C.R.S. For a general discussion of the statute, see **People in Interest of S.S.T.**, 38 Colo.App. 110, 553 P.2d 82 (1976). This instruction is also based on **People In Interest of J.G.**, 2014 COA 182, *cert. granted* (2015).

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# JG instructions

INSTRUCTION NO. 11

A child's environment is injurious to the child's welfare when all the following exist:

- (1) The environment is harmful to the welfare of the child;
- (2) The environment is under the control of, or is subject to change by, the child's parents; and
- (3) The environment is sufficiently injurious to the child's welfare that any reasonable parents would act to change it.

# JG instructions

INSTRUCTION NO. 17

You are instructed to answer the following questions that will be on a form for Special Verdict:

QUESTION 1: Did the respondent, [REDACTED] abandon [REDACTED]

QUESTION 2: Is [REDACTED] lacking proper parental care as a result of one of her respondent parents' acts or failures to act?

QUESTION 3: Is [REDACTED] lacking proper parental care as a result of one of her respondent parents' acts or failures to act?

QUESTION 4: Is [REDACTED] lacking proper parental care as a result of one of his respondent parents' acts or failures to act?

QUESTION 5: Is [REDACTED] lacking proper parental care as a result of one of his respondent parents' acts or failures to act?

QUESTION 6: Is [REDACTED] homeless, without proper care, or not domiciled with a parent of this child through no fault of such parent?

QUESTION 7: Is [REDACTED] homeless, without proper care, or not domiciled with a parent of this child through no fault of such parent?

QUESTION 8: Is [REDACTED] homeless, without proper care, or not domiciled with a parent of this child through no fault of such parent?

QUESTION 9: Is [REDACTED] homeless, without proper care, or not domiciled with a parent of this child through no fault of such parent?

QUESTION 10: Is [REDACTED] environment injurious to the child's welfare?

QUESTION 11: Is [REDACTED] environment injurious to the child's welfare?

QUESTION 12: Is [REDACTED] environment injurious to the child's welfare?

QUESTION 13: Is [REDACTED] environment injurious to the child's welfare?

Before you return the Special Verdict answering these questions, you must all agree upon the answers to each of the questions. Upon arriving at such agreement, your foreperson will insert each answer in the verdict form and then he or she and all the jurors will sign it upon completion of all the answers.