

2500 SUGGESTED ORDER OF INSTRUCTIONS: COMMITMENT AS A SEXUALLY VIOLENT PERSON UNDER CHAPTER 980, WIS. STATS.

The following is a suggested order of instructions for proceedings under Chapter 980, Sexually Violent Persons Commitments. It is based on the list provided in Wis JI-Criminal 1. Most of the instructions may be given without change. Those that need to be changed appear in boldface. Drafts of those instructions are included here, with the changed material also indicated in boldface.

- 2501 Preliminary Instruction: Commitment As A Sexually Violent Person Under Chapter 980, Wis. Stats.
- 50 Preliminary Instruction: Juror's Conduct; Evidence; Transcripts Not Available; Credibility; Substantive Issues; Opening Statement
- 55 Notetaking Permitted
- 57 Instruction on Juror Questioning of Witnesses
- 58 Transcripts Not Available for Deliberations; Reading Back Testimony
- 100 Opening Instructions [modified]**
- 2502 Commitment As A Sexually Violent Person Under Chapter 980, Wis. Stats.
 - 103 Evidence Defined
 - 147 Improper Questions
 - 148 Objections of Counsel; Evidence Received Over Objection
 - 150 Stricken Testimony
 - 154 Summary of Evidence
 - 155 Exhibits
 - 157 Remarks of Counsel
 - 160 Closing Arguments of Counsel
 - 162 Agreed Facts [modified]**
 - 165 Judicially Noticed Facts
 - 180 Statements of Defendant [modified]**
 - 190 Weight of Evidence
 - 195 Juror's Knowledge
 - 200 Expert Testimony: General
 - 201 Opinion of Non-Expert Witness

- 205 Expert Testimony: Hypothetical Question
300 **Credibility of Witnesses [modified]**
315 **Respondent Elects Not To Testify [TO BE GIVEN ONLY IF REQUESTED BY RESPONDENT] [modified]**
325 Impeachment of Witness: Prior Conviction or Juvenile Adjudication
330 Impeachment of Witness: Character For Truthfulness
460 **Closing Instruction [modified]**
515 **Unanimous Verdict and Selection of Presiding Juror [modified]**
- 2503 Verdict: Commitment As A Sexually Violent Person Under Chapter 980, Wis. Stats.
525 Instruction After Verdict Received

Following are the instructions that need to be modified for a Chapter 980 case.

COMMENT

Wis JI-Criminal 2500 was originally published in 2011 and revised in 2014. This revision was approved by the Committee in October 2015; it reflected a change in the title of Wis JI-Criminal 180.

100 OPENING INSTRUCTIONS [modified]

Members of the jury:

The court will now instruct you upon the principles of law which you are to follow in considering the evidence and in reaching your verdict.

It is your duty to follow all of these instructions. Regardless of any opinion you may have about what the law is or ought to be, you must base your verdict on the law I give you in these instructions. Apply that law to the facts in the case which have been properly proven by the evidence. Consider only the evidence received during this trial and the law as given to you by these instructions and from these alone, guided by your soundest reason and best judgment, reach your verdict.

If any member of the jury has an impression of my opinion as to whether **or not the respondent is a sexually violent person**, disregard that impression entirely and decide the issues of fact solely as you view the evidence. You, the jury, are the sole judges of the facts, and the court is the judge of the law only.

162 AGREED FACTS [modified]

[IF THE AGREED FACTS GO TO AN ELEMENT OF THE CRIME, A PERSONAL WAIVER BY THE DEFENDANT IS REQUIRED.]

The **parties** have stipulated or agreed to the existence of certain facts, and you must accept these facts as conclusively proved. (In this case, the **parties** have stipulated to the following facts:)

[state the agreed facts]

180 STATEMENTS OF RESPONDENT

The State has introduced evidence of (a statement) (statements) which it claims (was) (were) made by the **respondent**. It is for you to determine how much weight, if any, to give to (the) (each) statement.

In evaluating (the) (each) statement, you must determine three things:

- whether the statement was actually made by the **respondent**. Only so much of a statement as was actually made by a person may be considered as evidence.
- whether the statement was accurately restated here at trial.
- whether the statement or any part of it ought to be believed.

You should consider the facts and circumstances surrounding the making of (the) (each) statement, along with all the other evidence in determining how much weight, if any, the statement deserves.

300 CREDIBILITY OF WITNESSES

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

[GIVE THE FOLLOWING PARAGRAPH ONLY WHEN THE **RESPONDENT** TESTIFIES.]

[The **respondent** has testified in this case, and you should not discredit the testimony just because the **respondent** is **the subject of a petition for commitment**. Use the same factors to determine the credibility and weight of the **respondent's** testimony that you use to evaluate the testimony of any other witness.]

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

315 RESPONDENT ELECTS NOT TO TESTIFY

[TO BE GIVEN ONLY IF REQUESTED BY **RESPONDENT**.]

The respondent has the right not to testify **in this proceeding**.

The **respondent's** decision not to testify must not be considered by you in any way and must not influence your verdict in any manner.

460 CLOSING INSTRUCTION

Now, members of the jury, the duties of counsel and the court have been performed. The case has been argued by counsel. The court has instructed you regarding the rules of law which should govern you in your deliberations. The time has now come when the great burden of reaching a just, fair, and conscientious decision of this case is to be

thrown wholly upon you, the jurors, selected for this important duty. You will not be swayed by sympathy, prejudice, or passion. You will be very careful and deliberate in weighing the evidence. I charge you to keep your duty steadfastly in mind and, as upright citizens, to render a just and true verdict.

You are to decide only whether **or not the respondent is a sexually violent person**. Any consequences of your verdict are matters for the court alone to decide and must not affect your deliberations.

[Give instructions on the verdicts submitted.]

515 UNANIMOUS VERDICT AND SELECTION OF PRESIDING JUROR

Before the jury may return a verdict which may legally be received, the verdict must be reached unanimously; all 12 jurors must agree in order to arrive at a verdict.

When you retire to the jury room, select one of your members to preside over your deliberations. That person's vote is entitled to no greater weight than the vote of any other juror.

If you need to communicate with the court while you are deliberating, send a note through a bailiff, signed by the presiding juror. To have a complete record of this trial, it is important that you communicate with the court only by a written note. If you have questions, the court will talk with the attorneys before answering so it may take some

time. You should continue your deliberations while you wait for an answer. The court will answer any questions in writing or orally here in open court.

When you have agreed upon your verdict, have it signed and dated by the person you have selected to preside.

After you have reached a verdict:

- The presiding juror will notify the bailiff that a verdict has been reached.
- Everyone will return to the courtroom.
- The verdict will be read into the record in open court.
- The court may ask each of you if you agree with the verdict.

Swear the officer.