

993 WEARING A BULLETPROOF GARMENT — § 939.64

CAUTION: THIS INSTRUCTION IS TO BE USED ONLY FOR OFFENSES COMMITTED BEFORE FEBRUARY 1, 2003.

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

The information¹ alleges not only that the defendant committed the crime of _____ but also that the defendant did so while wearing a bulletproof garment.

If you find the defendant guilty, you must answer the following question:

"Did the defendant commit the crime of _____ while wearing a bulletproof garment?"

"Bulletproof garment" means a vest or other garment designed, redesigned, or adapted to prevent bullets from penetrating through the garment.²

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of _____ while wearing a bulletproof garment, you should answer the question "yes."

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

COMMENT

Wis JI-Criminal 993 was originally published in 1998. This revision was approved by the Committee in February 2003.

Section 939.64 was repealed by 2001 Wisconsin Act 109, effective February 1, 2003. This instruction is to be used only for charges based on conduct occurring before that date. The facts formerly addressed by § 939.64 have been recast as an aggravating factor to be considered in imposing a sentence. See § 973.017(3)(d).

Section 939.64 was created by 1983 Wisconsin Act 478. It provides for a penalty increase of up to ten years if a person commits a felony while wearing a bulletproof garment. 1995 Wisconsin Act 340 amended the statute by increasing the penalty enhancement from 5 to 10 years. (Effective date: June 1, 1996.)

As with similar provisions that increase the maximum penalty for a criminal offense, the Committee concluded that the penalty-increasing facts should be submitted to the jury as a special question. 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) (complaint).

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 _____ while wearing a bulletproof garment?"

1. Section 939.64 applies only to felonies. See § 939.64(2).
2. This is the definition provided in § 939.64(1).