

Table of Contents

Volume 1

CHAPTER 1. PRETRIAL PROCEEDINGS

- § 1:1 Proceedings prior to a criminal trial, generally
- § 1:2 Charging the offense
- § 1:3 Statutory construction
- § 1:4 Amending the indictment or information
- § 1:5 Arresting the accused
- § 1:6 The bill of particulars
- § 1:7 Arraigning the accused
- § 1:8 The stipulated bench trial
- § 1:9 Fitness of the accused to stand trial
- § 1:10 Right to speedy trial
- § 1:11 Motion to dismiss criminal charge
- § 1:12 Motion for substitution of judge
- § 1:13 Motion for change of place of trial
- § 1:14 Motion to discharge jury panel
- § 1:15 Discovery in criminal trials
- § 1:16 Motion for DNA database search (genetic marker groupings comparison analysis)
- § 1:17 Sanctions for discovery violations
- § 1:18 Evidence depositions in criminal cases
- § 1:19 Disclosures by the prosecution
- § 1:20 Disclosures by the defendant rules
- § 1:21 Victims' rights
- § 1:22 Responsibilities of victims and witnesses (725 ILCS 120/7)
- § 1:23 Effect of death of accused on pending criminal proceeding
- § 1:24 Right of public to access court records and criminal proceedings
- § 1:25 Investigative subpoenas
- § 1:26 Grand jury issues
- § 1:27 Pretrial detention/pretrial release

CHAPTER 1A. FITNESS OF DEFENDANT TO PLEAD, STAND TRIAL, OR BE SENTENCED

- § 1A:1 The right of a person to avoid being arraigned, tried, or sentenced in a criminal case because of mental unfitness
- § 1A:2 The definition of fitness
- § 1A:3 The presumption of fitness
- § 1A:4 Raising the fitness issue
- § 1A:5 The bona fide doubt of the defendant's fitness and the courts duty to hold a fitness hearing
- § 1A:6 The fitness examination and report
- § 1A:7 Commitment of the defendant for treatment
- § 1A:8 Medication of the defendant
- § 1A:9 Trial with special provisions and assistance
- § 1A:10 The fitness hearing
- § 1A:11 The discharge hearing
- § 1A:12 Remand of defendant for further treatment
- § 1A:13 Disposition of defendant's case at expiration of extended period of treatment
- § 1A:14 Disposition of a defendant suffering disabilities
- § 1A:15 Notice to law enforcement agency regarding release of defendant
- § 1A:16 Placement of defendant in secure setting

CHAPTER 2. THE CONDUCT OF THE TRIAL

I. GENERAL PRINCIPLES RELATING TO THE TRIAL

- § 2:1 The conduct of the trial, in general
- § 2:2 The courtroom
- § 2:3 Technology in the courts

II. LAWS GOVERNING THE CONDUCT OF TRIALS IN ILLINOIS COURTS

- § 2:4 Laws governing the trial of criminal cases
- § 2:5 Control of state court trials
- § 2:6 Checklist: Federal constitutional provisions that are binding on state courts

TABLE OF CONTENTS

§ 2:7 Juvenile court delinquency proceedings

III. THE LAW THAT CONTROLS THE CASE ON TRIAL

§ 2:8 The law applicable to the case on trial

§ 2:9 The law of the case

§ 2:10 Stare decisis and dictum

§ 2:11 The law applicable when the law has been
changed since the crime was committed (ex post
facto laws)

§ 2:12 The doctrine of collateral (judicial) estoppel

IV. PRINCIPLES RELATING TO THE PARTIES AND THE ATTORNEYS

§ 2:13 A defendant's rights under the Vienna Convention
on Consular Relations

§ 2:14 Presence of parties

§ 2:15 Persons permitted at counsel table

§ 2:16 Admission or exclusion of party's family

§ 2:17 Conduct of parties

§ 2:18 The "no contact" rule that prohibits a lawyer from
contacting a person represented by counsel

V. PRINCIPLES RELATING TO THE PARTICIPANTS IN THE TRIAL

§ 2:19 Bench conferences during trial

§ 2:20 Arrest of judge, attorneys, etc., during trial

§ 2:21 Liability of participants in trial for libel and
slander

§ 2:22 Using law enforcement officials to assist at trial

VI. THE PUBLIC TRIAL

§ 2:23 Right to public trial

§ 2:24 Excluding the public

§ 2:25 The order of closure

§ 2:26 Exclusion of media representatives

§ 2:27 In camera proceedings

§ 2:28 Arrangements for news media

§ 2:29 Taking pictures, broadcasting and televising
proceedings

VII. THE PRODUCTION AND PROTECTION OF TESTIMONY AND OTHER EVIDENCE

- § 2:30 Preserving the record
- § 2:31 Court reporters
- § 2:32 Transcribing testimony
- § 2:33 Giving testimony on video or by telephone
- § 2:34 Defendant appearing by two-way audio-visual communication system
- § 2:35 Bystander's report
- § 2:36 Lost pleadings, exhibits, etc
- § 2:37 Maintaining security in the courtroom

VIII. MAINTAINING PROPER CONDUCT IN THE COURTROOM

- § 2:38 Assaulting or harassing judge, juror or witness
- § 2:39 Bribery of judge or witness
- § 2:40 Obstruction of justice

IX. CORRECTING MISTAKES MADE IN THE TRIAL

- § 2:41 Trial mistakes and their correction
- § 2:42 The plain error doctrine
- § 2:43 Interlocutory appeals by the state

CHAPTER 3. CONDUCT OF THE JUDGE

- § 3:1 General conduct of judge
- § 3:2 Demeanor of judge, generally
- § 3:3 Judicial humor
- § 3:4 Presence of judge
- § 3:5 Duty of judge to preserve order
- § 3:6 Judge's right and duty to expedite trial
- § 3:7 Right of judge to control dress of persons in courtroom
- § 3:8 Right of judge to control persons near courtroom
- § 3:9 Judge's voice and diction
- § 3:10 Comments to jury, generally
- § 3:11 Remarks of judge on testimony and rulings
- § 3:12 Remarks on matters of law and common knowledge
- § 3:13 Judge's conduct toward parties
- § 3:14 Judge's conduct toward witnesses

TABLE OF CONTENTS

| | |
|--------|---|
| § 3:15 | Warning witness about perjury |
| § 3:16 | Admonishing a defendant of his right against self-incrimination |
| § 3:17 | Judge's right to limit number of witnesses |
| § 3:18 | Judge's conduct toward counsel |
| § 3:19 | Judge's assistance of counsel |
| § 3:20 | Judge's control of examination of witnesses |
| § 3:21 | Judge's right to bar party from consulting with attorney |
| § 3:22 | Questioning witnesses by judge |
| § 3:23 | Court's own witnesses |
| § 3:24 | Cross-examining and impeaching a court's witness |
| § 3:25 | Judge as witness |
| § 3:26 | Exclusion of improper testimony on court's own motion |
| § 3:27 | Controlling offensive language |
| § 3:28 | Independent investigations by judge |
| § 3:29 | The right to substitution of judge |
| § 3:30 | Substitution of judges during trial |
| § 3:31 | Objections to misconduct of judge |
| § 3:32 | Control of proceedings by pretrial order |
| § 3:33 | Liability of judge for libel and slander |
| § 3:34 | Pressure on parties to effect settlement |
| § 3:35 | Ex parte communications about pending matters |
| § 3:36 | Court's control of its records |

CHAPTER 3A. ILLINOIS RULES OF PROFESSIONAL CONDUCT OF 2010

| | |
|--------|---------------------------------------|
| § 3A:1 | Preamble: A Lawyer's Responsibilities |
| § 3A:2 | Scope |

CHAPTER 4. CONDUCT OF ATTORNEY IN TRIAL

| | |
|-------|--|
| § 4:1 | General conduct of attorney |
| § 4:2 | Need for counsel to be admitted to practice law |
| § 4:3 | Authority of Attorney General to appoint assistant to prosecute defendants |
| § 4:4 | Illinois rules of professional conduct |
| § 4:5 | Conduct of an attorney before a tribunal |
| § 4:6 | Fairness to opposing party and counsel |
| § 4:7 | Attorney's conduct toward judge and jury |

- § 4:8 Attorney's statements about a pending case
Illinois Rules of Professional Conduct, Rule 3.6
- § 4:9 Checklist: Additional suggested rules of conduct
in court
- § 4:10 Contempt by attorney
- § 4:11 Indirect contempt by attorney
- § 4:12 Right of attorney to defend client vigorously
- § 4:13 Discipline of attorney for improper conduct
- § 4:14 Checklist: Additional grounds for disciplining
attorney
- § 4:15 Responsibility of attorney for trial strategy
- § 4:16 Ability of counsel to bind client
- § 4:17 Attorney as witness
- § 4:18 Liability of attorney for libel and slander
- § 4:19 Lawyer's privilege from arrest
- § 4:20 Communications with jurors by attorney
- § 4:21 Compensation of court appointed attorney
- § 4:22 Procedure when defendant admits guilt to lawyer
- § 4:23 Legal malpractice in criminal cases
- § 4:24 Invited error doctrine
- § 4:25 Attorney's "opening the door" to inadmissible
evidence
- § 4:26 The attorney's statements about a pending case
- § 4:27 Duty of attorney to refrain from using or
revealing confidence or records of a client
- § 4:28 Duty of attorney to report professional
misconduct

CHAPTER 5. PUBLICITY BEFORE AND DURING TRIAL

- § 5:1 Effect of publicity on trial, generally
- § 5:2 Juror hearing and reading news accounts of trial
- § 5:3 Admonishing jury regarding publicity
- § 5:4 Continuance or change of venue because of
publicity
- § 5:5 Checklist: Sheppard Rules regarding conduct of
trial
- § 5:6 Judicial control of those speaking and writing
about proceedings

CHAPTER 6. MOTIONS DURING TRIAL

- § 6:1 Motions during trial, generally

TABLE OF CONTENTS

- § 6:2 Motion procedure
- § 6:3 Evidence on motions
- § 6:4 Motion in limine
- § 6:5 Nolle prosequi

CHAPTER 7. CONTINUANCES

- § 7:1 Continuances, generally
- § 7:2 Application for continuance
- § 7:3 Time for making motion for continuance
- § 7:4 Hearing and order for continuance
- § 7:5 Denial of continuance as denial of right to counsel
- § 7:6 Grounds for continuance
- § 7:7 Absence of material evidence
- § 7:8 Absence of material witness
- § 7:9 Unpreparedness of party
- § 7:10 Absence, illness or death of party
- § 7:11 Counsel on trial elsewhere
- § 7:12 Counsel otherwise unavailable
- § 7:13 Substitution of counsel
- § 7:14 Amendments to pleadings
- § 7:15 Prejudice, excitement, and surprise
- § 7:16 Continuance because of war
- § 7:17 Party or attorney in general assembly
- § 7:18 Other grounds for continuance

CHAPTER 8. NONJURY TRIALS

- § 8:1 Nonjury trials, generally
- § 8:2 Procedure in nonjury trials
- § 8:3 Admissibility of evidence
- § 8:4 Presumption that trial judge considered only proper evidence
- § 8:5 Findings by trial court

CHAPTER 9. JURY TRIAL

- § 9:1 Trial by jury, generally
- § 9:2 Right to fair and impartial jury
- § 9:3 Trial by less than twelve jurors
- § 9:4 Simultaneous jury and nonjury trial
- § 9:5 Simultaneous trial before two juries
- § 9:6 Simultaneous trial of two defendants before single jury
- § 9:7 The waiver of the right to trial by jury

- § 9:8 Right to have jury find beyond reasonable doubt
facts that increase penalty beyond statutory
maximum (Apprendi)

CHAPTER 10. PROVINCE OF COURT AND JURY

- § 10:1 Questions of law and fact, generally
- § 10:2 Invasion of province of jury
- § 10:3 Mixed questions of law and fact
- § 10:4 Credibility of witnesses
- § 10:5 Weight to be given evidence, generally
- § 10:6 Weight to be given particular kinds of evidence
- § 10:7 Instructing on weight of evidence
- § 10:8 Reasonable doubt
- § 10:9 Presumptions and inferences
- § 10:10 Character and conditions of things
- § 10:11 Amount and extent
- § 10:12 Character and status of persons
- § 10:13 Acts and conduct
- § 10:14 Construction of language

CHAPTER 11. THE RIGHTS OF THE ACCUSED

- § 11:1 Rights of accused, generally
- § 11:2 Constitutional protections guaranteed to the
accused
- § 11:3 Partial list of the rights of the accused
- § 11:4 Right to contact attorney and family
- § 11:5 Presumption of innocence
- § 11:6 Right to be proven guilty beyond reasonable
doubt
- § 11:7 Right to be found competent to stand trial
- § 11:8 Right to remain silent
- § 11:9 Silence of accused as an admission
- § 11:10 Waiver of right to remain silent
- § 11:11 Reference to defendant's silence
- § 11:12 Right of accused to testify
- § 11:13 Waiver of right to testify
- § 11:14 Right of accused to refuse to testify
- § 11:15 Right of defendant to be advised by trial judge
as to consequences of decisions
- § 11:16 Right to bill of particulars

TABLE OF CONTENTS

| | |
|---------|--|
| § 11:17 | Right to list of jurors and information about them |
| § 11:18 | Right to list of prosecution witnesses |
| § 11:19 | Right to severance |
| § 11:20 | Physical control of defendant during trial |
| § 11:21 | Matters regarding physical appearance of the accused |
| § 11:22 | Use of defendant's nickname or alias |
| § 11:23 | Right to be informed of an offer or deal |
| § 11:24 | Rights of severely handicapped defendant |
| § 11:25 | Rights of minor defendant |
| § 11:26 | Right of court reporter and transcript |
| § 11:27 | Right to investigators and expert witnesses |
| § 11:28 | Right to interview witnesses |
| § 11:29 | Right to humane treatment while in custody |
| § 11:30 | Right to negotiate a plea |
| § 11:31 | Right to conflict-free counsel |
| § 11:32 | Judge or prosecutor discouraging witnesses from testifying |
| § 11:33 | Right to fingerprint or DNA evidence not available at time of original conviction |
| § 11:34 | Right to have medical examination of victim |
| § 11:35 | Right of foreign national to consular notification pursuant to Vienna Convention on Consular Relations |
| § 11:36 | Right to language interpreter |

CHAPTER 12. RIGHT TO COUNSEL AND PRO SE DEFENSE

| | |
|---------|---|
| § 12:1 | Right to counsel |
| § 12:2 | Right of indigent defendant to appointed counsel |
| § 12:3 | When the right to counsel attaches |
| § 12:4 | Right to the effective assistance of counsel |
| § 12:5 | Right to loyalty of counsel—Conflicts of interest |
| § 12:6 | Right to have counsel present |
| § 12:7 | Waiver of right to counsel |
| § 12:8 | Procedures when counsel has been waived |
| § 12:9 | Use of standby counsel |
| § 12:10 | Procedures when standby counsel is used |
| § 12:11 | Right of pro se defendant to access law library |

CHAPTER 13. THE RIGHT TO BE PRESENT AND ITS WAIVER (TRIAL IN ABSENTIA)

- § 13:1 Right of defendant to be present
- § 13:2 Duty of court to notify defendant of possible trial in absentia
- § 13:3 Waiver of right to be present
- § 13:4 Trial of accused in absentia
- § 13:5 Misconduct of accused as waiver of right to be present

CHAPTER 14. DEFENSES IN CRIMINAL CASES

- § 14:1 Defenses in criminal cases, generally
- § 14:2 Affirmative defenses
- § 14:3 Notice of defense
- § 14:4 Compulsion as defense
- § 14:5 Intoxication or drugged condition as defense
- § 14:6 Instructing on intoxication or drugged condition
- § 14:7 Use of justifiable force (Self-Defense)
- § 14:8 Instructing on defense of dwelling
- § 14:9 Instructing on justifiable force
- § 14:10 Consent as defense
- § 14:11 Consent in sexual assault cases
- § 14:12 Mistake of age not a defense
- § 14:13 Defenses in conspiracy cases
- § 14:14 Wharton's rule
- § 14:15 Instructing on conspiracy cases
- § 14:16 Impossibility as defense
- § 14:17 Unconstitutionality of statute
- § 14:18 Necessity as defense
- § 14:19 Instructing on necessity defense
- § 14:20 Ignorance or mistake as defense
- § 14:21 Good faith misunderstanding of law as negating willfulness
- § 14:22 Selective and discriminatory prosecution
- § 14:23 Prosecutorial vindictiveness
- § 14:24 Outrageous government conduct
- § 14:25 Accident or misfortune as defense
- § 14:26 Withdrawal as defense
- § 14:27 Matters that are not defenses

TABLE OF CONTENTS

- § 14:28 Reasonable belief of defendant that victim of sex crime was old enough to consent
- § 14:29 Failure to charge all known offenses based on same act in single prosecution
- § 14:30 Involuntary act
- § 14:31 First Amendment rights as a defense
- § 14:32 Void for vagueness
- § 14:33 Rule of lenity
- § 14:34 Reasonable parental discipline
- § 14:35 Immunity from prosecution when seeking medical assistance for drug overdose

CHAPTER 15. ALIBI

- § 15:1 Alibi as defense
- § 15:2 Notice of alibi
- § 15:3 Penalty for failure to disclose alibi defense
- § 15:4 Burden of proving alibi
- § 15:5 Impeachment of alibi witness
- § 15:6 Cross-examining defendant about alibi
- § 15:7 Instructing on alibi

CHAPTER 16. ENTRAPMENT AS DEFENSE

- § 16:1 Entrapment as defense—Generally
- § 16:2 Take-back entrapment as defense
- § 16:3 Government sting operations
- § 16:4 Instructing on entrapment

CHAPTER 17. INSANITY AND MENTAL ILLNESS

- § 17:1 Insanity or mental illness as defense
- § 17:2 Notice of insanity defense
- § 17:3 Appointment of psychiatrist or clinical psychologist
- § 17:4 Burden of proving insanity
- § 17:5 Presumption of sanity in criminal cases
- § 17:6 Questioning jurors regarding insanity defense
- § 17:7 Admissibility of evidence as to insanity
- § 17:8 Instructing on defense of insanity
- § 17:9 Special verdict when insanity is affirmative defense
- § 17:10 “Defense” of mental illness

- § 17:11 Instructing on mental illness
- § 17:12 Verdict of guilty but mentally ill

CHAPTER 18. DOUBLE JEOPARDY AND SIMILAR BARS TO PROSECUTION

- § 18:1 Trying defendant more than once for same or similar misconduct
- § 18:2 Double jeopardy resulting from former prosecution for same or similar offense
- § 18:3 Multiple prosecutions for same or connected offenses
- § 18:4 Collateral estoppel
- § 18:5 Double jeopardy resulting from prosecutorial or judicial misconduct
- § 18:6 Finding of guilt of lesser offense as bar to prosecution for greater offense
- § 18:7 Double jeopardy resulting from declaration of mistrial without manifest necessity—without defendant's consent
- § 18:8 Double jeopardy resulting from discharge of jury for failure to agree
- § 18:9 Double jeopardy resulting from retrial after reversal on appeal
- § 18:10 Double jeopardy resulting from former prosecution in federal court or in another state
- § 18:11 Double jeopardy resulting from prosecutorial or judicial misconduct
- § 18:12 Defense counsel's misconduct resulting in a mistrial

CHAPTER 19. CONDUCT OF PROSECUTOR

- § 19:1 Conduct of prosecutor, generally
- § 19:2 Special responsibilities of a prosecutor
- § 19:3 Right of private counsel to assist prosecution
- § 19:4 Appointment of special prosecutor
- § 19:5 Duty to disclose evidence to defense
- § 19:6 Duty to give statements of prosecution witnesses
- § 19:7 Duty to preserve evidence
- § 19:8 Duty to deliver statements of defendant and codefendant
- § 19:9 Duty to disclose evidence favorable to accused—Brady rule

TABLE OF CONTENTS

| | |
|---------|--|
| § 19:10 | Materiality of undisclosed material |
| § 19:11 | Duty to disclose beneficial treatment of state's witnesses |
| § 19:12 | Duty to disclose electronic surveillance |
| § 19:13 | Duty to provide transcript of grand jury proceedings |
| § 19:14 | Duty to provide evidence to be used at trial |
| § 19:15 | Excision of material that is not discoverable |
| § 19:16 | Recusing the prosecutor under the advocate-witness rule |
| § 19:17 | Duty to provide prior convictions to be used for impeachment |
| § 19:18 | Sanctions for violation of pretrial order to preserve evidence |
| § 19:19 | Duty to disclose experts' reports, statements, etc |
| § 19:20 | Discouraging witnesses from testifying |
| § 19:21 | Use of perjured testimony |
| § 19:22 | Duty to disclose an informer |
| § 19:23 | Duty to call an informer |
| § 19:24 | Duty to call other witnesses |
| § 19:25 | Immunity of prosecutor |
| § 19:26 | Prosecutor as a witness |
| § 19:27 | Calling witness who refuses to testify |
| § 19:28 | Admissions by prosecutor |
| § 19:29 | Prosecutor's discretion in conducting plea negotiations |

CHAPTER 20. CONTEMPT OF COURT

| | |
|---------|--|
| § 20:1 | Power of court to punish for contempt |
| § 20:2 | Civil and criminal contempt |
| § 20:3 | Direct and indirect contempt |
| § 20:4 | Acts constituting direct, criminal contempt |
| § 20:5 | Direct criminal contempts committed outside actual presence of the judge |
| § 20:6 | Perjury as contempt of court |
| § 20:7 | Mental illness in direct criminal contempt proceedings |
| § 20:8 | Procedure in direct, criminal contempt |
| § 20:9 | Right to jury in contempt proceedings |
| § 20:10 | Procedural rights of person charged with direct criminal contempt |
| § 20:11 | Judge who hears contempt proceeding |
| § 20:12 | Record and order |

§ 20:13 Punishment for contempt

CHAPTER 21. JURY

- § 21:1 The jury in criminal cases
- § 21:2 Waiver of right to jury trial
- § 21:3 Problems of selecting jury, generally
- § 21:4 Right to names and addresses of prospective jurors
- § 21:5 Exemptions from jury service
- § 21:6 Right to time off for jury duty
- § 21:7 Jurors' fees
- § 21:8 Discrimination because of sex, race, etc
- § 21:9 Right of court to excuse jurors
- § 21:10 Swearing jury
- § 21:11 Preliminary instructions to jurors-handbooks
- § 21:12 Prohibition against payment of jurors by parties

CHAPTER 22. SELECTING THE JURY

- § 22:1 Impaneling jury
- § 22:2 Conduct of voir dire examination
- § 22:3 Duty to instruct jurors on defendant's basic rights
- § 22:4 Right of attorneys to ask questions
- § 22:5 Matters that are proper to be investigated on voir dire
- § 22:6 Voir dire when defendant's sanity is an issue
- § 22:7 Reopening voir dire after jurors have been sworn
- § 22:8 Use of hypothetical questions
- § 22:9 Passing on panels of jurors
- § 22:10 Duty of jurors to answer truthfully
- § 22:11 Effect of jurors' failure to divulge pertinent information
- § 22:12 Selection of alternate jurors
- § 22:13 Duty of judge to assure selection of impartial jurors

CHAPTER 23. CHALLENGING JURORS

- § 23:1 Challenging jurors, generally
- § 23:2 Order of exercising challenges
- § 23:3 Peremptory challenges
- § 23:4 Systematic exclusion of racial members by using peremptory challenges

TABLE OF CONTENTS

- § 23:5 —Checklist: traits that have been held to be
racially neutral
- § 23:6 Systematic exclusion because of gender
- § 23:7 Systematic exclusion because of youth

CHAPTER 24. CAUSE FOR CHALLENGING JURORS

- § 24:1 Challenge for cause, generally
- § 24:2 —Checklist: Statutory Grounds For Challenge
For Cause
- § 24:3 Making challenge for cause
- § 24:4 Passing on challenge for cause
- § 24:5 Effect of ruling on challenge
- § 24:6 Having read or heard news reports of case
- § 24:7 Previous knowledge of facts
- § 24:8 Previous connection with case
- § 24:9 Preconceived opinion
- § 24:10 Prejudice and bias, generally
- § 24:11 Familial relationship with party
- § 24:12 Business or professional relationship with party
- § 24:13 Social relationship with party
- § 24:14 Bias against person involved in case
- § 24:15 Bias against circumstantial evidence
- § 24:16 Prejudice against crime, liquor, gambling, etc
- § 24:17 Racial, religious, and class prejudices and beliefs
- § 24:18 Relationships with witnesses
- § 24:19 Relationships with attorney
- § 24:20 Relationship with judge
- § 24:21 Present and former law enforcement officials
- § 24:22 Physically impaired juror
- § 24:23 Challenge for cause based on juror's time
restraints
- § 24:24 Waiving objection to challenge for cause

CHAPTER 25. CONDUCT OF JURY DURING TRIAL

- § 25:1 Conduct of jury during trial
- § 25:2 Failure of juror to appear
- § 25:3 Dismissal of juror for improper conduct
- § 25:4 Acceptance of favors by jurors
- § 25:5 Bribing juror
- § 25:6 Replacing juror with an alternate juror

- § 25:7 Attention to proceedings
- § 25:8 Taking notes
- § 25:9 Inquiries by jurors
- § 25:10 Use of intoxicants or drugs
- § 25:11 Communications with jurors before and during trial
- § 25:12 Personal exchanges with jurors during trial
- § 25:13 Jurors reading or hearing accounts of trial
- § 25:14 Procedure when juror reads account of trial
- § 25:15 Reception of evidence out of court
- § 25:16 Unauthorized view
- § 25:17 Separation of jury during trial
- § 25:18 Jurors' instructions during trial
- § 25:19 Juror as witness
- § 25:20 Juror's immunity
- § 25:21 Harassing jurors
- § 25:22 Failure to administer oath to jury

CHAPTER 26. OPENING STATEMENTS

- § 26:1 Right to make an opening statement
- § 26:2 Content of opening statement
- § 26:3 Improper remarks in opening statement
- § 26:4 Opening statement and limiting evidence
- § 26:5 Directing verdict on opening statement
- § 26:6 Admissions in opening statement

CHAPTER 27. ORDER OF PROOF

- § 27:1 Order of producing testimony in criminal cases
- § 27:2 Right to introduce evidence at later stage
- § 27:3 Right to recall witness
- § 27:4 Right to introduce evidence during cross-examination
- § 27:5 Right to reopen proofs
- § 27:6 Rebuttal testimony
- § 27:7 Surrebuttal
- § 27:8 Split trials

CHAPTER 28. BURDEN OF PROOF IN CRIMINAL CASES

- § 28:1 Burden of proof in criminal cases, generally
- § 28:2 Proof based solely on confession
- § 28:3 Proof based solely on circumstantial evidence

TABLE OF CONTENTS

| | |
|---------|---|
| § 28:4 | Fingerprint evidence as basis for conviction |
| § 28:5 | Proof based solely on testimony of single witness |
| § 28:6 | Proof based solely on testimony of accomplice |
| § 28:7 | Proof based solely on testimony of addict |
| § 28:8 | Criminal charge based on negative proposition |
| § 28:9 | Burden when an affirmative defense is raised |
| § 28:10 | Burden on defendant in criminal cases |
| § 28:11 | Burden of proving attempt |
| § 28:12 | Burden of proving accountability |
| § 28:13 | Burden of proving statutory exception |

CHAPTER 29. BURDEN OF PROVING PARTICULAR FACTS

| | |
|---------|---|
| § 29:1 | Burden of proving venue |
| § 29:2 | Proof of crime within limitation period |
| § 29:3 | Burden of proving corpus delicti |
| § 29:4 | Burden of proving date of offense |
| § 29:5 | Burden of proving intent or knowledge |
| § 29:6 | Burden of proving deception or intent to defraud |
| § 29:7 | Burden of proving ownership |
| § 29:8 | Burden of proving possession |
| § 29:9 | Burden of proving self-defense (justifiable use of force) |
| § 29:10 | Burden of proving motive |
| § 29:11 | Instructing on motive |
| § 29:12 | Burden of proving age |
| § 29:13 | Burden of proving length of knife blade |
| § 29:14 | Burden of proof in rape cases |
| § 29:15 | Burden of proving sex offense cases, generally |
| § 29:16 | Burden of proving value of stolen property |
| § 29:17 | Burden of proving amount of criminal damage to property |
| § 29:18 | Burden of proving intoxication |
| § 29:19 | Burden of proving consent |
| § 29:20 | Burden of proving corporate existence |
| § 29:21 | Burden of proving weight of drugs |
| § 29:22 | Burden of proof in child abduction cases |
| § 29:23 | Burden of proving criminal drug conspiracy |
| § 29:24 | Burden of proving residential burglary |
| § 29:25 | Burden of proving resisting a peace officer |
| § 29:26 | Burden of proving financial identity theft |
| § 29:27 | Burden of proving “use or benefit” |

- § 29:28 Burden of proving “dating relationship”
- § 29:29 “Insulting or provoking nature”
- § 29:30 Burden of proving weapons offenses
- § 29:31 Burden of proving “obscenity”
- § 29:32 Burden of proving “injury”
- § 29:33 Burden of proving great bodily harm
- § 29:34 Burden of proving “strangulation”
- § 29:35 Burden of proving “unique threat”
- § 29:36 Burden of proving “deadly weapon”
- § 29:37 Burden of proving “dangerous weapon”
- § 29:38 Burden of proving “public property”
- § 29:39 Burden of proving “public way”
- § 29:40 Burden of proving “public place of
accommodation or amusement”
- § 29:41 Burden of proving “without authority”
- § 29:42 Burden of proving “position of authority”

CHAPTER 30. BURDEN OF PROVING PARTICULAR CRIMES

- § 30:1 Burden of proving kidnapping
- § 30:2 Burden of proving concealing or aiding a fugitive
- § 30:3 Burden of proving possession of controlled
substance
- § 30:4 Burden of proving intent to deliver controlled
substance
- § 30:5 Burden of proving unlawful delivery or
possession of a controlled substance within 500
feet of a church
- § 30:6 Burden of proving unlawful delivery of a
controlled substance within 500 feet of a school
- § 30:7 Burden of proving child sex offender within 500
feet of a school
- § 30:8 Burden of proving obstructing justice
- § 30:9 Burden of proving possession of stolen motor
vehicle
- § 30:10 Burden of proving robbery
- § 30:11 Burden of proving theft
- § 30:12 Burden of proving calculated criminal drug
conspiracy
- § 30:13 Burden of proving driving under influence
- § 30:14 Burden of proving deceptive practices
- § 30:15 Burden of proving unlawful possession of
weapons

TABLE OF CONTENTS

| | |
|---------|---|
| § 30:16 | Burden of proving possession of firearm by felon |
| § 30:17 | Burden of proving possession of firearm by street gang member |
| § 30:18 | Burden of proving knowingly leaving scene of accident |
| § 30:19 | Burden of proving financial exploitation of elderly person |
| § 30:20 | Burden of proving possession of stolen motor vehicle |
| § 30:21 | Burden of proving attempt |
| § 30:22 | Burden of proving trespass to property |
| § 30:23 | Burden of proving home invasion |
| § 30:24 | Burden of proving aggravated unlawful possession of a weapon |
| § 30:25 | Burden of proving sex offenses |
| § 30:26 | Burden of proving aggravated criminal sexual abuse |
| § 30:27 | Burden of proving escape |
| § 30:28 | Burden of proving aggravated kidnapping |
| § 30:29 | Burden of proving reckless or aggravated discharge of a firearm |
| § 30:30 | Burden of proof of other crimes and sufficiency of the evidence to support conviction |
| § 30:31 | Burden of proving perjury |
| § 30:32 | Burden of proving official misconduct |
| § 30:33 | Burden of proving arson |
| § 30:34 | Burden of proving constructive possession of a weapon |
| § 30:35 | Burden of proving other domestic violence acts |
| § 30:36 | Burden of proving aggravated DUI |
| § 30:37 | Burden of proving burglary |
| § 30:38 | Burden of proving residential burglary |
| § 30:39 | Burden of proving violation of an order of protection |
| § 30:40 | Burden of proving forgery |
| § 30:41 | Burden of proving threatening a public official |
| § 30:42 | Burden of proving mob action |
| § 30:43 | Burden of proving “stalking” and “cyberstalking” |
| § 30:44 | Burden of proving armed habitual criminal |
| § 30:45 | Burden of proving aggravated battery |
| § 30:46 | Burden of proving domestic battery |
| § 30:47 | Burden of proving armed violence |
| § 30:48 | Burden of proving forgery |

- § 30:49 Burden of proving child pornography
- § 30:50 Burden of proving disorderly conduct
- § 30:51 Burden of proving vehicular invasion

CHAPTER 31. PROVING IDENTITY OF ACCUSED

- § 31:1 Problems regarding identity of accused, generally
- § 31:2 Judicially compelled identification procedures
- § 31:3 Motion to suppress identification testimony
- § 31:4 Burden of proving identity
- § 31:5 Propriety of method of identification, generally
- § 31:6 Vague, doubtful or inconsistent identifications
- § 31:7 Presence of counsel at identification
- § 31:8 Waiver of presence of counsel at identification
- § 31:9 Lineup and photo spread procedure
- § 31:10 Using photographs to identify accused
- § 31:11 Lineup
- § 31:12 Showup
- § 31:13 In-court identification based on improper out-of-court identification
- § 31:14 Identification by voice
- § 31:15 Fingerprints
- § 31:16 Footprints and tracks
- § 31:17 Bloodhound evidence
- § 31:18 Admissibility of out-of-court identification
- § 31:19 Substantive admissibility of prior identification
- § 31:20 Artist's sketch or composite picture of offender as hearsay
- § 31:21 Instructing on identity

CHAPTER 32. PROOF OF FACTS

- § 32:1 Preparing to prove facts
- § 32:2 Situations where proof is excused before trial
- § 32:3 Situations where proof is excused during trial
- § 32:4 Methods of proving facts

CHAPTER 33. USE OF STIPULATIONS

- § 33:1 Nature of stipulation
- § 33:2 Use of stipulations to control trial
- § 33:3 Subject matter of stipulations
- § 33:4 Construction and enforcement of stipulations

TABLE OF CONTENTS

- § 33:5 Relief from stipulations
- § 33:6 Duty of prosecution to accept stipulation as to conviction of crime that is element of crime charged
- § 33:7 Effect of stipulation of facts sufficient to establish guilt

CHAPTER 34. WITNESSES

- § 34:1 Compelling attendance of witnesses
- § 34:2 Special witness doctrine
- § 34:3 Service of subpoena
- § 34:4 Procedure in quashing subpoena
- § 34:5 Required presence of defendant at trial
- § 34:6 Diplomatic immunity of ambassadors and consuls
- § 34:7 Failure of witness to appear
- § 34:8 Habeas corpus to testify
- § 34:9 Witnesses from out-of-state
- § 34:10 Material witnesses
- § 34:11 List of prosecution witnesses
- § 34:12 Communicating with or harassing witness
- § 34:13 Right to interview witnesses
- § 34:14 Right to compel examination of witnesses
- § 34:15 Right to confer with witness on stand
- § 34:16 Compensation of witnesses
- § 34:17 Exclusion of witnesses
- § 34:18 Persons permitted in courtroom despite exclusion order
- § 34:19 Sequestering witnesses
- § 34:20 Penalties for violating exclusion order
- § 34:21 Swearing witnesses
- § 34:22 Effect of failure to administer oath
- § 34:23 Right to an interpreter
- § 34:24 Qualifications of interpreter
- § 34:25 Using interpreter in court
- § 34:26 Giving testimony on television, radio or motion picture
- § 34:27 Liability of witnesses
- § 34:28 Privilege of witness while attending trial
- § 34:29 Perjury
- § 34:30 Subornation of perjury
- § 34:31 Protection of witnesses

- § 34:32 Witness testifying on videotape or closed-circuit television
- § 34:33 Witness in prison garb
- § 34:34 Rights of witnesses
- § 34:35 Preserving testimony with a deposition

CHAPTER 35. COMPELLING PRODUCTION OF DOCUMENTS

- § 35:1 Right to compel production of documents
- § 35:2 Subpoena duces tecum
- § 35:3 Procedure in quashing subpoena duces tecums
- § 35:4 Use of document by requesting party

CHAPTER 36. RIGHT TO CONFRONT WITNESSES

- § 36:1 Right to confront witnesses, generally
- § 36:2 When right prevails
- § 36:3 Statements deemed to be testimonial and therefore demanding the right to confront the declarer
- § 36:4 Depositions and documentary evidence
- § 36:5 Testimony at former trial or hearing
- § 36:6 Waiver of right
- § 36:7 Hearsay and right to confront witnesses
- § 36:8 Right of defendant to cross-examine declarant of out-of-court testimonial statement
- § 36:9 Testimonial statements that provide the right to cross-examine the declarant
- § 36:10 Use of closed-circuit television for child's testimony

CHAPTER 37. COMPETENCY OF WITNESS TO TESTIFY

- § 37:1 Competency of witnesses, generally
- § 37:2 Time for objecting to competency
- § 37:3 Determining competency of witness to testify
- § 37:4 Competency of felon to testify
- § 37:5 Competency of child to testify
- § 37:6 Determining competency of child to testify
- § 37:7 Competency of spouse to testify for or against other spouse

TABLE OF CONTENTS

| | |
|---------|---|
| § 37:8 | Competency of participants in trial |
| § 37:9 | Competency of grand juror |
| § 37:10 | Competency of deaf mute |
| § 37:11 | Competency of mentally or physically handicapped person |
| § 37:12 | Psychiatric examination of witness |
| § 37:13 | Competency of addict or alcoholic |
| § 37:14 | Competency of informer |
| § 37:15 | Effect of religious beliefs on competency to testify |
| § 37:16 | Competency of accomplice to testify |
| § 37:17 | Instructions on accomplice's testimony |
| § 37:18 | Competency of witnesses omitted from list of witnesses |
| § 37:19 | Witness discovered as result of illegal search |
| § 37:20 | Competency of private detective or investigator in criminal case |
| § 37:21 | Witness who has been hypnotized |

CHAPTER 38. ADMISSIBILITY OF EVIDENCE

| | |
|---------|--|
| § 38:1 | Admissibility of evidence, generally |
| § 38:2 | Foundation for admissibility of evidence |
| § 38:3 | Competency of evidence |
| § 38:4 | Materiality of evidence |
| § 38:5 | Relevancy of evidence |
| § 38:6 | Relevancy of conditions after event |
| § 38:7 | Relevancy conditioned on fact |
| § 38:8 | Admissibility of negative evidence |
| § 38:9 | Admissibility of evidence as to stipulated or admitted fact |
| § 38:10 | Evidence on collateral issues |
| § 38:11 | Evidence that causes unfair surprise |
| § 38:12 | Admissibility of inadmissible evidence to rebut previously admitted improper evidence (curative admissibility) |
| § 38:13 | Self-serving declarations |
| § 38:14 | Admissibility of hypnotic evidence |
| § 38:15 | Right to be informed that witness was hypnotized |
| § 38:16 | Evidence about death and related facts |
| § 38:17 | Evidence about birth and age |
| § 38:18 | Evidence about marriage |

- § 38:19 Relevancy of events surrounding crime
- § 38:20 State of mind of accused
- § 38:21 Syndrome testimony—battered-woman syndrome
- § 38:22 Posttraumatic stress syndrome
- § 38:23 Battered child syndrome
- § 38:24 Evidence that may prejudice jury
- § 38:25 Exclusion of relevant evidence because of unfair prejudice
- § 38:26 Statistical evidence that tends to show probability of defendant's guilt
- § 38:27 Confessions or admissions by codefendants that inculcate accused
- § 38:28 Defendant's waiver of objection to inadmissible evidence (opening the door)
- § 38:29 Proof of person's habit, custom, usual practice, etc
- § 38:30 Evidence of defendant's refusal to take breath test
- § 38:31 Barring admission of evidence as sanctions for violations of court order or rule
- § 38:32 Admissibility of other sex crimes to show defendant's propensity to commit sex offenses
- § 38:33 Admissibility of alcohol evidence on issue of impairment
- § 38:34 Rape shield evidence
- § 38:35 Use of transcript of interview as substantive evidence

CHAPTER 39. EVIDENCE OF OTHER OFFENSES BY DEFENDANT

- § 39:1 Proof of other offenses by defendant
- § 39:2 Need for similarity between crimes
- § 39:3 Proof of commission of subsequent offenses
- § 39:4 Other offenses that show knowledge
- § 39:5 Other offenses that show intent
- § 39:6 Other offenses that show defendant's state of mind
- § 39:7 Other offenses that show consciousness of guilt
- § 39:8 Other offenses that show motive
- § 39:9 Other offenses that negate mistake, accident or inadvertence
- § 39:10 Other offenses that negate innocence or absence of intent

TABLE OF CONTENTS

| | |
|---------|--|
| § 39:11 | Other offenses to establish identity |
| § 39:12 | Other offenses to identify weapon |
| § 39:13 | Other offenses to show common scheme, plan or design |
| § 39:14 | Other offenses to show modus operandi |
| § 39:15 | Other sexual offenses to show modus operandi |
| § 39:16 | Other similar sexual offenses between same people |
| § 39:17 | Other offenses in furtherance of conspiracy |
| § 39:18 | Other offenses to contradict defendant's denials |
| § 39:19 | Other offenses to disprove an alibi |
| § 39:20 | Other offenses to place defendant in proximity to crime |
| § 39:21 | Other offenses connected with present charge |
| § 39:22 | Other offenses to show circumstances of defendant's arrest |
| § 39:23 | Other offenses to show circumstances of crime charged |
| § 39:24 | Other offenses to show that crime charged actually occurred |
| § 39:25 | Other offenses to show opportunity or preparation |
| § 39:26 | Other offenses to show defendant's attitude toward victim |
| § 39:27 | Other offenses to explain otherwise implausible fact |
| § 39:28 | Other offenses to explain unclear circumstances |
| § 39:29 | Other offenses to disprove defense of entrapment |
| § 39:30 | Other threats or assaults by accused on victim |
| § 39:31 | Other similar sexual offenses to negate an innocent construction of defendant's acts |
| § 39:32 | Other bad acts to show voluntariness of confession |
| § 39:33 | Prior offenses disclosed by defendant |
| § 39:34 | Evidence of similar crimes in neighborhood |
| § 39:35 | Evidence that suggests commission of other crimes |
| § 39:36 | Fingerprint evidence that suggests commission of other crimes |
| § 39:37 | Use of or reference to mug shots |
| § 39:38 | Closing arguments about other offenses by defendant |

- § 39:39 Instructing about other offenses committed by defendant
- § 39:40 Proof of other offenses of domestic violence

CHAPTER 40. EVIDENCE THAT SUGGESTS GUILT OF ANOTHER PERSON

- § 40:1 Evidence that suggests guilt of another
- § 40:2 Evidence of similar crimes committed while defendant was in custody
- § 40:3 Evidence that incriminates one other than accused
- § 40:4 Confessions or admissions by codefendants
- § 40:5 Confessions or admissions by others

CHAPTER 41. OBJECTIONS TO EVIDENCE

- § 41:1 Objections to evidence, generally
- § 41:2 Right to object to improper testimony and conduct
- § 41:3 Need for objection to improper evidence
- § 41:4 Timeliness of objection
- § 41:5 Stating grounds for objection
- § 41:6 Ruling on objection
- § 41:7 Waiver of objection
- § 41:8 Motion to exclude or strike inadmissible evidence
- § 41:9 Need for formal exception
- § 41:10 Offer of proof
- § 41:11 When formal offer of proof is not required

CHAPTER 42. ADMISSION OF EVIDENCE

- § 42:1 Admitting evidence, generally
- § 42:2 Ruling on admissibility of evidence
- § 42:3 Conditional admission of evidence
- § 42:4 Conditional relevance of evidence
- § 42:5 Restricting use of admitted evidence
- § 42:6 Instructing on limited use of evidence
- § 42:7 Introducing evidence during rebuttal
- § 42:8 Withdrawal of evidence

TABLE OF CONTENTS

CHAPTER 43. CIRCUMSTANTIAL EVIDENCE

- § 43:1 Admission of circumstantial evidence, generally
- § 43:2 Burden on prosecution when proof is entirely circumstantial
- § 43:3 Circumstantial evidence of criminal intent
- § 43:4 Sudden wealth following crime
- § 43:5 Circumstantial evidence of motive
- § 43:6 Other matters provable by circumstantial evidence in criminal cases
- § 43:7 Instructing on circumstantial evidence in criminal cases

CHAPTER 44. DIRECT EXAMINATION OF WITNESSES

- § 44:1 Direct examination, generally
- § 44:2 Conduct of witness
- § 44:3 Examining deaf or mute witness
- § 44:4 Form and content of question
- § 44:5 Leading questions
- § 44:6 Checklist: Situations where leading questions are permitted
- § 44:7 Questions that call for conclusion of witness
- § 44:8 Requirements of witness' answer
- § 44:9 Responsiveness of answer
- § 44:10 Witness' first-hand knowledge
- § 44:11 Witness' best recollection, belief, impression, etc
- § 44:12 Testimony concerning telephone conversations
- § 44:13 Improper conduct of counsel in examining witness
- § 44:14 Coaching of witness by spectator
- § 44:15 Examining the witness outside the courtroom
- § 44:16 Use of service dog by witness during testimony

CHAPTER 45. REFRESHING AND RECALLING WITNESS' RECOLLECTION

- § 45:1 Use of memoranda, generally
- § 45:2 Present recollection refreshed
- § 45:3 Writings used to refresh witness' memory
- § 45:4 Right of opposing counsel to inspect memorandum

- § 45:5 Past recollection recorded
- § 45:6 Admission of writing

CHAPTER 46. PRIVILEGE AGAINST SELF-INCRIMINATION

- § 46:1 Testimony that tends to incriminate witness
- § 46:2 Extent of privilege against self-incrimination
- § 46:3 Privilege of corporations and other groups
- § 46:4 Use of force to obtain incriminating evidence
- § 46:5 Laws that compel giving of incriminating evidence
- § 46:6 Invoking privilege against self-incrimination
- § 46:7 The standing required to claim the privilege against self-incrimination
- § 46:8 Necessity for court to warn witness of privilege
- § 46:9 Excessive warnings to defendant's witness
- § 46:10 Compelling accused to give non-testimonial evidence
- § 46:11 Inspection of accused's or witness' person
- § 46:12 Obtaining accused's fingerprints
- § 46:13 Compelling accused to give samples of blood, urine, etc
- § 46:14 Compelling accused to give voice exemplars
- § 46:15 Compelling accused to give handwriting exemplars
- § 46:16 Books and documents
- § 46:17 Required records exception
- § 46:18 Ruling upon existence of privilege against self-incrimination
- § 46:19 Loss or waiver of self-incrimination privilege
- § 46:20 Burden of proving voluntariness of incriminating statement
- § 46:21 Use of lie detector (polygraph) tests
- § 46:22 Use of voice stress tests
- § 46:23 Videotape of drunk driving suspect
- § 46:24 Cell phones
- § 46:25 Witness' immunity
- § 46:26 Mental examination of accused
- § 46:27 Instructing about effect of refusal of witness to testify

CHAPTER 47. CROSS-EXAMINING WITNESS

- § 47:1 Right to cross-examine witness

TABLE OF CONTENTS

| | |
|---------|---|
| § 47:2 | Scope of cross-examination |
| § 47:3 | —Limitations—Rape shield |
| § 47:4 | Form of questions on cross-examination |
| § 47:5 | Cross-examining expert witness |
| § 47:6 | Cross-examining expert as “professional witness” |
| § 47:7 | Using treatise to cross-examine expert witness |
| § 47:8 | Right to bring out entire transaction, conversation, etc |
| § 47:9 | Right to bring out address of witness |
| § 47:10 | Right of prosecution witnesses not to talk to defense counsel |
| § 47:11 | Manner of conducting cross-examination |
| § 47:12 | Testing witness’ knowledge and accuracy |
| § 47:13 | Answers that embarrass or degrade witness |
| § 47:14 | “Availability” of witness for cross-examination |
| § 47:15 | Right to recall witness for further cross examination |
| § 47:16 | Effect of denial of right to cross-examine |
| § 47:17 | Effect of refusal of witness to answer |
| § 47:18 | Cross-examining accused |
| § 47:19 | Cross-examining an accomplice |
| § 47:20 | Cross-examining on collateral issues |
| § 47:21 | Cross-examining witness who has been hypnotized |
| § 47:22 | Failure of cross-examiner to substantiate insinuations denied by the witness |

CHAPTER 48. IMPEACHMENT OF WITNESSES

| | |
|---------|--|
| § 48:1 | Impeachment of witnesses, generally |
| § 48:2 | Impeachment of defendant |
| § 48:3 | Impeaching one’s own witness |
| § 48:4 | Examining hostile witness |
| § 48:5 | Laying foundation for impeaching witness |
| § 48:6 | Credibility of witnesses, generally |
| § 48:7 | Instructing on credibility of witnesses |
| § 48:8 | Impeachment on collateral issues |
| § 48:9 | Impeaching with inconsistent acts or conduct |
| § 48:10 | Showing interest of witness |
| § 48:11 | Immunity or promise of immunity or leniency |
| § 48:12 | Showing bias of witness |
| § 48:13 | Showing hostility of witness |

- § 48:14 Impeachment by omission
- § 48:15 Anticipatory impeachment of state's witness
- § 48:16 Religious beliefs or opinions of witness
- § 48:17 Illegal or disreputable occupation of witness
- § 48:18 Previous misconduct of witness
- § 48:19 Witness' use of alias or false name
- § 48:20 Testimony of narcotics addict
- § 48:21 Instructing about addict's testimony
- § 48:22 Intoxication of witness at time of event
- § 48:23 Checklist: Matters which may not be used for impeachment
- § 48:24 Expert testimony as to credibility of witness
- § 48:25 Testimony false in part
- § 48:26 Impeaching witness who was silent before grand jury
- § 48:27 Mentally impaired witness
- § 48:28 Use of privileged government documents to impeach witness
- § 48:29 Impeaching witness who has been hypnotized
- § 48:30 Impeaching defendant's witness with failure to give exculpatory information for defendant to authorities

CHAPTER 49. IMPEACHING WITH PRIOR INCONSISTENT STATEMENT OR CONDUCT

- § 49:1 Using a prior inconsistent statement to impeach a witness
- § 49:2 Prior inconsistent conduct
- § 49:3 Inadmissible statements of accused as prior inconsistent statements
- § 49:4 Determining inconsistency of prior statement
- § 49:5 Using an inadmissible confession to impeach
- § 49:6 Prior inconsistent statements that incriminate accused
- § 49:7 Witness' right to explain prior statement
- § 49:8 Proof of statement by extrinsic evidence
- § 49:9 Admission of inconsistent statement in evidence
- § 49:10 Laying foundation for prior inconsistent statement
- § 49:11 Failure to follow up after laying foundation
- § 49:12 Prior expressions of opinion

TABLE OF CONTENTS

- § 49:13 Use of grand jury testimony to impeach witness
- § 49:14 Using a prior inconsistent statement as substantive evidence
- § 49:15 Instructing on prior inconsistent statements
- § 49:16 Impeachment with silence

CHAPTER 50. IMPEACHING WITNESS WITH CRIMINAL OFFENSE

- § 50:1 Impeachment by proof of prior conviction
- § 50:2 Limitations on use of prior conviction
- § 50:3 Crimes that may be used to impeach
- § 50:4 Manner of proving prior conviction—The mere fact rule
- § 50:5 Taking judicial notice of prior conviction
- § 50:6 Effect of variance in names in proving identity of defendant
- § 50:7 Failure to follow up with proof
- § 50:8 Effect of pardon, parole, appeal, and reversal
- § 50:9 Witness' right to explain extenuating circumstances
- § 50:10 Limitation on impeachment of witness with felony conviction as violation of right of confrontation
- § 50:11 Judicial discretion in admitting conviction
- § 50:12 Time limit
- § 50:13 Juvenile adjudications
- § 50:14 Instructing on limited use of evidence of prior conviction

Volume 2

CHAPTER 51. REDIRECT AND RECROSS-EXAMINATION

- § 51:1 Scope of redirect examination
- § 51:2 Form and content of questions on redirect examination
- § 51:3 Refreshing witness' memory on redirect examination
- § 51:4 Explaining and correcting testimony on redirect examination
- § 51:5 Rehabilitating witness

- § 51:6 Explaining impeaching answers
- § 51:7 Use of prior consistent statements
- § 51:8 Right to recross-examination

CHAPTER 52. PRIVILEGED COMMUNICATIONS AND INFORMATION

- § 52:1 Nature of privileged communication
- § 52:2 Need for confidentiality
- § 52:3 Effect of eavesdropping
- § 52:4 Burden of proving existence of privilege
- § 52:5 Claiming privilege
- § 52:6 Waiving privilege
- § 52:7 Commenting on exercise of privilege
- § 52:8 Communications between husband and wife
- § 52:9 Requirements for privilege to exist between husband and wife
- § 52:10 Existence of marital relationship
- § 52:11 Physician-patient privilege
- § 52:12 Waiver of physician-patient privilege
- § 52:13 Psychiatrist-patient privilege
- § 52:14 Patient's right to privacy and confidentiality
- § 52:15 Privileged communications by client to public accountant
- § 52:16 Privileged communications to clergyman
- § 52:17 Privileged communications to public officials
- § 52:18 Privilege against disclosure of a secret surveillance
- § 52:19 Reporter's privilege
- § 52:20 Situations where privilege is not recognized
- § 52:21 Privileged information
- § 52:22 Mental health and developmental disabilities confidentiality act
- § 52:23 Political vote
- § 52:24 Trade secrets
- § 52:25 Instructing on privileged communications and information
- § 52:26 Surveillance privilege
- § 52:27 The judicial deliberation privilege
- § 52:28 The informant's privilege

CHAPTER 53. ATTORNEY-CLIENT PRIVILEGE

- § 53:1 Privileged communications between attorney and client

TABLE OF CONTENTS

| | |
|---------|---|
| § 53:2 | Existence of attorney and client relationship |
| § 53:3 | Confidential nature of communication to lawyer |
| § 53:4 | Disclosure of client's name or fee arrangement |
| § 53:5 | Communications in furtherance of crime or fraud |
| § 53:6 | Confidential communications by corporate officers and employees |
| § 53:7 | Claiming attorney-client privilege |
| § 53:8 | Waiving attorney-client privilege |
| § 53:9 | Termination of attorney-client privilege |
| § 53:10 | Effect of dispute between attorney and client |

CHAPTER 54. JUDICIAL NOTICE

| | |
|---------|--|
| § 54:1 | Meaning of judicial notice |
| § 54:2 | Proof excused if fact is judicially noticed |
| § 54:3 | When judicial notice is mandatory |
| § 54:4 | Making record of facts judicially noticed |
| § 54:5 | Opportunity to be heard |
| § 54:6 | Time of taking judicial notice |
| § 54:7 | Admissibility of evidence to rebut judicially noticed fact |
| § 54:8 | Instructing on judicial notice |
| § 54:9 | Judicial notice of laws |
| § 54:10 | Foreign laws |
| § 54:11 | Facts concerning court |
| § 54:12 | Facts about government, etc |
| § 54:13 | Cities, towns, villages, and geographical facts |
| § 54:14 | Location |
| § 54:15 | Population |
| § 54:16 | Historical and economic facts |
| § 54:17 | Intoxicating liquors |
| § 54:18 | Scientific and statistical facts |
| § 54:19 | Language and abbreviations |
| § 54:20 | Human health, habits, and behavior |
| § 54:21 | Natural phenomena |
| § 54:22 | Business customs and practices |
| § 54:23 | Value |
| § 54:24 | Transportation, streets, highways |
| § 54:25 | Checklist: other facts judicially noticed |
| § 54:26 | Checklist: facts not judicially noticed |

CHAPTER 55. PRESUMPTIONS AND INFERENCES

| | |
|--------|------------------------|
| § 55:1 | Nature of presumptions |
|--------|------------------------|

- § 55:2 Reasonableness of presumption
- § 55:3 Mandatory and permissive presumptions
- § 55:4 Irrebuttable presumptions
- § 55:5 Rebuttable presumptions
- § 55:6 Inferences
- § 55:7 Presumption on presumption, inference on inference
- § 55:8 Conflicting presumptions
- § 55:9 Effect of controverting evidence on presumptions
- § 55:10 Procedure in establishing presumed fact
- § 55:11 Admissibility of evidence to rebut presumed fact
- § 55:12 Presumption of regularity
- § 55:13 Regularity of acts and proceedings of public personnel
- § 55:14 Regularity of judicial proceedings
- § 55:15 Regularity of actions of corporate personnel
- § 55:16 Presumptions about foreign laws
- § 55:17 Presumptions about people
- § 55:18 Sanity

CHAPTER 56. INFERENCES BASED UPON CONDUCT

- § 56:1 Presumptions and inferences about accused, generally
- § 56:2 Failure of accused to testify
- § 56:3 Failure to produce evidence or call witness
- § 56:4 Inference arising from possession of stolen or contraband goods
- § 56:5 Instructing on inference from possession of stolen goods
- § 56:6 Presumption of intoxication from alcoholic content of blood
- § 56:7 Flight or concealment to avoid arrest
- § 56:8 Resistance to arrest
- § 56:9 Escape or attempted escape from custody
- § 56:10 False exculpatory statements
- § 56:11 Bribery or subornation of perjury
- § 56:12 Influencing or harassing witnesses
- § 56:13 Suppression or fabrication of evidence
- § 56:14 Attempted suicide
- § 56:15 Use of fictitious name
- § 56:16 Knowledge of law in criminal cases

TABLE OF CONTENTS

- § 56:17 Instructions on presumptions
- § 56:18 Refusal to comply with court order

CHAPTER 57. REAL AND DEMONSTRATIVE EVIDENCE

- § 57:1 Real and demonstrative evidence distinguished
- § 57:2 Use of real evidence, generally
- § 57:3 Tangible articles having some bearing on transaction in question
- § 57:4 Admissibility of weapons
- § 57:5 Tangible articles in same condition
- § 57:6 Need to establish chain of custody
- § 57:7 Proof of the weight of illegal substances
- § 57:8 Connecting tangible articles to accused
- § 57:9 Admissibility of sound recordings
- § 57:10 Admissibility of maps, surveys, drawings, and diagrams
- § 57:11 Use of blackboards
- § 57:12 Admissibility of static models and casts
- § 57:13 Use of operating models
- § 57:14 Effect of marks or notations on demonstrative evidence

CHAPTER 58. PHOTOGRAPHS, VIDEO RECORDINGS, ETC.

- § 58:1 Admissibility of photographs
- § 58:2 Foundation for photograph
- § 58:3 Posed photographs
- § 58:4 Photographs of premises and objects
- § 58:5 Photographs of illegally obtained property
- § 58:6 Prejudicial photographs in criminal cases
- § 58:7 Admissibility of motion pictures and video recordings
- § 58:8 Admissibility of video recordings, etc., as “silent witness” to crime
- § 58:9 Admissibility of x-ray photographs
- § 58:10 Enlarged and colored photographs
- § 58:11 Recorded conversations

CHAPTER 59. VIEW

- § 59:1 Right to view premises
- § 59:2 Request for view

§ 59:3 Conduct of view

§ 59:4 Nature of view

CHAPTER 60. DOCUMENTARY EVIDENCE

- § 60:1 General requirements relating to documentary evidence
- § 60:2 Effect of alteration of instrument
- § 60:3 Procedure in offering and admitting documents in evidence
- § 60:4 Remainder of related writings or recorded statements
- § 60:5 When authentication of documentary evidence is excused
- § 60:6 Presumption of authenticity
- § 60:7 Authentication of private writings
- § 60:8 Authentication of attested documents
- § 60:9 Authentication of acknowledged and recorded documents
- § 60:10 Other rules relating to use of private writings
- § 60:11 Statutes
- § 60:12 Court decisions
- § 60:13 Court papers and records
- § 60:14 Records of counties and municipalities
- § 60:15 Records of public officers
- § 60:16 Records of private corporations
- § 60:17 Letters
- § 60:18 Computer generated records
- § 60:19 Telegram, electronic mail, and text messages
- § 60:20 Facsimile (fax) mail
- § 60:21 Maps, plats, and surveys
- § 60:22 Authentication of church records
- § 60:23 Authentication of family bible
- § 60:24 Authentication of annuity and mortality tables
- § 60:25 Authentication of scientific books
- § 60:26 Authentication of ancient documents
- § 60:27 Authentication of social media posts

CHAPTER 61. BEST EVIDENCE RULE

- § 61:1 Best evidence rule, generally
- § 61:2 Situations calling for “best evidence”
- § 61:3 Situations where “best evidence” is not required

TABLE OF CONTENTS

| | |
|---------|---|
| § 61:4 | Use of secondary evidence |
| § 61:5 | Where primary evidence is in control of opponent |
| § 61:6 | Secondary evidence of bulky records |
| § 61:7 | Admissibility of computer printouts |
| § 61:8 | Admissibility of computer graphics |
| § 61:9 | Proof of loss of primary evidence |
| § 61:10 | Secondary evidence of public records |
| § 61:11 | Copies as primary or secondary evidence |
| § 61:12 | Nature of secondary evidence to be used |
| § 61:13 | Establishing contents of document by oral evidence |

CHAPTER 62. OPINION EVIDENCE, GENERALLY

| | |
|--------|--|
| § 62:1 | Requirement that witness testify as to facts |
| § 62:2 | Facts distinguished from opinions |
| § 62:3 | Admissibility of opinions in general |
| § 62:4 | Opinions concerning ultimate issue |
| § 62:5 | Other limitations on opinion evidence |

CHAPTER 63. NONEXPERT OPINION EVIDENCE

| | |
|---------|---|
| § 63:1 | Use of nonexpert opinion evidence, generally |
| § 63:2 | Examining nonexpert witness regarding opinion |
| § 63:3 | Nonexpert opinion about individuals |
| § 63:4 | Nonexpert opinion on mental condition |
| § 63:5 | Nonexpert opinion on physical condition |
| § 63:6 | Nonexpert opinion as to meaning of statement made by another |
| § 63:7 | Speed |
| § 63:8 | Stopping distance |
| § 63:9 | Value of personal property |
| § 63:10 | Sanity |
| § 63:11 | Nonexpert opinion on intoxication and influence of drugs |
| § 63:12 | Age of person |
| § 63:13 | Blood stains |
| § 63:14 | Other matters on which nonexpert may state opinion |
| § 63:15 | Nonexpert opinion on “body language” |

CHAPTER 64. EXPERT TESTIMONY AND OPINION EVIDENCE

- § 64:1 Use of expert and opinion evidence, generally
- § 64:2 Disclosure of expert reports and statements to accused
- § 64:3 Disclosure of medical and scientific reports to prosecution
- § 64:4 Court-appointed experts
- § 64:5 Qualifications required of expert witnesses
- § 64:6 The “caretaker” function of the trial court judge
- § 64:7 Taking judicial notice of prior judicial decision or technical writings to determine general acceptance of a scientific principle or methodology
- § 64:8 Voir dire as to expert witness’ qualifications
- § 64:9 Matters to which expert witness may testify
- § 64:10 Expert opinion on matters of common knowledge
- § 64:11 Examining expert
- § 64:12 Scope of expert’s testimony
- § 64:13 Disclosure of facts or data underlying expert opinion
- § 64:14 Testimony based upon personal knowledge or observation
- § 64:15 Testimony based upon scientific literature, tests, etc
- § 64:16 Weight to be given expert witness’ opinions
- § 64:17 Matters to which expert witness need not testify
- § 64:18 Speed
- § 64:19 Sanity or competency
- § 64:20 Expert opinion as to narcotics addiction
- § 64:21 Matters of business customs and practices
- § 64:22 Value of personal property
- § 64:23 Questioned documents
- § 64:24 Fingerprints and palmprints
- § 64:25 Footprints
- § 64:26 The use of new scientific techniques for identification
- § 64:27 Eyewitness identification
- § 64:28 Expert opinion on eyewitness testimony
- § 64:29 Ballistics
- § 64:30 Powder burns
- § 64:31 Blood stains
- § 64:32 Blood splatters

TABLE OF CONTENTS

| | |
|---------|---|
| § 64:33 | DNA evidence |
| § 64:34 | Blood tests |
| § 64:35 | Probability of finding characteristics and electrophoresis of blood samples |
| § 64:36 | Expert testimony about gangs |
| § 64:37 | Modus operandi of criminals |
| § 64:38 | Intoxication |
| § 64:39 | Admissibility of breath tests for intoxication |
| § 64:40 | Blood or urine tests for alcohol or drugs |
| § 64:41 | Retrograde extrapolation |
| § 64:42 | Admissibility of horizontal gaze nystagmus (HGN) tests |
| § 64:43 | Expert testimony as to abused person syndrome |
| § 64:44 | Psychiatric or psychological examination of sex crime victim |
| § 64:45 | Admissibility of expert testimony on rape syndrome |
| § 64:46 | Neutron-activation analysis |
| § 64:47 | Miscellaneous scientific tests and devices |
| § 64:48 | Gudjonsson Suggestibility Scale |
| § 64:49 | Obscenity |
| § 64:50 | Reconstruction evidence |
| § 64:51 | Instructing as to expert testimony |
| § 64:52 | Probability percentage using Bayes Theorem |

CHAPTER 65. MEDICAL TESTIMONY

| | |
|---------|--|
| § 65:1 | Testimony of medical witness, generally |
| § 65:2 | Direct examination of physician or surgeon |
| § 65:3 | Doctor's testimony based in part on hearsay |
| § 65:4 | Hypothetical question asked physician or surgeon |
| § 65:5 | Cross-examining medical witness |
| § 65:6 | Medical records |
| § 65:7 | Hospital records |
| § 65:8 | Doctor's records |
| § 65:9 | Scientific records |
| § 65:10 | Medical or anatomical charts, models, skeletons, etc |
| § 65:11 | Psychologist and psychiatrist |
| § 65:12 | Instructing on medical testimony |
| § 65:13 | Medical diagnosis and/or treatment exception to the hearsay rule |

CHAPTER 66. PROOF OF HANDWRITING

- § 66:1 Proof of handwriting, generally
- § 66:2 Use of nonexpert witness
- § 66:3 Expert handwriting witness
- § 66:4 Use of exemplars
- § 66:5 Using photographic copy as standard

CHAPTER 67. EXPERIMENTS, DEMONSTRATIONS, AND TESTS

- § 67:1 Experiments and demonstrations, generally
- § 67:2 Person conducting experiment
- § 67:3 Similarity of conditions
- § 67:4 Subject matter of experiment or demonstration
- § 67:5 Courtroom demonstrations
- § 67:6 Reenactment of crime

CHAPTER 68. HYPOTHETICAL QUESTION

- § 68:1 Use of hypothetical question
- § 68:2 Contents of hypothetical question
- § 68:3 Objections to hypothetical question
- § 68:4 Answer to hypothetical question
- § 68:5 Cross-examining as to answer to hypothetical question

CHAPTER 69. HEARSAY EVIDENCE

- § 69:1 Admissibility of hearsay evidence
- § 69:2 Determining trustworthiness of hearsay
- § 69:3 Definition of hearsay evidence
- § 69:4 Acts (verbal and nonverbal) as hearsay
- § 69:5 Implied hearsay assertions
- § 69:6 Inapplicability of hearsay rule to certain situations
- § 69:7 Admissibility of hearsay evidence based upon intentional murder of a witness
- § 69:8 Res gestae rule
- § 69:9 Necessity of objection to hearsay evidence
- § 69:10 Hearsay admitted without objection
- § 69:11 Attacking and supporting credibility of declarant
- § 69:12 Hearsay within hearsay

TABLE OF CONTENTS

- § 69:13 Affidavits
- § 69:14 Awards and other recognitions as hearsay
- § 69:15 Testimonial statements subject to hearsay rule

CHAPTER 70. EXCEPTIONS TO HEARSAY RULE

- § 70:1 Exceptions to hearsay rule, generally
- § 70:2 Threat by accused
- § 70:3 Threats by victim
- § 70:4 Official records, generally
- § 70:5 Coroner's records and verdict
- § 70:6 Police records
- § 70:7 Certificate of public chemist, inspector or
analyst
- § 70:8 Weather reports
- § 70:9 Census reports
- § 70:10 Official vital records, generally
- § 70:11 Birth records
- § 70:12 Marriage records
- § 70:13 Death records
- § 70:14 Family history
- § 70:15 Relationship and pedigree
- § 70:16 Mortality tables
- § 70:17 Almanacs
- § 70:18 Church records
- § 70:19 Family bibles
- § 70:20 Ancient documents
- § 70:21 Spontaneous declarations
- § 70:22 Hearsay exceptions as evidence in trial involving
victim of sex offense
- § 70:23 Notice of intent to use hearsay statement of
child sex abuse victim
- § 70:24 Hearing to determine admissibility of hearsay
statement of sex abuse victim
- § 70:25 Declarations by victim of rape
- § 70:26 Statements by sex crime victim to medical
personnel
- § 70:27 Statements made by a victim of domestic
violence
- § 70:28 Excited utterances
- § 70:29 Present sense impressions
- § 70:30 Pain and suffering

- § 70:31 Dying declaration
- § 70:32 Existing mental, emotional or physical condition
- § 70:33 State of mind
- § 70:34 Statement of intention
- § 70:35 Statements of identification
- § 70:36 Knowledge or notice
- § 70:37 Motive, plan or design
- § 70:38 Declarations against interest, generally
- § 70:39 Declarations against pecuniary interest
- § 70:40 Declarations against penal interest
- § 70:41 Statements of co-conspirators
- § 70:42 Treatises, scientific works, etc
- § 70:43 Historical works
- § 70:44 Newspapers and advertisements
- § 70:45 Market reports
- § 70:46 Directories and business registers
- § 70:47 Person's age
- § 70:48 High-risk adults with disabilities
- § 70:49 Opinion polls and surveys in obscenity cases
- § 70:50 Police procedures leading to arrest or issuance of
warrant as hearsay
- § 70:51 Course of conduct
- § 70:52 Admissibility of hearsay statement of elderly
person
- § 70:53 Admissibility of out-of-court exculpatory
statements by defendant and others
- § 70:54 Testimony as to events observed on live
television as hearsay
- § 70:55 Testimony as to contents of missing audio or
video tape as hearsay
- § 70:56 The residual hearsay exception
- § 70:57 "Testimonial" statements
- § 70:58 Forfeiture by wrongdoing

CHAPTER 71. TESTIMONY AT FORMER TRIAL OR PROCEEDING

- § 71:1 Use of testimony from former trial
- § 71:2 Identity of parties
- § 71:3 Opportunity to cross-examine witness
- § 71:4 Same or similar issues
- § 71:5 Unavailability of witness
- § 71:6 Checklist: Witness held to be unavailable

TABLE OF CONTENTS

- § 71:7 Diligence in procuring witness
- § 71:8 Proving former testimony
- § 71:9 Use of sworn testimony of witness now deceased

CHAPTER 72. BUSINESS ENTRIES, RECORDS AND REPORTS

- § 72:1 Use of business records
- § 72:2 Requirements for admission of business records
- § 72:3 Authentication of business records
- § 72:4 Microfilms and like copies of business records
- § 72:5 Admissibility of absence of entry in business records

CHAPTER 73. ILLEGALLY OBTAINED EVIDENCE

- § 73:1 Illegally obtained evidence, generally
- § 73:2 Fruit of poisonous tree doctrine
- § 73:3 Evidence obtained by eavesdropping
- § 73:4 Evidence obtained by eavesdropping device
- § 73:5 Wiretap evidence obtained in violation of federal law
- § 73:6 Wiretap evidence obtained in violation of state law
- § 73:7 Suppression of eavesdropping evidence
- § 73:8 Admissibility of audio-video tapes of accused
- § 73:9 Use of illegally obtained evidence to impeach defendant
- § 73:10 Use of illegally obtained evidence to impeach defendant's witnesses

CHAPTER 74. CONFESSIONS AND ADMISSIONS

- § 74:1 Nature of admissions in criminal cases
- § 74:2 When statements by accused may be used
- § 74:3 Admissions to avoid continuances
- § 74:4 Admissibility of plea discussions and bargaining
- § 74:5 Admissibility of guilty plea
- § 74:6 Admission by adoption of statement of third party
- § 74:7 Admissions by coconspirators
- § 74:8 Offers of compromise as admission

- § 74:9 Nature of confessions
- § 74:10 Failure to declare innocence
- § 74:11 Constitutional rights in obtaining confessions
- § 74:12 Requirements of confession
- § 74:13 Effect of reference to inadmissible confession
- § 74:14 Need for corroboration of confession
- § 74:15 Impeachment of admitted confession
- § 74:16 More than one confession by accused
- § 74:17 Use of entire statement
- § 74:18 Weight to be given confession
- § 74:19 Necessity of a *Frye* hearing
- § 74:20 Instructions on confessions and admissions

CHAPTER 75. SUPPRESSING ILLEGALLY OBTAINED CONFESSION

- § 75:1 Motion to produce confession
- § 75:2 Requirement of electronic recording of confessions
- § 75:3 Motion to suppress confession
- § 75:4 Proceeding to determine admissibility of confession
- § 75:5 Standing to contest admissibility of confession
- § 75:6 Necessary witnesses at hearing
- § 75:7 Presumptions and burden of proof
- § 75:8 Determining voluntariness of confession
- § 75:9 Confession in absence of counsel
- § 75:10 Confession following illegal arrest
- § 75:11 Confession during illegal detention
- § 75:12 Manner of conducting interrogation
- § 75:13 Use of force or threats
- § 75:14 Use of drugs
- § 75:15 Use of truth or deception tests
- § 75:16 Use of artifice, trickery or deceit
- § 75:17 Use of cellmate to obtain confession
- § 75:18 Hope of benefit or reward
- § 75:19 Promise of immunity
- § 75:20 Age of accused
- § 75:21 Confession by juvenile in absence of parent or other adult friend
- § 75:22 Character or mental condition of accused
- § 75:23 Effect of intoxication or narcotics
- § 75:24 Admissibility of judicial confession made in the absence of counsel

TABLE OF CONTENTS

§ 75:25 Effect of eavesdropping statute

CHAPTER 76. MIRANDA WARNINGS

- § 76:1 Miranda warnings
- § 76:2 When an accused is “in custody,” requiring giving Miranda warnings
- § 76:3 Sufficiency of warnings given
- § 76:4 Renewal of questioning
- § 76:5 Conversation initiated by suspect
- § 76:6 The sufficiency of the request for an attorney
- § 76:7 Waiver of *Miranda* rights
- § 76:8 Police subterfuge in obtaining waiver of *Miranda* rights
- § 76:9 Limitations on *Miranda* rules
- § 76:10 Public safety and rescue doctrine/private safety exceptions to *Miranda* rule
- § 76:11 Checklist: situations where *Miranda* warnings are not required
- § 76:12 Determining whether interrogation is custodial
- § 76:13 Determining if questioning is an interrogation
- § 76:14 Purging taint by intervening circumstances
- § 76:15 Determining whether defendant’s statements from a prior illegal arrest are sufficiently attenuated to be admissible
- § 76:16 Statements made in separate investigations

CHAPTER 77. SUPPRESSION OF EVIDENCE OBTAINED ILLEGALLY

- § 77:1 Prohibition against illegal searches and seizures
- § 77:2 Silver platter doctrine
- § 77:3 Motion to suppress evidence illegally seized
- § 77:4 Time for filing motion to suppress
- § 77:5 Standing required to suppress evidence
- § 77:6 Hearing on motion to suppress illegally seized evidence—*Franks* hearing
- § 77:7 Order granting or denying motion to suppress

CHAPTER 78. SEARCH AND SEIZURE WITH SEARCH WARRANT

- § 78:1 Search and seizure with warrant
- § 78:2 The distinction between “search” and “seizure”
- § 78:3 Search warrant procedures

- § 78:4 Challenging veracity of search warrant affidavit
- § 78:5 Anticipatory warrants
- § 78:6 Warrant for search of media premises or personnel
- § 78:7 Search warrant based on hearsay
- § 78:8 Need to knock and announce
- § 78:9 Good faith exception to exclusionary rule
- § 78:10 Illegality of repetitive warrant
- § 78:11 Need to produce warrant to justify search
- § 78:12 Articles in plain view during execution of search warrant
- § 78:13 Refusal to cooperate with a search warrant

CHAPTER 79. SEARCH AND SEIZURE WITHOUT SEARCH WARRANT

- § 79:1 Search and seizure without warrant
- § 79:2 Search distinguished from a seizure
- § 79:3 Standing
- § 79:4 Exigent circumstances that justify warrantless search
- § 79:5 Checklist: seizures that may be permitted without warrant
- § 79:6 The emergency exception
- § 79:7 Reasonable expectation of privacy
- § 79:8 Consensual encounters with police
- § 79:9 Inevitable discovery rule
- § 79:10 The independent-source rule
- § 79:11 The “special needs” and “balance” tests for lawful search without warrant
- § 79:12 Arrest and search without warrant based on informer’s tip
- § 79:13 Pen registers, traps, and tracers
- § 79:14 Transponders (electronic beepers, global positioning systems)
- § 79:15 Search and seizure during or after fire
- § 79:16 Articles in public places
- § 79:17 Searches of commercial premises
- § 79:18 Articles in plain view
- § 79:19 Open fields doctrine
- § 79:20 Searches of curtilage
- § 79:21 Searches of hotel and similar rooms
- § 79:22 Searches of contents of luggage or other closed containers

TABLE OF CONTENTS

| | |
|---------|---|
| § 79:23 | Abandoned property |
| § 79:24 | Abandonment of premises searched |
| § 79:25 | Searches of garbage and trash containers |
| § 79:26 | Dog-aided searches |
| § 79:27 | Arrest and search based upon profile |
| § 79:28 | Search by parole or probation officer |
| § 79:29 | Search by government inspector without warrant |
| § 79:30 | Search by school authorities |
| § 79:31 | Warrantless search by conservation officer |
| § 79:32 | Admissibility of evidence obtained in search by private individual |
| § 79:33 | Airport searches |
| § 79:34 | Search with binoculars or technological equipment |
| § 79:35 | Searches from aircraft |
| § 79:36 | Search of package based on profile |
| § 79:37 | Reasonableness of government detention of mail |
| § 79:38 | Administrative searches |
| § 79:39 | Search following hot pursuit |
| § 79:40 | Search under emergency assistance exception |

CHAPTER 80. SEARCH AND SEIZURE PURSUANT TO LAWFUL ARREST

| | |
|---------|--|
| § 80:1 | Search and seizure pursuant to lawful arrest |
| § 80:2 | Custodial interrogation—Determining whether and when arrest has occurred |
| § 80:3 | Probable cause (reasonable grounds) for warrantless arrest |
| § 80:4 | Warrantless arrest based on informant's tip |
| § 80:5 | Arrest based upon "collective knowledge" of police officers |
| § 80:6 | Pretextual arrests |
| § 80:7 | Arrest made in private residence |
| § 80:8 | Arrests in doorway, hallway, etc |
| § 80:9 | Fresh pursuit arrests |
| § 80:10 | Rights upon arrest |
| § 80:11 | Right of conservation officer to detain, search, and arrest |
| § 80:12 | Right of railroad agent and other law enforcement, non-government employees, to arrest |
| § 80:13 | Probable cause for making arrest for DUI |

- § 80:14 Search and seizure by police officer pursuant to arrest outside his jurisdiction
- § 80:15 Arrest by private person—Citizen's arrest
- § 80:16 The protective sweep by police

CHAPTER 81. QUESTIONING PERSON AS SEARCH OR SEIZURE

- § 81:1 Three tiers of citizen-police encounters
- § 81:2 Temporary questioning without arrest
- § 81:3 Investigatory stops
- § 81:4 Search during temporary questioning
- § 81:5 Frisking for weapons
- § 81:6 Police-citizen encounters while performing community-caretaking function
- § 81:7 Airport searches

CHAPTER 82. SEARCHES OF PERSON AFTER ARREST

- § 82:1 Search of person while executing search warrant
- § 82:2 Inventory search
- § 82:3 Strip searches
- § 82:4 Body cavity searches
- § 82:5 X-ray examination of suspect
- § 82:6 Surgical removal of evidence
- § 82:7 Plain feel exception

CHAPTER 83. SEARCHES WITHOUT WARRANT BUT WITH CONSENT

- § 83:1 Search without warrant but with consent of accused
- § 83:2 Search without warrant but with consent of co-owner, co-tenant, etc
- § 83:3 Consent given by spouse
- § 83:4 Consent given by significant other
- § 83:5 Consent given by owner, manager, etc
- § 83:6 Consent given by parent
- § 83:7 Consent given by child
- § 83:8 Consent given by other relative
- § 83:9 Consent given in advance required by law
- § 83:10 Apparent common authority to consent
- § 83:11 Scope of the consent

TABLE OF CONTENTS

- § 83:12 Voluntariness of consent
- § 83:13 Sufficiency of consent
- § 83:14 Consent obtained by exploitation of illegal arrest

CHAPTER 84. SEARCHES OF VEHICLES AND PASSENGERS

- § 84:1 Stopping vehicle
- § 84:2 Search of automobile or occupants without warrant
- § 84:3 Consent to search automobile
- § 84:4 Inventory search of automobile
- § 84:5 Search of mobile home without warrant
- § 84:6 Search of automobile incidental to traffic violation
- § 84:7 Systematic stop and check of automobiles
- § 84:8 Roadblock stops for driving under influence
- § 84:9 Search of contents of automobile without warrant
- § 84:10 Searches based on drug dog
- § 84:11 Search of automobile after lapse of time

CHAPTER 85. EVIDENCE OF CHARACTER AND REPUTATION

- § 85:1 Evidence of character and reputation, generally
- § 85:2 Evidence of character (reputation) of accused
- § 85:3 Character traits of accused that may be considered
- § 85:4 Qualifications of witness to accused's character
- § 85:5 Method of proving character in criminal cases
- § 85:6 Instructing regarding character of accused
- § 85:7 Proof of membership in gang
- § 85:8 Character and reputation of complaining witness
- § 85:9 Character of victim of assault or homicide
- § 85:10 Prior sexual activity or reputation of victim of sexual offense
- § 85:11 Character (reputation) of other witnesses
- § 85:12 Cross-examining character witness

CHAPTER 86. USING DEPOSITIONS AT TRIAL

- § 86:1 Evidence depositions in criminal trials

- § 86:2 Taking evidence deposition
- § 86:3 Objections to depositions
- § 86:4 Using evidence deposition at trial
- § 86:5 Unavailability of deponent
- § 86:6 Diligence required to produce deponent
- § 86:7 Partial use of deposition
- § 86:8 Using deposition after substitution, dismissal or remand
- § 86:9 Instructing on evidence depositions
- § 86:10 Use of video deposition in evidence

CHAPTER 87. MISTRIAL

- § 87:1 Nature of mistrial
- § 87:2 Right to have mistrial declared
- § 87:3 Grounds for declaring mistrial
- § 87:4 Double jeopardy—Mistrial for inability of jury to arrive at verdict
- § 87:5 The decision to move for a mistrial

CHAPTER 88. DIRECTED VERDICT

- § 88:1 Directing verdict
- § 88:2 Directing verdict for variance
- § 88:3 Amending indictment, information or complaint

CHAPTER 89. CLOSING ARGUMENTS

- § 89:1 General rules governing closing arguments
- § 89:2 Closing arguments in non-jury trials
- § 89:3 Right to make closing argument
- § 89:4 Waiver of right to argue
- § 89:5 Court's control of closing arguments
- § 89:6 Time allowed for argument
- § 89:7 Right of party to argue own case
- § 89:8 Right to open and close arguments
- § 89:9 Proper scope of rebuttal argument
- § 89:10 Objections to improper remarks or arguments
- § 89:11 Correcting improper remarks or conduct
- § 89:12 Making record of final arguments
- § 89:13 Instructing about final arguments
- § 89:14 Right to retaliate for improper conduct of counsel—The invited response doctrine
- § 89:15 Improper remarks and conduct, generally
- § 89:16 Arguing new matter or points

TABLE OF CONTENTS

| | |
|---------|---|
| § 89:17 | Comments on court's instructions |
| § 89:18 | Stating law applicable to case |
| § 89:19 | Reading from pleadings |
| § 89:20 | Reading forms of verdict |
| § 89:21 | Reading from trial transcript |
| § 89:22 | Reading from scientific works |
| § 89:23 | Reading from law books |
| § 89:24 | Demonstration or reenactment of evidence |
| § 89:25 | Use of charts, blackboards, etc |
| § 89:26 | Addressing jurors by name |
| § 89:27 | Stating personal opinion of counsel |
| § 89:28 | Appeals to sympathy, prejudice or passion |
| § 89:29 | Misstating evidence |
| § 89:30 | Use of profanity |
| § 89:31 | Comments about opposing party |
| § 89:32 | Comments about opposing counsel |
| § 89:33 | Comments about opposing witnesses |
| § 89:34 | Comments on failure to call witness |
| § 89:35 | Comment on failure to produce evidence |
| § 89:36 | Urging "jury nullification" |
| § 89:37 | Accusing defendant of fabricating a defense |
| § 89:38 | Commenting on post-arrest silence |

CHAPTER 90. IMPROPER ARGUMENTS BY PROSECUTOR

| | |
|---------|---|
| § 90:1 | Improper arguments by prosecutor, generally |
| § 90:2 | Comments about evils of crime |
| § 90:3 | Comments about accused |
| § 90:4 | Comments on failure of accused to testify |
| § 90:5 | Comments on accused's post-arrest silence |
| § 90:6 | Comments on accused's failure to produce witnesses |
| § 90:7 | Comments on failure to call alibi witnesses |
| § 90:8 | Misstating law, generally |
| § 90:9 | Misstating defendant's burden of proof |
| § 90:10 | Misstating duties and function of jury |
| § 90:11 | Comments about defense counsel and counsel's tactics |
| § 90:12 | Improper vouching for prosecution witnesses |
| § 90:13 | Comment about defense witnesses |
| § 90:14 | Stating prosecutor's personal opinions |
| § 90:15 | Argument as to danger in releasing defendant |

- § 90:16 Requesting jurors to put selves in place of complainant
- § 90:17 Comment on right to pardon, parole or probation
- § 90:18 Comment on “reasonable doubt”
- § 90:19 Correcting errors committed by prosecutor in closing arguments

CHAPTER 91. JURY INSTRUCTIONS

- § 91:1 General requirements for jury instructions
- § 91:2 Oral jury instructions
- § 91:3 Duty to use applicable pattern instructions when available
- § 91:4 Checklist: Suggestions for preparing jury instructions
- § 91:5 Preparing instructions not based on pattern instructions
- § 91:6 Format of instructions
- § 91:7 Time for tendering instructions
- § 91:8 Court’s own instructions
- § 91:9 Jury instruction conference
- § 91:10 Objections to instructions
- § 91:11 Effect of failure to object to instructions
- § 91:12 Number of instructions
- § 91:13 Cautionary instructions
- § 91:14 Issues instruction
- § 91:15 Instructions that define words or terms
- § 91:16 Instructions based on statutes
- § 91:17 Instructions based on judicial decisions
- § 91:18 Slanted and argumentative instructions
- § 91:19 Invading province of jury
- § 91:20 Negative instructions
- § 91:21 Manner of reading instructions
- § 91:22 Clarifying or explaining instructions
- § 91:23 Correcting erroneous instructions
- § 91:24 Effect of erroneous instructions
- § 91:25 Effect of conflicting instructions
- § 91:26 Disposition of instructions
- § 91:27 Duty of court to instruct on own motion
- § 91:28 Instructing on crime charged
- § 91:29 Instructing as to lesser included offense
- § 91:30 Waiver of right to tender lesser-included offense instruction
- § 91:31 Instructing on defenses

TABLE OF CONTENTS

| | |
|---------|---|
| § 91:32 | Instructing on defendant's theory of case |
| § 91:33 | Instructing on conflicting defenses |
| § 91:34 | Instructing on the presumption of innocence |
| § 91:35 | Instructing on burden of proof |
| § 91:36 | Instructing on reasonable doubt |
| § 91:37 | Instructing as to intent |
| § 91:38 | Instructing as to acting knowingly |
| § 91:39 | Instructing as to accused's failure to testify |
| § 91:40 | Instructing on accused's right to remain silent |
| § 91:41 | Instructing on accused's right to refuse to testify |
| § 91:42 | Instructing on accountability |
| § 91:43 | Instructing on accomplice witness |
| § 91:44 | Missing witness instruction |
| § 91:45 | Instructing on necessity |
| § 91:46 | Concluding criminal instructions |
| § 91:47 | Instructing on conspiracy |
| § 91:48 | Instructing on eye witness testimony |
| § 91:49 | Instructing on mistake-of-fact |
| § 91:50 | Instructing as to lesser offense |
| § 91:51 | Instructing on proximate cause |
| § 91:52 | Instructing on geographic jurisdiction |
| § 91:53 | <i>Appendi</i> issues |

CHAPTER 92. CONDUCT OF JURY DURING DELIBERATIONS

| | |
|---------|--|
| § 92:1 | Conduct of jury during deliberations |
| § 92:2 | Treatment of improper conduct by jurors |
| § 92:3 | Items taken by jury to jury room |
| § 92:4 | Control of jury during deliberations |
| § 92:5 | Bailiff attending jury |
| § 92:6 | Conduct of deliberations |
| § 92:7 | Presence of counsel during deliberations |
| § 92:8 | Secrecy of jury proceedings |
| § 92:9 | Replacing juror with alternate during deliberations |
| § 92:10 | Answering jurors' questions |
| § 92:11 | Jury's request to rehear testimony |
| § 92:12 | Jury's request to reread or clarify instructions |
| § 92:13 | Rules governing arrival at verdict |
| § 92:14 | Communications by judge with jury during deliberations |
| § 92:15 | Request by judge of numerical division |

- § 92:16 Communications by others during jury deliberations
- § 92:17 Urging agreement
- § 92:18 Eavesdropping on deliberations
- § 92:19 Separation of jury during deliberations
- § 92:20 Meals and entertainment during deliberations
- § 92:21 Use of magnifying glass and other devices
- § 92:22 Experiments by jurors
- § 92:23 Haste in arriving at verdict
- § 92:24 Use of books during deliberations
- § 92:25 Discharge of juror after deliberations have begun

CHAPTER 93. THE VERDICT AND JUDGMENT

- § 93:1 Verdict
- § 93:2 Objections to form of verdict
- § 93:3 Power of court to have jury reconsider defective verdict
- § 93:4 Construction of general verdicts
- § 93:5 Inconsistent verdicts
- § 93:6 Fatal variance in verdict
- § 93:7 Inconsistent bench findings
- § 93:8 Convicting of lesser-included crime
- § 93:9 Sealed verdicts
- § 93:10 Polling jurors
- § 93:11 Procedure when juror dissents or is uncertain
- § 93:12 Verdict by less than twelve jurors
- § 93:13 Impeachment of verdict
- § 93:14 The one act, one crime rule
- § 93:15 The standards of review applied by appeal courts
- § 93:16 Retrial no violation of double jeopardy if evidence was sufficient to convict

CHAPTER 94. POST-TRIAL PROCEEDINGS

- § 94:1 The motion to reduce a sentence
- § 94:2 The motion for a new trial
- § 94:3 Newly discovered evidence
- § 94:4 Petition for relief from judgment
- § 94:5 Sufficiency of record on appeal

TABLE OF CONTENTS

**CHAPTER 95. THE ILLINOIS POST-
CONVICTION HEARING**

§ 95:1 The Post-Conviction hearing

§ 95:2 The proceedings on the post-conviction petition

APPENDIX

Appendix A. Illinois Rules of Evidence

Table of Laws and Rules

Table of Cases

Index