

**INVOLUNTARY CIVIL COMMITMENT OF
SEXUALLY VIOLENT PREDATORS**

§§ 394.910 - 394.930 Fla. Stat.

1.01

PRELIMINARY INSTRUCTION

Responsibility of jury and judge.

You have now been sworn as the jury to try this case. This is a civil case filed by the petitioner, the State of Florida, against, the respondent, (respondent's name). The State alleges the respondent is a sexually violent predator and should be confined in a secure facility for long-term control, care, and treatment. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Steps in trial.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have an opportunity to address you to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention.

Following the final arguments by the attorneys, I will instruct you on the law.

Things to be avoided.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you are retired to the jury room to consider your verdict, after having heard all of these matters.

You must decide this case only on the evidence presented during the trial in your presence, and in the presence of the respondent, the attorneys and myself. You must not conduct any investigation of your own. Accordingly, you must not visit any of the places described in the evidence, or the scene of the occurrence that is the subject of the trial, unless I direct you to view the scene. Also, you must avoid reading newspaper headlines and articles relating to this case and trial. You must also avoid seeing or hearing television and radio comments or accounts of this trial while it is in progress.

Objections.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, the objection will either be overruled or sustained. If an objection is overruled, the witness will answer the question. If an objection is sustained or upheld, the witness cannot answer the question. If an objection is sustained, you must not speculate on what might have happened, or what the witness might have said, had the witness been permitted to answer the question. You should not draw any inference from the question itself.

The judge's conferences with attorneys.

During the trial, it may be necessary to confer with the attorneys out of your hearing to discuss matters of law and other matters that require consideration by me alone. It is impossible to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

Recesses.

During the trial we will take recesses. During these recesses you shall not discuss the case among yourselves or with anyone else, nor permit anyone to say anything to you or in your presence about the case. Further, you must not talk with the attorneys, the witnesses, or any of the parties about anything, until your deliberations are finished. In this way, any appearance of something improper can be avoided.

If during a recess you see one of the attorneys and he or she does not speak to you, or even seem to pay attention to you, please understand that the attorney is not being discourteous but is only avoiding the appearance of some improper contact with you. If anyone tries to say something to you or in your presence about this case, tell that person that you are on the jury trying this case, and ask that person to stop. If he or she keeps on, leave at once and immediately report this to the bailiff or court deputy, who will advise me.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in the case and give you a summary of the facts they expect the evidence will show.

Comment

This instruction is based upon Florida Standard Jury Instruction 1.1 (civil) and Kansas jury instructions regarding the civil commitment of sexually violent predators.

1.02

CLOSING ARGUMENT

Both sides have now rested their case.

The attorneys will now present their final arguments. Please remember that what the attorneys say is not evidence. However, do listen closely to their arguments; they are intended to aid you in understanding the case.

Comment

Derived from Florida Standard Criminal Jury Instruction 1.02, Closing Argument.

2.01

INTRODUCTORY INSTRUCTION

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you, to the facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, [and] [all facts that may be admitted or agreed to by the parties] [and] [any fact of which the court has taken judicial notice (explain as necessary)].

In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case. But you should not speculate on any matters outside the evidence.

Comment

This instruction is based upon Florida Standard Jury Instruction 2.1 (civil) and Kansas jury instructions regarding the civil commitment of sexually violent predators.

2.02

STATEMENT OF CASE

This is a civil case filed by the petitioner, the State of Florida, against the respondent, (respondent's name). The State alleges the respondent is a sexually violent predator and should be confined in a secure facility for long-term control, care, and treatment.

To prove the respondent, (respondent's name) is a sexually violent predator, the State must prove each of the following three elements by clear and convincing evidence:

- a. (Respondent) has been convicted of a sexually violent offense; and,**
- b. (Respondent) suffers from a mental abnormality or personality disorder; and**
- c. The mental abnormality or personality makes [him] [her] likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.**

A sexually violent offense is: Read only those "sexually violent offenses" applicable based on the allegations of the petition and the evidence presented.

- 1. Murder while engaged a sexual battery;**
- 2. Kidnapping of a child under the age of 13, and in the course of that offense committing a sexual battery or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;**
- 3. False imprisonment upon a child under the age of 13, and in the course of that offense committing a sexual battery or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;**
- 4. Sexual battery;**
- 5. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;**
- 6. [] If applicable, insert the name of the comparable other state or federal felony conviction which the state has proved. See §394.912(9)(g) Fla. Stat.**
- 7. An attempt, conspiracy, or criminal solicitation of, or to commit a sexually violent offense.**

8. **Any criminal act that has been determined beyond a reasonable doubt to be sexually motivated. However, before you can find the crime was sexually motivated, the State must prove, beyond a reasonable doubt, that one of the purposes for which the person committed the crime was sexual gratification. If you have a reasonable doubt about whether or not the crime was sexually motivated, then you should find the act was not sexually motivated.**

A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to find the crime was not sexually motivated if you have an abiding conviction that it was. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction that the act was sexually motivated, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then it has not been proven beyond every reasonable doubt.

Whether a crime was sexually motivated may have been previously determined.
See § 394.912(9)(h), Fla. Stat.

“Mental abnormality” means mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

“Likely to engage in acts of sexual violence” means a person’s propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

Comment

This jury instruction is based upon the definitions found in §§ 787.01, 787.02, 794.011, 800.04, 394.912, Fla.Stat.; Cheesbrough v. State, 255 so.2d 675 (Fla. 1971); Florida Standard Jury Instructions, Criminal; and, the Kansas jury instructions regarding the civil commitment of sexually violent predators.

2.03

BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE

Before the respondent, (respondent's name), can be confined in a secure facility, the State has the burden of proving, by clear and convincing evidence, that he is a sexually violent predator.

Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces in your mind a firm belief or conviction, without hesitation, about the matter in issue.

Comment

This instruction is based on Florida Standard Jury Instructions in Civil Cases: MI 11 (civil theft). See *In re: Standard Jury Instructions in Civil Cases*, Case No. 93-321 (Fla. October 8, 1998).

WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

- 1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?**
- 2. Did the witness seem to have an accurate memory?**
- 3. Was the witness honest and straightforward in answering the attorneys' questions?**
- 4. Did the witness have some interest in how the case should be decided?**
- 5. Does the witness' testimony agree with the other testimony and other evidence in the case?**
- 6. Was the testimony of the witness reasonable when considered in the light of all the evidence in the case and in the light of your own experience and common sense?**
- (Give the following paragraphs only as required by the evidence.)*
- 7. Has the witness been offered or received any money, preferred treatment or other benefit in order to get the witness to testify?**
- 8. Had any pressure or threat been used against the witness that affected the truth of the witness' testimony?**
- 9. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in court?**
- 10. Was it proved that the witness had been convicted of a felony or a crime involving dishonesty or false statement?**
- 11. Was it proved that the general reputation of the witness for telling the truth**

and being honest was bad?

You may rely upon your own conclusion about the witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

2.05

EXPERT WITNESSES

[You have heard opinion testimony [on certain technical subjects] from [a person] [persons] referred to as [an] expert witness[es].] [Some of the testimony before you was in the form of opinions about certain technical subjects.]

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

Comment

Based upon Florida Standard Jury Instruction 2.2b (civil), Expert Witnesses.

RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

- 1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.**
- 2. This case must be decided only upon the evidence that you have heard from the answers of the witness [and have seen in the form of the exhibits in evidence] and these instructions.**
- 3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.**
- 4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.**
- 5. Your duty is to determine if the respondent has been proven to be a sexually violent predator. You have nothing whatever to do with the nature or length of the confinement in the event you find the State has proven its case against the respondent.**
- 6. The respondent is entitled to the individual consideration and opinion of each of you.**
- 7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his testimony.**
- 8. Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on your views of the evidence, and on the law contained in these instructions.**

Comment

This instruction is a modified version of Standard Criminal Jury Instruction 2.05, Rules for Deliberation, the Kansas jury instructions regarding the civil commitment of sexual predators, and § 394.917(1), Fla. Stat.

2.07

CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Comment

This instruction is the same as Standard Criminal Jury Instruction 2.07, Cautionary Instruction.

2.08

VERDICT AND SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson. The foreperson presides over your deliberations, like the chair person of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case. The foreperson will bring the verdict back to the courtroom when you return.

Before the respondent may be confined to a secure facility as a sexually violent predator, your verdict must be unanimous; that is, all of you must agree to the same verdict. The verdict must be the verdict of each juror as well as the jury as a whole.

If the verdict is not unanimous but a majority of the jury determines that the respondent is a sexually violent predator, the case may be retried before another jury.

If three or more jurors determine that the respondent is not proven to be a sexually violent predator [he][she] will not be confined to a secure facility as a sexually violent predator and the case will not be retried before another jury.

The verdict must be in writing and for your convenience the necessary verdict form has been prepared for you.

(Read and explain verdict form.)

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have agreed to a constitution and to live by the law. No juror has the right to violate rules we all share.

Comment

Based upon § 394.917, Fla. Stat.; Standard Criminal Jury Instruction 2.09, Submitting Case to Jury.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
GENERAL CIVIL DIVISION

IN THE MATTER OF: _____)
(RESPONDENT'S NAME), _____)
_____) Case No. 99-XXXXX
Respondent. _____)
_____)

VERDICT

Complete paragraph A, B or C:
(Check only one)

- _____ A. The jury unanimously finds the respondent (name of respondent) is a sexually violent predator.
- _____ B. The jury unanimously find the respondent (name of respondent) is not proven to be a sexually violent predator.
- _____ C. The jury is unable to make a unanimous verdict but, _____ jurors find the respondent is a sexually violent predator, and _____ jurors find the respondent is not proven to be a sexually violent predator.

DATED this _____ day of _____, [year].

FOREPERSON

(Print Foreperson's name)