

### 3.14

#### Proof Of Other Offenses Or Conduct

[1] Evidence has been received that the defendant[s] [(has) (have)] been involved in [(an offense) (offenses) (conduct)] other than [(that) (those)] charged in the [(indictment) (information) (complaint)].

[2] This evidence has been received on the issue[s] of the [(defendant's) (defendants')] [(identification) (presence) (intent) (motive) (design) (knowledge) (\_\_\_\_)] and may be considered by you only for that limited purpose.

[3] It is for you to determine [whether the defendant[s] [(was) (were)] involved in [(that) (those)] [(offense) (offenses) (conduct)] and, if so,] what weight should be given to this evidence on the issue[s] of \_\_\_\_.

#### Committee Note

*Instruction and Committee Note Approved October 17, 2014*

The Illinois Supreme Court has made clear that evidence of other crimes is admissible if it is relevant to establish any fact material to the case other than propensity to commit crime. *People v. Stewart*, 105 Ill.2d 22, 62, 473 N.E.2d 840 (1984); IRE 404(b). Accordingly, the Committee determined that this instruction should be broadened by including a blank within the alternatives provided to explain to the jury why the evidence is being admitted. If the court concludes that none of the specific alternatives provided in paragraph [2] of this instruction fits the facts of the case before it, then the court should set forth in the blank in this instruction whatever explanation does fit the evidence.

The issue(s) on which the evidence which is the subject of this instruction has been received *must* be the same issue(s) in both paragraph [2] and paragraph [3]. Accordingly, insert in the blank in paragraph [3] whatever issue(s) that appear in paragraph [2].

On occasion evidence might be received for a limited purpose that is not technically “an offense,” but for which this instruction might still be useful. Examples are *People v. Carr*, 114 Ill.App.2d 370, 252 N.E.2d 912 (1st Dist.1969) (in prosecution for unlawful possession and sale of a narcotic drug, State permitted to adduce evidence defendant had rented his apartment, the scene of the sale, under an assumed name); *People v. Jackson*, 145 Ill.App.3d 626, 495 N.E.2d 1207 (1st Dist.1986) (evidence of defendant's status and activities as a gang member admissible on issue of motive); *People v. Branion*, 47 Ill.2d 70, 265 N.E.2d 1 (1970) (evidence of defendant's extra-marital affair and marital discord probative of murder). To meet such circumstances, the word “conduct” has been added in paragraph [1] as an alternative to the word “offense.”

Paragraph [3] makes clear to the jury that the limited evidence which is the subject of this instruction is still to be weighed by them; they are free to accept or reject it as they see fit. When the defense concedes that the defendant performed the conduct or committed the offense that is the subject of this instruction, *the bracketed portion of paragraph [3] should not be given.*

Whenever this instruction is given, all three paragraphs (in whatever form is applicable) must be given to the jury.

This instruction may be given both (1) during trial, either just before or immediately after the jury is to hear the evidence in question, *see People v. Roe*, 228 Ill.App.3d 628, 592 N.E.2d 596 (4th Dist.1992), and (2) at the end of the trial, before jury deliberations. *Roe* quoted with approval the following paragraph of this Committee Note. *See Roe*, 228 Ill.App.3d at 636, 592 N.E.2d 596.

At the time the evidence which is the subject of this instruction is first presented to the jury, the Committee recommends that an oral instruction should be given to explain to the jury the limited purpose of this evidence, unless the defendant objects to that instruction.

If this instruction is given just before the jury is to hear the evidence in question, paragraphs [1] and [2] should be modified to begin “Evidence will be received ...” and “This evidence will be received ....”

In *People v. Denny*, 241 Ill.App.3d 345, 360-61, 608 N.E.2d 1313 (4th Dist.1993), the court wrote the following:

“Because of the significant prejudice to a defendant's case that the admission of other crimes evidence usually risks, we hold that trial courts should not only instruct the jury in accordance with IPI Criminal 2d No. 3.14 at the close of the case, but also orally from the bench (unless defendant objects) at the time the evidence is first presented to the jury.”

This instruction is not applicable to proof of prior convictions admitted on the issue of believability. See Instruction 3.13.

Care must be taken to state the proper limited purpose for the evidence. *See People v. King*, 165 Ill.App.3d 464, 518 N.E.2d 1309 (2d Dist.1988).

Use applicable paragraphs and bracketed material.

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

For an example of the use of this instruction, see Sample Set 27.05.