

980 LIFETIME SUPERVISION OF SERIOUS SEX OFFENDERS — § 939.615

THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY AFTER THE INSTRUCTION ON THE OFFENSE CHARGED.

The information alleges not only that the defendant committed the crime of (name offense) but also that one of the defendant's purposes for committing that crime was the defendant's sexual arousal or gratification.

If you find the defendant guilty of (name offense), you must answer the following question:

"Did the defendant commit the crime of (name offense) for the defendant's sexual arousal or gratification?"

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the answer to the question is "yes."

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 980 was originally published in 1999 and revised in 2003 and 2007. This revision was approved by the Committee in June 2015; it updated the Comment to reflect changes made by 2013 Wisconsin Act 362.

Section 939.615 was created by 1997 Wisconsin Act 275; the statute applies to offenses committed on or after its effective date: June 26, 1998. It provides for lifetime supervision of persons convicted of certain "serious sex offenses." If a prosecutor seeks lifetime supervision, notice must be included in the charging document "before or at arraignment and before acceptance of any plea." See § 973.125.

Subsection (1)(b)1. of § 939.615 lists offenses that are always considered "serious sex offenses." Lifetime supervision may be ordered following conviction for these offenses without requiring new factual findings by the jury; the court needs to determine "that lifetime supervision of the person is necessary to protect the public." § 939.615(2)(a). 2005 Wisconsin Act 277 [effective date: April 20, 2006] amended the list of offenses in § 939.615(1)(b)1. to include § 948.085 Sexual assault of a child placed in substitute care, an offense created by Act 277.

Subsection (1)(b)2. of § 939.615 provides a second basis for ordering lifetime supervision:

A violation, or the solicitation, conspiracy or attempt to commit a violation, under ch. 940, 942, 943, 944 or 948 other than a violation specified in subd. 1., if the court determines that one of the purposes for the conduct constituting the violation was for the actor's sexual arousal or gratification.

Reference to Chapter 942 was added to § 939.615(1)(b)2. by 2013 Wisconsin 362 [effective date: April 25, 2014].

This second basis is the option addressed by this instruction. An instruction is necessary because § 939.615(2)(c) provides that "the court shall direct that the trier of fact find a special verdict as to whether the conduct constituting the offense was for the actor's sexual arousal or gratification."

The following form is suggested for the verdict:

We, the jury, find the defendant guilty of _____, under Wis. Stat. § _____, at the time and place charged in the information.

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the defendant commit the crime of (name offense) for the defendant's sexual arousal or gratification?"

Subsection (7) of § 939.615, as amended by 2001 Wisconsin Act 109, provides that it is a Class I felony if a person violates a condition of lifetime supervision by conduct that constitutes a felony. There is not a uniform instruction for that offense.