415 WITNESS: PRIOR CONVICTION

Evidence was received that a witness has been convicted of a criminal offense. You may consider this evidence in weighing the testimony of that witness and in determining the witness' credibility, but it may not be used for any other purpose.

COMMENT

This instruction was approved by the Committee in 1974 and revised in 1991 and 2010.

Wis. Stat. § 906.09(2) provides that evidence of crime should be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Moore v. State, 83 Wis.2d 285, 265 N.W.2d 540 (1978); Whitty v. State, 34 Wis.2d 278, 149 N.W.2d 557 (1967); State v. Hutnik, 39 Wis.2d 754, 159 N.W.2d 733 (1968). See also Fahrenberg v. Tengel, 96 Wis.2d 211, 291 N.W.2d 516 (1980); Voith v. Buser, 83 Wis.2d 540, 266 N.W.2d 304 (1978).

In construing a similar earlier statute, the court said in Underwood v. Strasser, 48 Wis.2d 568, 180 N.W.2d 631 (1970): "This statutory provision applies to civil actions as well as to criminal cases. No distinction between the two categories of cases is made in the statute."

In Fehrman v. Smirl, 25 Wis.2d 645, 131 N.W.2d 314 (1964), also construing the earlier statute, the court instructed jurors that in considering the testimony of S, they were entitled to take into consideration the fact that S had admitted prior conviction of a misdemeanor but that this fact did not disqualify S as a witness; the supreme court held that if the misdemeanor had been one such as a driving offense which did not affect credibility, the instruction would not have been proper.