

22.01a Definition Of Material

A statement is material when it did influence or could have influenced [(the) (a)] [(trier of fact) (decision maker)] on any issue or point in question. In other words, the test for materiality is whether the statement tends to disprove or prove an issue in the case.

Materiality is, therefore, derived from the relationship between the proposition of the allegedly false statement(s) and the issue(s) in the case.

The materiality of a statement is to be determined at the time the statement was made and with reference to the circumstances existing at the time the statement was made without regard to subsequent events.

[The statement, however, does not have to be made in the presence of [(the) (a)] [(trier of fact) (decision maker)] or anyone else to be material.]

Committee Note

735 ILCS 5/32-2 (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2 (1991)).

Give Instruction 22.01B.

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995).

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The materiality of the false statement is to be determined at the time the statement was made. *Davis*, 164 Ill.2d at 316 (J. McMorrow concurring), quoting 70 C.J.S., *Perjury* §13, at 262. The rationale for this proposition derives from case law which holds that a statement is material when it did influence or could have influenced, the trier of fact. *People v. Acevado*, 275 Ill.App.3d 420, 423, 656 N.E.2d 118 (2d Dist. 1995); *People v. Bridle*, 84 Ill.App.3d 523, 527 (2d Dist. 1980); see also *United States v. Novek*, 273 U.S. 202, 206, 47 S.Ct. 341, 71 L.Ed. 610 (1927). “The crime of perjury is complete when the oath is taken with the necessary intent, although the false affidavit is never used”, *United States v. McKenna*, 327 F.3d 830, 839 (9th Cir. 2003); *United States v. Stone*, 429 F.2d 138, 140-41 (2d Cir. 1970); 60A Am Jur 2d, *Perjury* §29.

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevado*, 275 Ill.App.3d at 423 (internal citations omitted).

“A statement can be neither material nor immaterial in itself, but its materiality must be determined in accordance with its relations to some extraneous matter.” *People v. Toner*, 55 Ill.App.3d 688, 693, 371 N.E.2d 270 (1st Dist. 1977); *People v. Harris*, 102 Ill.App.2d 335, 337,

242 N.E.2d 782 (5th Dist. 1968), quoting 70 CJS, *Perjury*, par. 11, p. 466.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.