

## CPL ARTICLE 300: JURY CHARGE.

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Court MUST charge jury after summations.

Court specifies fundamental legal principles: defendant presumed innocent; People must prove beyond reasonable doubt; shall NOT consider possible sentence when deliberating over verdict; not draw unfavorable inference from defendant's failure to testify [Court so instructs *ONLY* upon request of defendant who did **not** testify]. The Court shall also instruct the jury on the applicable law, but need NOT refer directly to the evidence.

The jury shall be informed that a verdict of "not responsible by mental defect" will result in a hearing regarding the defendant's mental condition; MAY result in involuntary commitment.

Jury shall find defendant guilty, not guilty, not responsible, or guilty of one or more alternate offenses when charge submitted "in the alternative".

Parties can make requests regarding Court's charge either before or after such charge. Request can be orally or in writing. Court must rule promptly, but a failure to do shall constitute a denial of the request.

Regarding "Enterprise Corruption", the Court shall strike counts not supported by legally sufficient evidence; OR submit lesser-included offenses to jury. The jury shall NOT consider the corruption charge itself until it has already unanimously found defendant guilty of at least 3 counts which are part of the general pattern.

Court shall submit counts to the jury, or lesser-included offenses, or charges "in the alternative". When a charge is not supported by legally sufficient evidence, it must be stricken and dismissed; however the Court shall then submit the greatest weight of lesser-included offense which can be supported.

"Consecutive" counts are charges which have consecutive sentences (where total jail time is aggregate of sentenced periods).

"Concurrent" counts are charges where jail sentences are all served at the same time.

"Inclusory Concurrent" is a special category of concurrent counts where one charge encapsulates all others as "lesser-included" offenses (all other concurrent counts are non-inclusory).

"Inconsistent" counts are where guilt on one by definition negates culpability on the other(s).

Trial order of dismissal strikes any counts not supported by legally sufficient evidence.

If only ONE count left on indictment, Court **must** submit such charge to jury.

If all counts are individually consecutive, Court shall submit ALL.

Concurrent counts: Court submits at least ONE (**must** submit all charges of Murder 1). Court may also submit as many *non-inclusory* counts as appropriate.

INCLUSORY = submit count of greatest weight, **MAY** also submit lesser-included offenses as "alternatives" [however defendant can only be found guilty of ONE such alternative]. If the jury finds guilt as to the greatest count = **DISMISSAL** of lesser-includes. Finding to a lesser-included = **ACQUITTAL** of greatest weighted charge.

If charges can be grouped into categories where counts are concurrent as to their own group, but *consecutive* as to other groups/charges = must submit at least one of each **group**, pursuant to above rules. If there are also non-grouped individual charges which are consecutive against all other counts, must submit each and every such charge.

Court shall submit at least one of any "inconsistent" charges. Where more than one is supported by legally sufficient evidence, **MAY** submit several "in the alternative", instructing that a finding of guilty on any one such *must* result in "not guilty" to the others. Where charges are so supported, but one is against the weight of the evidence, need only submit the other(s).

Court need not submit a charge if people so consent (however **must** submit lesser-includes upon defendant's demand where accorded such right; *OR*: where counts are too many/complex for jury to be burdened with, may submit only "representative portion".

Any count not submitted is deemed DISMISSED, even without express Order (including consecutives not submitted over People's objection).

**ONLY** where a "reasonable view" of the evidence supports commission of a lesser-included offense, but NOT the greatest: Court must submit lesser-includes as "alternatives" [regardless of whether such offenses are also charged separately as own counts] upon request of *either* party (failure to submit NOT error if no such request was made). Court may also do so on own discretion. Where no such "reasonable view", Court can NOT submit lesser-includes; but Defendant waives objection if not made before jury retires to deliberate.

For a defendant who allegedly committed an offense while under 16: Court **must** submit lesser-included offenses, even where a finding of guilty on such would NOT be a conviction since infant defendant not legally responsible.

For purposes herein: Rape/Criminal Sex Act in the Third is NOT a lesser-included offense of Rape/Crim Sex 1, nor of any other such charge. However if the evidence would tend to support the lesser charge but not the greater; MAY submit as lesser-included "in alternative", only with consent of both sides.