

**116 MULTIPLE CHARGES OF THE SAME OFFENSE: DIFFERENT VICTIMS**

The defendant is charged with three separate counts of (name of offense).

The first count of the information in this case charges that:

[READ THE CHARGE IN THE FIRST COUNT.]

The second count of the information in this case charges that:

[READ THE CHARGE IN THE SECOND COUNT.]

The third count of the information in this case charges that:

[READ THE CHARGE IN THE THIRD COUNT.]

CONTINUE WITH ADDITIONAL COUNTS AS NECESSARY

The defendant has entered a plea of not guilty to each of these charges which means the State must prove every element of each offense charged beyond a reasonable doubt.

**Statutory Definition of the Crime**

(Name of offense), as defined in § \_\_\_\_\_ of the Criminal Code of Wisconsin is committed by one who (refer to the uniform instruction for the summary definition of the offense).

**State's Burden of Proof**

Before you may find the defendant guilty of any count of \_\_\_\_\_, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following \_\_\_ elements were present with respect to that count.

### Elements of the Crime That the State Must Prove

SET FORTH THE ELEMENTS AS PROVIDED IN THE UNIFORM INSTRUCTIONS, INCLUDING DEFINITIONS. THE WORDING OF SOME ELEMENTS MAY NEED TO BE CHANGED TO FIT THIS FORMAT. IF THE INSTRUCTION CALLS FOR A NAME TO BE USED, IT WILL USUALLY BE SUFFICIENT TO REFER TO "THE PERSON NAMED IN THAT COUNT."<sup>1</sup>

1. As to each count, \_\_\_\_\_.
2. As to each count, \_\_\_\_\_.
3. As to each count, \_\_\_\_\_.
4. As to each count, \_\_\_\_\_.

CONTINUE WITH ADDITIONAL ELEMENTS OR COUNTS AS NECESSARY

### Jury's Decision

THE COMMITTEE RECOMMENDS SEPARATE CLOSING PARAGRAPHS FOR EACH COUNT<sup>2</sup>

If you are satisfied beyond a reasonable doubt that all \_\_\_ elements of (name of offense) have been proved as to Count One, you should find the defendant guilty of (name of offense) as charged in Count One.

If you are not so satisfied, you must find the defendant not guilty as to Count One.

If you are satisfied beyond a reasonable doubt that all \_\_\_ elements of (name of offense) have been proved as to Count Two, you should find the defendant guilty of (name of offense) as charged in Count Two.

If you are not so satisfied, you must find the defendant not guilty as to Count Two.

If you are satisfied beyond a reasonable doubt that all \_\_\_ elements of (name of offense) have been proved as to Count Three, you should find the defendant guilty of (name of offense) as charged in Count Three.

If you are not so satisfied, you must find the defendant not guilty as to Count Three.

CONTINUE WITH ADDITIONAL COUNTS AS NECESSARY

#### COMMENT

Wis JI-Criminal 116 was approved by the Committee in August 2003.

This instruction is intended to illustrate how Wis JI-Criminal 115 and 484 might be modified for a case involving three charges of the same offense against one defendant. Some changes may also be necessary in the instruction for the underlying offense. It may be helpful to distinguish the counts by referring the name of the victim, the date of the offense, the premises involved, or a similar means of identifying each count. Wis JI-Criminal 116 EXAMPLE shows how the instruction might be adapted for a case involving multiple charges of sexual assault of a child.

The instruction was developed because it had come to the Committee's attention that there had been problems in developing clear and accurate instructions for the multiple count case. Repeating complete instructions for each count is not desirable or necessary. While no single approach is absolutely required or clearly preferable, certain constructions, such as using "either-or," "and-or," "either or both," etc., should, in the Committee's judgment, be avoided. This instruction is offered as an illustration of one way to approach the multiple count case. The objective is to avoid unnecessary repetition while clearly setting forth the facts necessary to constitute each crime charged.

1. For example, applying the model to burglary would yield the following:

1. As to each count, the defendant intentionally entered the building named in that count.
2. As to each count, the defendant entered the building without the consent of the person in lawful possession.
3. As to each count, the defendant knew that the entry was without consent.
4. As to each count, the defendant entered the building with intent to steal.

2. The Committee recommends that separate closing paragraphs be used for each count, as indicated in the instruction. This will assure that the jury focuses on the elements for each charge.

As an alternative, it may be possible to provide a single closing paragraph to cover all counts. Something like the following would be required:

If you are satisfied beyond a reasonable doubt that all \_\_\_ elements of (name of offense) have been proved as to any count, you should find the defendant guilty of (name of offense) as charged in that count.

If you are not so satisfied as to any count, you must find the defendant not guilty as to that count.