

**601 INSTRUCTION PRIOR TO TRIAL UPON A PLEA OF NOT GUILTY  
JOINED WITH A PLEA OF NOT GUILTY BY REASON OF MENTAL  
DISEASE OR DEFECT**

**The Defendant's Two Pleas**

The defendant, (name of defendant), has entered two pleas to the charge of (charge):  
not guilty and not guilty by reason of mental disease or defect.<sup>1</sup>

**Two Phase Trial**

The law requires that the issues raised by the two pleas be decided in a continuous trial that is separated into two phases.<sup>2</sup> Your verdict will be taken at the end of each phase. You are to consider only the issues presented to you during each phase. You are not to consider any issues other than those presented to you for each verdict.

CONTINUE WITH THE FOLLOWING IF A COMPLETE DESCRIPTION OF  
THE TWO PHASES IS DESIRED:<sup>3</sup>

**The First Phase**

In the first phase of this trial, you will be asked to determine whether the defendant is guilty of the charge of (charge). You will make this determination solely upon the facts which deal with the actual incident alleged in the information. During this first phase, you will not be asked to determine whether at the time of the incident the defendant was suffering from mental disease or defect.

If, after the first phase of the trial, you find the defendant not guilty, the trial will be over. If you find the defendant guilty, the trial will move to a second phase.

### The Second Phase

During the second phase, you will be asked to determine whether the defendant is responsible for criminal conduct. Wisconsin law provides that a person is not responsible for criminal conduct if, at the time it was committed, the person had a mental disease or defect and as a result lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform the conduct to the requirements of law. If the trial proceeds into this second phase, you will be instructed more fully as to your duties at that time.

We will now begin the first phase of the trial. I again caution you that this first phase is concerned solely with the question of whether the defendant committed the crime of (charge) as set forth in the information.

#### EVIDENCE TAKEN ON THE ISSUE OF GUILT.

#### COMMENT

Wis JI-Criminal 601 is part of a series of instructions which replaces the instructions formerly numbered 600-CPC through 655-CPC. Wis JI-Criminal 601 and comment were originally published in 1980, revised in 1984, and republished without change in 1988 and 1990. The 2003 revision involved adoption of the new format and changes in the text. It was republished without change in 2011.

1. This instruction is drafted for use where the plea is based on the presence of a mental disease or mental defect. If a case involves a claim that the combined effect of a "mental disease" and a "mental defect" is involved, the term "mental disease and defect" should be used throughout. State v. Duychak, 133 Wis.2d 307, 395 N.W.2d 795 (Ct. App. 1986), dealt with that situation. The court held that it was not error to phrase the jury instructions in the conjunctive – mental disease and defect – since the theory of defense was that the defendant suffered from both a disease and a defect, the combined effect of which was the lack of substantial capacity to appreciate the wrongfulness of his conduct. The court noted that to use "or" would have frustrated the proffered defense; and to use "and/or" would not have been desirable.

2. Informing the jury of the two phases of the trial is required by § 971.165(1)(b).

3. In the Committee's judgment, the first two paragraphs of the instruction are sufficient to advise the jury of the nature of the two phases of the bifurcated trial. The rest of the instruction is considered to be optional, for use where the judge wishes to give a more complete description.