

**255 STATE NEED NOT PROVE EXACT DATE OF COMMISSION:
SPECIFIC DATE ALLEGED**

If you find that the offense charged was committed by the defendant, it is not necessary for the State to prove that the offense was committed on the precise date alleged in the (information) (complaint). If the evidence shows beyond a reasonable doubt that the offense was committed on a date near the date alleged, that is sufficient.

COMMENT

Wis JI-Criminal 255 was originally published in 1962. It was revised in 1983 and republished without change in 1991. It was revised in 1999 and was republished without change in 2000.

The 1998 revision made nonsubstantive editorial changes in the text and changed the title to indicate that this instruction is to be used only where the charging document alleges that the offense occurred on a specific date. For cases where the charge alleges that the offense occurred during a period of time, Wis JI-Criminal 255A should be used.

CAUTION: This instruction should not be used when evidence of more than one criminal act has been admitted in support of a single charge or where the evidence points to a particular hour or date of commission, and the defendant has produced evidence of an alibi. See Abaly v. State, 163 Wis. 609, 158 N.W. 308 (1916), and Eaton v. State, 252 Wis. 420, 31 N.W.2d 618 (1947).

In Jensen v. State, 36 Wis. 598, 154 N.W.2d 769 (1967), the court held it was error to give this instruction in a case where there were two offenses in question which occurred very close to each other in time and where there was general testimony to the effect that the acts (of sexual intercourse) occurred several times. The court said the instruction "was designed for a fact situation in which one offense only is alleged, or where, if there are multiple offenses, there is absolutely no confusion in anyone's mind as to their separateness in time." 36 Wis.2d 598, 604-05.

In many cases, it will be necessary for the jury to agree that a particular act was committed by the defendant. The time the act was allegedly committed is one way to identify the particular act, but the legal issue is more one of jury agreement than "time of the offense." Regarding jury agreement when there is evidence of more than one criminal act, see Wis JI-Criminal 515.