

128 CHARGES DISPOSED OF DURING TRIAL

At the beginning of the trial, I described the charges against the defendant. Count specify number, charging identify crime, has been disposed of¹ and is no longer part of this case. Count specify number, charging identify crime, remains. Do not guess about or concern yourselves with the reasons for this disposition. It must not affect your consideration of the charges that remain.

[Do not consider evidence that related only to the count that has been disposed of.]²

COMMENT

Wis JI-Criminal 128 was approved by the Committee in February 2014.

This instruction is intended to be used when charges are disposed of during trial. The jury would have been informed of all charges at the beginning of the trial and should be advised not to concern themselves with why those charges are no longer in the case.

1. The term "disposed of" is used because it is general enough to apply to two common situations: where a count is dismissed during trial and where a guilty plea is entered to a count after trial has begun.

2. The sentence in brackets should be given when the judge decides that it would be helpful to the jury after considering the specific facts in the case. Sometimes evidence may be easily distinguished as pertaining only to the disposed-of counts, as where the events leading to the charge occurred on a different date than the remaining counts. Other times, the evidence may relate to a single occurrence that supported the multiple charges and separating the evidence may not be possible. If there has been a motion to strike certain evidence – because it related only to a disposed-of count – the jury should be instructed to disregard the stricken evidence. Where the evidence relating to the disposed-of count is unfairly prejudicial to the defendant, the court may need to evaluate the need for a mistrial.