

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.<sup>1</sup>

## 662 VERDICTS SUBMITTED FOR REEXAMINATION UNDER § 971.17(2)

The following three forms of verdict<sup>2</sup> will be submitted to you for your consideration concerning the reexamination of (name of petitioner).

One reading: "We, the jury, find (name of petitioner) should be recommitted to the custody of the department at an appropriate institution."

One reading: "We, the jury, find (name of petitioner) may be safely released from (name of institution) upon such conditions as the court deems necessary."<sup>3</sup>

And the other reading: "We, the jury, find (name of petitioner) may be safely discharged from the custody of the department."

It is for you to determine which one of the forms of verdicts submitted you will bring in as your verdict.

### COMMENT

Wis JI-Criminal 662 was originally published in 1980 and republished without change in 1984, 1988, 1990, and 1992. The 1992 revision added to footnote two. Wis JI-Criminal 662 was republished without change in 2011.

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. The questions in the suggested verdict are those identified by the Wisconsin Supreme Court in State ex rel. Gebarski v. Milwaukee County Circuit Court, 80 Wis.2d 489, 502, 259 N.W.2d 531 (1977). The continued viability of the Gebarski dangerousness standard is open to question. See the discussion of Foucha

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.

3. If the jury determines that release on conditions is appropriate, it is the duty of the judge to establish those conditions. The Committee recommends that the judge contact the department to assure that the conditions imposed can be fulfilled.