

3.11

Prior Inconsistent Statements – Admitted For Limited Purpose Only

The believability of a witness may be challenged by evidence that on some former occasion he [(made a statement) (acted in a manner)] that was not consistent with his testimony in this case. This evidence may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

Committee Note

This instruction addresses the use of prior inconsistent statements for the non-substantive limited purpose of attacking the credibility of the witness.

Use this instruction when all prior inconsistent statements are admitted solely for the limited purpose of attacking credibility.

Do not use this instruction when all prior inconsistent statements are admitted solely as substantive evidence pursuant to Rule 801 and Section 115-10.1. *People v. Donlow*, 2020 IL App (4th) 170374, ¶ 73 (when a prior inconsistent statement has been admitted substantively, juries need not be instructed regarding that statement). All evidence is substantive unless limited to a non-substantive purpose.

Do not use this instruction when some prior inconsistent statements are admitted for a limited purpose and others substantively. In those circumstances, use Instruction 3.11X.

Upon request, give this instruction orally to the jury when the impeachment occurs. Impeachment occurs when it is completed. Impeachment is completed either when the witness admits the out-of-court statement or other affirmative evidence is admitted to perfect the impeachment. Give this instruction again in the final, written instructions.

A previous version of this instruction mistakenly equated the criteria the trial court must apply to determine the substantive admissibility of the prior inconsistent statement with a factual question for the jury to resolve. *Donlow*, 2020 IL App (4th) 170374, ¶ 70. Accordingly, this section has been deleted from the instruction.

Use the applicable bracketed material.