

# Proving a Criminal Act

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In order to take advantage of 735 ILCS 5/9-120 you need to:

1. Know what acts ( behavior) “constitute a felony or Class A misdemeanor” (in Illinois);
2. Understand what “elements” are necessary to prove the crime;
3. Provide evidence of those elements; and
4. Understand what evidence is and what evidence you can or can not present to the court.

What you don’t have to have is a conviction or even an arrest. In fact, you don’t need police involvement at all.

My first piece of advice is to hire an attorney if you are going to use criminal behavior as the basis of an eviction. At least the first time. Proving a crime is not as easy as it might sound.

Fortunately, in civil procedures such as evictions, you have a lower burden of proof. You are required to “prove” criminal behavior by a preponderance of the evidence – i.e. “more likely than not.” (In criminal procedures the requirement is to prove the behavior “beyond a reasonable doubt.”) Nevertheless, you **MUST PROVE** the criminal conduct. How?

1. Knowing what acts constitute criminal behavior that in Illinois would be classified as a felony or Class A misdemeanor. At least instinctively, most persons know what a crime is (stealing, hitting someone, drug use, etc.). The trick here is identifying the criminal act under Illinois statutes. For that you will need to refer to 720 ILCS 5/ Criminal Code of 1961. It isn’t easy and it will take some time to wade through the act to find the criminal behavior you’re seeking.

2. Once you’ve identified the crime, you will need to know what “elements” make up the crime and must be proven in court. As an example: Domestic Battery is one of the more common crimes that take place in residential settings. Illinois statute reads:

**720ILCS5/12-3.3 Domestic Battery.**

(a) A person commits domestic battery if he *intentionally or knowingly* without legal justification by any means:

- (1) Causes *bodily harm* to any family or household member as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, as amended;
- (2) Makes physical contact of an *insulting or provoking nature* with *any family or household member* as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, as amended.

What are the elements you have to prove? You must prove that the tenant

- A. Intentionally or knowingly
- B. Caused bodily harm OR had contact of an insulting or provoking nature
- C. To a family/household member

(You don’t have to prove the element “without legal justification” unless the tenant claims he had legal justification.)

The most common criminal behavior probably is Disorderly Conduct. Illinois statute reads, in part, “A persons commits disorder conduct when he knowingly does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.” Unfortunately, Disorderly Conduct is a

Class C Misdemeanor and does not apply for our purposes. So, you must know the classifications of crimes, too.

3. You have to provide evidence proving the elements of the criminal behavior you are alleging. Let's take Domestic Battery again.

A. Generally you can prove the tenant "intentionally" or "knowingly" committed an act simply by proving the act – unless the tenant claims the act was accidental. What evidence could you give the court?

- The testimony of any witness who saw the act, including the victim or yourself. But not the police officer unless she saw the act.
- The testimony of any person to whom the tenant admitted his action. This very well could be the police officer.

B. Caused bodily harm –

- Witness testimony that the victim of the tenant's action was injured.
- Pictures or videos of the victim's injury plus testimony of the person who can corroborate that the pictures "fairly and accurately" represent the way the victim and her injury looked on a certain date and time.

B. Insulting or provoking nature –

- Easier to prove. Most any *unwanted* physical contact is construed as "insulting or provoking." Physical contact includes being hit by a thrown object or spit.

C. To a family/household member. You need to know what relationships are covered under the statute. Husband/wife; boyfriend/girlfriend; sibling; offspring; and aunt/uncle are covered. Proving it, however, is not always easy. How do you prove someone is married to another person, for instance? Testimony by the victim. Admission by the tenant. Testimony by someone who knows. Courthouse documents. Anything else?

4. Having the evidence is not enough. You must be able to present the evidence in court. It's harder than it sounds.

Witness testimony – The witness must be present in the court, sworn under oath, and be able to testify to what she personally knows. That testimony must be elicited by the examiner (your or your attorney) without leading questions. With very few exceptions, the witness can not testify to what someone told her (the major exception would be an admission by the tenant.)

Photos & video – They can be introduced into court as evidence only after someone has testified that they took the pictures/video and/or that the pictures/videos "fairly and accurately" represent the pertinent subject matter on a certain date, time and/or location.

Documents – Most often you will be using courthouse records. You will need to have them certified and, in most instances, you will need a person knowledgeable with the keeping of those records to identify them and establish their authenticity.

Police Reports – YOU CANNOT USE THEM. They are hearsay. Hearsay – what someone reports that someone else said – is inadmissible.

Audio Recordings – You will need someone to identify the voices plus someone to establish the legitimacy of the recording (generally the person who made it).

Admissions – One of the best forms of evidence is an exception to the hearsay rules, it must be presented by a witness to the admission.

Physical evidence – The actual drugs possessed by the tenant or the weapon used in a criminal act by the tenant, etc., must be presented in court by someone (or several persons) who has direct knowledge/proof of what the item is and the "chain" of possession between the tenant and the presentation to the court. This is more difficult than it sounds. And, chances are, because this is a crime, the physical evidence will be in the possession of law enforcement.

Remember, you don't need a "smoking gun." Most cases are proven with circumstantial evidence. What is circumstantial evidence? If you go to bed at 9 pm and there is no snow on the ground but, when you get up in the morning there are six inches of snow then you can conclude – even though you didn't actually see it – that it snowed during the night. That's circumstantial evidence.

Finally, subpoenas: Without discussion of the ways in which to subpoena, be aware that you can and should subpoena any person that you are going to put on the stand – direct witnesses and persons who will introduce pictures, videos, documents or physical evidence.

One last piece of legal advice (no charge): get an attorney to help you.