

650 ADVICE TO A PERSON FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT

THE FOLLOWING SHOULD BE READ TO A PERSON WHO IS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT AND COMMITTED TO THE DEPARTMENT OF HEALTH SERVICES

"The court is required to inform you that Section 941.29 of the Wisconsin Statutes provides that if you possess a firearm at any time after being found not guilty of a felony by reason of mental disease or defect you may be sentenced to a term of imprisonment not to exceed 10 years or to pay a fine not to exceed \$25,000, or both.¹

INCLUDE THE FOLLOWING IF THE PERSON HAS BEEN FOUND NOT GUILTY OF A VIOLENT FELONY BY REASON OF MENTAL DISEASE OR DEFECT²

["The court is required to inform you that Section 941.291 of the Wisconsin Statutes provides that if you possess a body armor at any time after being found not guilty of a violent felony by reason of mental disease or defect you may be sentenced to a term of imprisonment not to exceed 15 years or to pay a fine not to exceed \$50,000, or both.]

"The court has ordered that you be committed to the Department of Health Services and placed in an institution for the reason that you have been found not guilty of (name of crime) by reason of mental disease or defect. You have the right to appeal the finding that you committed (name of crime).³ You also have the right to appeal this court's decision to place you in an institution.⁴ And you have the right to ask the court to order that you be released from the institution on conditions after you have been there for at least six months.⁵

"You should discuss all of these matters with your attorney. Your attorney is directed to explain these rights to you and to take all necessary actions on your behalf to assure that any rights you wish to pursue are preserved."

COMMENT

This was originally published as SM-50A in 1974 and was revised in 1980 and 1990. It was revised and renumbered as JI 650 in 2004. This revision was approved by the Committee in December 2010 and involved minor editorial changes.

With the exception of the advice regarding possession of a firearm and body armor (see notes 1 and 2, below), the advice provided here is not explicitly required by statute or case law. However, the Committee recommends that it be given, since similar advice is required for all defendants convicted of criminal offenses. See § 973.18(2) and SM-33, INFORMATION ON POSTCONVICTION RELIEF.

1. Section 971.17(1g) requires that "the court shall inform the defendant of the requirements and penalties under s. 941.29." Section 941.29(1) and (2) provide that it is a Class G felony for a person "found not guilty of a felony in this state by reason of mental disease or defect" to possess a firearm. Subsection (7) of that statute provides that the section does not apply if a court subsequently determines that the person is no longer insane or no longer has a mental disease, defect, or illness and is not likely to act in a manner dangerous to public safety. The recommended advice in this instruction does not include the exception described in subsection (7).

2. Section 971.17(1h) requires that "[if] the defendant . . . is found not guilty of a violent felony, as defined in s. 941.291(1)(b), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.291." Section 941.291 provides that it is a Class E felony for a person to possess body armor if the person "has been found not guilty of a violent felony in this state by reason of mental disease or defect." § 941.291(2)(d) and (3).

3. Section 971.165(3)(b) provides that a judgment of not guilty by reason of mental disease or defect "is interlocutory to the commitment order under s. 971.17 and reviewable upon appeal therefrom."

4. The standards for commitment to an institution are found in § 971.17(3)(a). If there is a claim that the standards were not met, it is assumed that the claim would be raised in an appeal from the commitment order. Section 971.165(3)(b) refers to appeal from that order. See note 3, supra.

5. The standards and procedures for a petition for conditional release are set forth in § 971.17(4)(a). Conditional release replaces reexamination under the former statutes. See Wis JI-Criminal 660-662.