

492 VERDICTS SUBMITTED FOR MULTIPLE DEFENDANTS: SINGLE COUNT: INCLUDED OFFENSE

The following three¹ forms of verdict will be submitted to you concerning the charges against each of the defendants.

[IN LIEU OF THE PROCEDURE FOLLOWED BELOW, THE COURT MAY READ EACH SET OF VERDICTS FOR EACH DEFENDANT.]

One reading: "We, the jury, find the defendant," as named in the verdict,² "guilty of (offense charged),³ as charged in the information."⁴

Another reading: "We, the jury, find the defendant," as named in the verdict,⁵ "guilty of (included offense),⁶ in violation of § ____ of the Criminal Code of Wisconsin, at the time and place charged in the information."⁷

And a third reading: "We, the jury, find the defendant," as named in the verdict,⁸ "not guilty."

It is for you to determine which one of the forms of verdict submitted for each defendant you will bring in as your verdict regarding that defendant.

COMMENT

Wis JI-Criminal 492 was originally published in 1962 and revised in 1979 and 1990. It was republished without change in 2000.

1. Additions to the verdict are required in several situations. In theft, criminal damage to property, and receiving stolen property cases, findings are required for the value of the property involved. Wis JI-Criminal 1441A provides a recommended instruction for these findings. There are also several so-called "penalty enhancers" that provide for an increased penalty if specified facts are found. See, for example, Wis JI-Criminal 990, **USING A DANGEROUS WEAPON**; Wis JI-Criminal 994, **CONCEALING IDENTITY**; and Wis JI-Criminal 996 and 996.1, **SELECTING THE PERSON AGAINST WHOM A CRIME IS**

COMMITTED (or, **THE PROPERTY DAMAGED**) **BECAUSE OF RACE, RELIGION, ETC.** See the cited instructions for suggested additions to the verdict.

2. The words "as named in the verdict" should be read to the jury in lieu of the defendant's name and only one set of verdicts need be read. This procedure eliminates repetition, which is not of too much concern where there are only two defendants and a single offense charged. But where there are more than two defendants or more than one or two counts, this procedure will save time.

3. Here insert the short title of the offense charged. Refer to the Criminal Code titles, but in some instances these will not be appropriate, and it will be necessary to formulate a short title by synopsis.

4. This instruction refers only to the charge "in the information" rather than to the charge "in the (information) (complaint)" because the Committee concluded that lesser included offenses are submitted almost exclusively where the charged crime is a felony. There may be cases, however, where a misdemeanor offense is charged and a lesser included offense is submitted. For example, an attempt could be submitted as a lesser included offense to a charge of misdemeanor theft or battery. See §' 939.32(1) and 939.66(4). In such cases, the reference to "information" should be changed to "complaint."

It is important that the reference, "as charged in the information," appear in the verdict. The Committee feels that this reference is sufficient to take care of the venue issue in cases where venue has not been contested. While venue is not an element of a criminal offense, it must be established beyond a reasonable doubt. *State v. Dombrowski*, 44 Wis.2d 486, 171 N.W.2d 349 (1969); *Smazal v. State*, 31 Wis.2d 360, 142 N.W.2d 808 (1960). Where venue is contested and one of the exceptions under § 971.19 applies, a separate instruction on venue may be required; see Wis JI-Criminal 267.

5. See note 2, supra.

6. Here insert the short title of the included offense. See note 3, supra.

7. See note 4, supra.

8. See note 2, supra.