

3.14 Proof Of Other Offenses Or Conduct

[1] You [(will hear) (have heard) evidence] 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 [(will be) (has been)] received on the issue[s] of the [(defendant's) (defendants')] [(motive) (opportunity) (intent) (preparation) (plan) (knowledge) (identity) (absence of (mistake) (accident)) (propensity) (____)] and may be considered by you only for [(that) (those)] purpose[s].

[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

At common law, evidence of other crimes is admissible if that evidence is relevant to establish any material purpose other than a defendant's propensity to commit crimes. *People v. Dabbs*, 239 Ill. 2d 277, 283, 940 N.E.2d 1088, 1093 (2010); Ill. R. Evid. 404(b). This rule is grounded in the belief that using prior conduct or charges to show propensity has “too much probative value”, tempting the jury to infer guilt because a defendant committed other bad conduct. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003); *People v. Potts*, 2021 IL App (1st) 161219, ¶ 174, 196 N.E. 3d 961, 992.

This common law rule was abrogated in part by 725 ILCS 5/115-7.3 and 115-7.4. *Dabbs*, 239 Ill. 2d at 284-285, 940 N.E.2d at 1094. Both sections 115-7.3 and 115-7.4 provide that for certain defined crimes (such as sexual abuse or domestic violence), evidence of a defendant's other offenses or conduct “may be considered for its bearing on any matter to which it is relevant.” 725 ILCS 5/115-7.3; 725 ILCS 5/115-7.4.

Accordingly, unlike the common law, these statutes permit the admission of other crimes evidence to show a defendant's propensity to commit the charged offense if the requirements of the statute and other applicable rules of evidence are met. *Donoho*, 204 Ill. 2d at 176, 788 N.E. 2d at 718; *Dabbs*, 239 Ill. 2d at 295; 940 N.E.2d at 1099. The State is entitled to an instruction that certain evidence can be considered for propensity purposes. See *People v. Heller*, 2017 IL App (4th) 140658, ¶65, 71 N.E.3d 1113, 1123 (where other crimes evidence admitted solely pursuant to statute, instructing jury on propensity is proper); *People v. McDaniel*, 2021 IL App (2d) 190496, ¶ 59; 190 N.E.3d 312, 321 (where the same conduct is admitted both for limited purpose and to prove propensity, omitting reference to propensity renders instruction incomplete); *Potts*, 2021 IL App (1st) 161219, ¶ 191, 196 N.E.3d 961, 995 (when multiple

instances of uncharged offenses or conduct admitted, some pursuant to common law and some pursuant to statute, the State is entitled to a propensity instruction).

Instruction 3.14 is designed for use with all other crimes evidence, whether admitted pursuant solely to common law, solely to statute, or both.

Give paragraphs [1], [2], and [3].

Insert in the blank in paragraph [3] the same issue(s) identified in paragraph [2].

When the defense concedes that the defendant performed the conduct or committed the offense that is the subject of this instruction, do not use the bracketed portion of paragraph [3].

If referencing multiple instances of uncharged offenses or conduct, repeat the entire instruction for each uncharged offense or conduct, briefly identifying the uncharged offense or conduct in paragraph [1] and its corresponding issue(s) in paragraphs [2] and [3]. Modify the instruction to differentiate which uncharged offense or conduct is admitted for what purpose.

Give this instruction verbally to the jury, either just before or immediately after the jury hears the evidence at issue. *People v. Heard*, 187 Ill. 2d 36, 60-61, 718 N.E.2d 58, 72 (1999). Give this instruction again in the final, written instructions.

Do not use this instruction when the proof of prior convictions is admitted on the issue of believability. See Instruction 3.13.

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.