

THIS INSTRUCTION APPLIES ONLY TO REEXAMINATIONS CONDUCTED FOR PERSONS ADJUDICATED NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT FOR OFFENSES COMMITTED PRIOR TO JANUARY 1, 1991.¹

660 PRELIMINARY INSTRUCTION: REEXAMINATION OF PERSON COMMITTED AS NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT [§ 971.17(2)]

[THIS INSTRUCTION IS TO BE GIVEN TO THE JURY AT THE BEGINNING OF THE HEARING HELD TO REEXAMINE A PERSON COMMITTED AS NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT.]

The petitioner, (name), has requested a reexamination of his mental condition as provided by Wisconsin law. The petitioner was found to have committed a criminal offense but was found to be not responsible because he suffered from a mental disease or defect at the time of the offense. Following his trial, he was committed to the custody of the Wisconsin Department of Health Services.

The purpose of this hearing is to determine whether the petitioner, (name), may be safely discharged or released on conditions without danger to himself or to others, or whether he should be recommitted to the Wisconsin Department of Health Services to be placed in an appropriate institution for continued custody, care, and treatment.² After hearing the testimony, you will be asked to make this determination.

COMMENT

Wis JI-Criminal 660 was originally published in 1980 and revised in 1984. It was republished without change in 1988 and revised in 1990 and 1992. This revision was approved by the Committee in December 2010 and involved minor editorial changes.

1. Chapter 334, Laws of 1989, changed reexamination procedures for persons found not guilty by reason of mental disease or defect for offenses committed after January 1, 1991. The right to reexamination is

replaced by the right to petition for conditional release. See the discussion at Wis JI-Criminal 600, Introductory Comment. Reexamination procedures addressed by Wis JI-Criminal 660-662 continue to apply to persons committed for offenses occurring before January 1, 1991. § 971.17(8).

2. State ex rel. Gebarski v. Milwaukee County Circuit Court, 80 Wis.2d 489, 259 N.W.2d 531 (1977). The continued viability of the Gebarski dangerousness standard is open to question. See the discussion of Fouca v. Louisiana, United States Supreme Court, May 18, 1992, in Wis JI-Criminal 600, Introductory Comment, at V.,C., and in the comment to Wis JI-Criminal 661.