

# **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 Assailing 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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”

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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 inculpate 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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
--------	------------------------

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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>Apprendi</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

TRIAL HANDBOOK FOR ILLINOIS LAWYERS—CRIMINAL

- § 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**