

### 3.13X

#### **Proof Of Prior Convictions--Defendant--Admissibility**

Ordinarily, evidence of a defendant's prior conviction of an offense may [be considered by you only as it may affect his believability as a witness and must] not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of \_\_\_\_\_, you may [also] consider evidence of defendant's prior conviction of the offense of \_\_\_\_\_ [only] for the purpose of determining whether the State has proved that proposition.

#### **Committee Note**

*Instruction and Committee Note Approved October 17, 2014*

This instruction should be given only when an element of the charged offense is that the defendant has been previously convicted of committing a prior offense.

Use the bracketed phrase “[be considered by you only as it may affect his believability as a witness and must]” in the first paragraph of this instruction and use the bracketed word “[also]” in the second paragraph of this instruction only when the defendant testifies at his trial.

If the defendant does not testify at his trial, this instruction should be given only at the defendant's request; otherwise, this instruction should not be given. If the defendant does request that this instruction be given and he does not testify at trial, use the bracketed word “[only]” in the second paragraph of the instruction. Do not use any other bracketed material.

The Committee created this instruction to deal with the admissibility of evidence regarding a defendant's prior conviction when this prior conviction is an essential element of the charged offense. In *People v. Bailey*, 201 Ill.App.3d 904, 559 N.E.2d 509 (2d Dist.1990), the court addressed this situation when the State charged the defendant with unlawful possession of a weapon by a felon and provided a modified Instruction 3.13 to cover the defendant's testimony at his trial. In *Bailey*, the court stated that “[i]n effect, [use of Instruction 3.13, by itself,] would have made it impossible to convict defendant of unlawful use of weapons by a felon.” *Bailey*, 201 Ill.App.3d at 906, 559 N.E.2d 509. See Instructions 18.07 and 18.08, defining the offense of unlawful possession of a weapon by a felon. Accordingly, this instruction provides that when the defendant has been previously convicted of committing a prior offense and he testifies at his trial, evidence of his prior conviction is admissible as substantive evidence of the prior conviction and also as impeachment evidence against the defendant.

Insert in the blanks the defendant's prior conviction.

Use applicable bracketed material.