

605B VERDICT: NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT

Question 1: At the time the crime was committed, did the defendant have a mental disease or defect?

Answer: _____
Yes or No

If you answer "yes" to question 1, answer question 2.

Question 2: As a result of the mental disease or defect, did the defendant lack substantial capacity either to appreciate the wrongfulness of the conduct or to conform that conduct to the requirements of law?

Answer: _____
Yes or No

Dissenting Juror(s): _____ as to Question(s) _____

_____ as to Question(s) _____

COMMENT

Wis JI-Criminal 605B was originally approved by the Committee in October 2002. It was republished without change in 2011.

This provides a suggested verdict for the jury's finding at the second stage of the bifurcated trial.

The verdict should be changed to refer to "mental disease and defect" if the plea is based on the combined effect of a mental disease and a mental defect. *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.