

125 IMPEACHMENT OF WITNESS: PRIOR CONVICTION OR JUVENILE ADJUDICATION

Evidence has been received that (one) (some) of the witnesses¹ in this trial (has) (have) been [convicted of crime(s)] [adjudicated delinquent]. This evidence was received solely because it bears upon the credibility of the witness. It must not be used for any other purpose.

NOTE

1. It is within the trial judge's discretion to refer to the witness by name. See *Koss v. State*, 217 Wis. 325, 258 N.W. 860 (1935).

COMMENT

This instruction was approved in 2017. It is adapted from Wis JI-Criminal 325.

The comment to Wis JI-Criminal 325 provides:

This instruction is to be given upon request when evidence of prior convictions is admitted to impeach a witness other than the defendant. See Wis JI-Criminal 327 for an instruction on impeachment of a defendant who has testified. Evidence of prior crimes admitted as "other acts" evidence under § 904.04(2) is addressed by Wis JI-Criminal 275.

The rationale for allowing the proof of prior convictions to impeach is that one who has been convicted of a crime is less likely to be a truthful witness. See *State v. Kruzycki*, 192 Wis.2d 509, 531 N.W.2d 429 (Ct. App. 1995); *State v. Kuntz*, 160 Wis.2d 722, 467 N.W.2d 531 (1991); *Liphford v. State*, 43 Wis.2d 367, 168 N.W.2d 549 (1969). But the admissibility is supposed to be limited to this purpose C the effect on credibility. Whenever evidence is admitted for a limited purpose, a jury instruction describing the limits must be given on request. See Wis. Stat. § 901.06.

In *Nicholas v. State*, 49 Wis.2d 683, 183 N.W.2d 11 (1971), the court addressed the common law rule in existence in Wisconsin before the adoption of the Rules of Evidence. The present rule under § 906.09 is the same. A testifying defendant, or any other witness, can be asked two questions: (1) "Have you ever been convicted of a crime?" and (2) "How many times?" If the witness answers truthfully, that ends it. If witness is not truthful, questions can be asked about each conviction, referring to them by the name of the offense. But the questioner may not go into the facts relating to the underlying crimes. Also see *State v. Sohn*, 193 Wis.2d 346, 535 N.W.2d 1 (Ct. App. 1995); and *State v. Midell*, 39 Wis.2d 733, 159 N.W.2d 614 (1968).

A trial court considering whether to admit evidence of prior convictions for impeachment purposes should consider the following factors: (1) the lapse of time since the conviction; (2) the rehabilitation or pardon of the person convicted; (3) the gravity of the crime; and (4) the involvement of dishonesty or false statement in the crime. *State v. Smith*, 203 Wis.2d 288, 295-96, N.W.2d (Ct. App. 1996), citing *State v. Kruzycki*, *supra* at 525. The court must also determine that the probative value of the evidence is not outweighed by the danger of unfair prejudice. See §§ 906.09(3) and 901.04.

Note that Wis. Rule 906.09 is not the same as the federal counterpart, Rule 609. Under the federal rule impeachment is limited to felonies and crimes involving dishonesty or false statement. And, there is generally a 10-year limit, that is, convictions older than 10 years are not admissible.