

515 UNANIMOUS VERDICT AND SELECTION OF PRESIDING JUROR

This is a criminal, not a civil, case; therefore, before the jury may return a verdict which may legally be received, the verdict must be reached unanimously. In a criminal case, all 12 jurors must agree in order to arrive at a verdict.

When you retire to the jury room, select one of your members to preside over your deliberations. The presiding juror's vote is entitled to no greater weight than the vote of any other juror.

If you need to communicate with the court while you are deliberating, send a note through the bailiff, signed by the presiding juror. To have a complete record of this trial, it is important that you communicate with the court only by a written note. If you have questions, the court will talk with the attorneys before answering so it may take some time. You should continue your deliberations while you wait for an answer. The court will answer any questions in writing or orally here in open court.¹

When you have agreed upon your verdict, have it signed and dated by the person you have selected to preside.

After you have reached a verdict:

- The presiding juror will notify the bailiff that a verdict has been reached.
- Everyone will return to the courtroom.
- The verdict will be read into the record in open court.
- The court may ask each of you if you agree with the verdict.²

Swear the officer.

COMMENT

Wis JI-Criminal 515 was originally published in 1962 and revised in 1983, 2001 and 2011. The 2011 revision added paragraphs relating to getting assistance from the court and information about returning the verdict. This revision was approved by the Committee in October 2022; it added to the comment.

The material added to the text in 2011 was originally published as part of Wis JI-Criminal 521, which has been withdrawn.

For a supplementary instruction advising of the need to be unanimous with regard to a particular criminal act, see Wis JI-Criminal 517.

The jury unanimity instruction should always be given. However, the failure to do so can be cured by polling the jury, thereby assuring that the verdict was, in fact, unanimous. State v. Kircher, 189 Wis.2d 392, 398-401, 525 N.W.2d 788 (Ct. App. 1994).

1. See State v. Anderson, 2006 WI 77, 291 Wis.2d 673, 717 N.W.2d 74 (overruled in part on other grounds. See State v. Alexander, 2013 WI 70, 349 Wis. 2d 327, 833 N.W.2d 126). The decision reversed a conviction for first degree sexual assault of a child based on several prejudicial errors made by the trial judge in connection with jury deliberations:
 - allowing the jury to play a videotape of a pretrial interview of the victim in the jury room rather than on the record in open court;
 - communicating with the jury during deliberations outside the presence of the defendant and without notice to or consultation with the defendant;
 - communicating with the jury outside the presence of defense counsel and without notice to or consultation with defense counsel;
 - failing to preserve a record of those communications; and,
 - refusing the jury's requests to have portions of the testimony read.291 Wis.2d 673, ¶126.
2. Also see, Wis JI-Criminal 522, Polling The Jury.