

# **ILLINOIS HOMICIDE STATUTE 1871**

**30 ILL. STAT. DIV. 5**

## DIVISION III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

§ 1. *The Party Injured.*  
 § 2. *Of Approvers.*

§ 3. *Affirmation Sufficient.*  
*False Affirmation.*

*R. S. § 15, 153. P. 361. S. 377. 1. PARTY INJURED.]* The party or parties injured, shall in all cases be competent witnesses, unless he, she or they shall be rendered incompetent by reason of his, her or their infamy or other legal incompetency other than that of interest; the credibility of all such witnesses shall be left to the jury, as in other cases.

§ 16. Blacks, Mulattoes and Indians not allowed to testify as to white persons in criminal cases; repealed; Laws 1865, (7 Feb.) 105.

*Ibid. § 17. 2. APPROVERS.]* Approvers shall not be allowed to give testimony.

*Ibid. § 18. 3. AFFIRMATION.]* The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit wilful and corrupt perjury.

## DIVISION IV. CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

§ 1. *Of Allegiance.*  
 § 2. *Of Treason.*

*Testimony Required.*  
 § 3. *Misprision of Treason.*

*R. S. § 19, 154. P. 362. S. 377. 1. ALLEGIANCE.]* Crimes against the government and people shall consist in treason and misprision of treason, and can only be committed by persons owing allegiance to the state.

*Ibid. § 20. 2. TREASON.]* Treason shall consist in levying war against the government and people of this state, in the same, or being adherent to the enemies of this state, giving them aid, advice and comfort in this state or elsewhere. Any person being thereof duly convicted of open deed by two or more witnesses, or voluntary confession in open court, shall suffer the pains and penalty of death; and when the overt act of treason shall be committed without the limits of this state, the person charged therewith may be arrested, tried and punished in any county in this state, within the limits of which he may be found; and the offense may be charged to have been committed in the county where he may be arrested.

*Ibid. § 21. 3. MISPRISION OF TREASON.]* Misprisions of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. Any person found guilty thereof shall be punished by confinement in the penitentiary for any term not exceeding two years.

## DIVISION V. OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

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 § 6. *Irresistible Passion.*  
 § 7. *Involuntary Manslaughter.*  
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 § 9. *Confinement for Life.*  
 § 10. *Limitation.*  
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§ 37. <i>Rape Punished.</i>	§ 48. <i>Strikes Punished.</i>
§ 38. <i>Emission.</i>	§ 49. <i>Misconduct in Coal Banks.</i>

*R. S.* § 22, 155. *P.* 362. *S.* 377. **1. MURDER.]** Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned.

*Ibid.* § 23. **2. EXPRESS MALICE.]** Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

*Ibid.* § 24. **3. IMPLIED MALICE.]** Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death. — [Consult also *Div. 15* §§ 5, 9.]

*Ibid.* § 25. **4. MANSLAUGHTER.]** Manslaughter is the unlawful killing of a human being without malice, express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, or involuntary in the commission of an unlawful act, or a lawful act without due caution or circumspection.

*Ibid.* § 26. **5. INJURY — ACTUAL OR ATTEMPTED.]** In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

*Ibid.* § 27. **6. IRRESISTIBLE PASSION — DELIBERATION.]** The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

*Ibid.* § 28. **7. INVOLUNTARY MANSLAUGHTER.]** Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: *Provided always*, that where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

*Ibid.* § 29. **8. MANSLAUGHTER PUNISHED — EIGHT YEARS.]** Every person convicted of the crime of manslaughter, shall be punished by imprisonment in the penitentiary for a term not exceeding eight years.

*Laws* 1859, 125. 19 *Feb.* § 1. **9. CONFINEMENT FOR LIFE.]** In all cases where a person shall be convicted of manslaughter, the jury shall, in their verdict, fix the time which the party found guilty as aforesaid shall be confined in the penitentiary, which shall be for natural life, or any number of years, to be designated in the verdict.

*Ibid.* § 2. **10. LIMITATION.]** All offenses committed before this act, except those named in § 3 [concerning larceny] takes effect, shall be punished on conviction, as provided by the law in force at the time such offense was committed.

*R. S.* § 30, 156. *P.* 363. *S.* 378. **11. TIME OF DEATH.]** In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which, the whole of the day on which the hurt was done shall be reckoned the first.

*Ibid.* § 31. **12. PLACE OF DEATH.]** If the injury be inflicted in one county and the

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party die within another county, or without the state, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county, and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county. — [Consult also Div. 16.]

*Ibid.* § 32. **13. JUSTIFIABLE HOMICIDE.** Justifiable homicide is the killing of a human being in necessary self-defense, or in the defense of habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

*Ibid.* § 33. **14. REASONABLE FEARS.** A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

*Ibid.* § 34. **15. SELF-DEFENSE.** If a person kill another in self-defense, it must appear that the danger was so urgent and pressing, that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavor to decline any further struggle before the mortal blow was given.

*Ibid.* § 35. **16. RESISTING AN OFFICER.** If an officer in the execution of his office, in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting or other crime, denominated felony by the common law, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he or she be killed, the officer or private person so killing shall be justified: *Provided*, that such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that from all probability, there was no prospect of being able to prevent injury from such resistance and the consequent escape of such accused person.

*Ibid.* § 36. **17. DEATH ACCORDING TO LAWFUL SENTENCE.** Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer, who in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

*R. S.* § 37, 157. *P.* 364. *S.* 379. **18. HOMICIDE BY MISADVENTURE.** Excusable homicide, by misadventure, is when a person in doing a lawful act, without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

*Ibid.* § 38. **19. OTHER INSTANCES.** All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

*Ibid.* § 39. **20. DEFENDANT DISCHARGED.** The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

*Ibid.* § 40. **21. BURDEN OF PROOF.** The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

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*Ibid.* § 41. **22. DEATH OF BASTARD CONCEALED.**] If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if born alive would be a bastard, so that it may not come to light, whether it shall have been ~~murdered~~ or not, every such mother being convicted thereof, shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided however*, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

*Ibid.* § 42. **23. PETIT TREASON IS MURDER.**] The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted be punished accordingly.

*Ibid.* § 43. **24. DUELING.**] If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors and counselors, being thereof duly convicted, shall be considered to have committed a high misdemeanor, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years, nor less than one year.

*Ibid.* § 44. **25. CHALLENGING.**] If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this state, and be fined in a sum not exceeding \$100.

*Ibid.* § 45. **26. CARRYING CHALLENGE.**] If any person shall, willingly or knowingly, carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as a second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument or weapon with which the duel shall be fought or intended to be fought, so that it be alleged in the indictment, that the engine, weapon or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties.

*Laws 1869, 307. 31 Mar.* § 1. **27. PRIZE FIGHTING.**] Any person who shall send, cause to be sent, published, or otherwise made known, and [any] challenge to fight what is commonly known as a prize fight, or shall accept such challenge, or who shall engage in such prize fight, or go into training preparatory to such fight, or act as trainer for any person contemplating a participation in such fight, and any person acting as aider or abettor, backer, umpire, trainer, second, surgeon, assistant or reporter at such fight, or in preparation for such fight, shall, upon conviction thereof, be confined in the penitentiary not less than one year nor more than 10 years.

*Ibid.* § 2. **28. BOXING.**] Any person who shall be in any way connected with any sparring or boxing exhibition shall, upon conviction thereof, be fined not less than \$100. nor more than \$1000., and confined in the county jail not less than 30 days nor more than one year.

*Laws 1869, 112.. 31 Mar. [19 June]* § 3. **29. PRIZE FIGHTING — FURTHER PROVISIONS.**] Every person who shall fight in this state, or agree in this state to fight either in or out of this state, or shall train in this state to fight, or shall go or attempt to go out of this state to fight in any other state, place, or territory, or shall in any way or manner aid,

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abet, or assist any other person to fight or attempt to fight, either in or out of this state, what is commonly called a prize-fight, every such person shall be deemed guilty of a high misdemeanor, and on conviction thereof, shall be punished by confinement in the county jail for any period of not less than six months, nor more than one year, and be fined not less than \$500., nor more than \$1000.

*R. S.* § 46, 158. *P.* 365. *S.* 381. **30. POISONING.** Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than seven years. And every person who shall administer, or cause to be administered or taken, any such poison, substance or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding \$1000.

*Laws* 1853, 215. 12 Feb. [15 Apr.] § 1. **31. POISON LABELED.** All druggists and other persons selling medicines at retail, shall be required to place upon each bottle, vial or package by them sold, a label, with the name of the medicine which such bottle, vial or package contains, written or printed thereon.

*Ibid.* § 2. **32.** Any person who shall violate the provisions of the foregoing act, shall be subject to a fine of not less than \$1. nor exceeding \$5., to be recorded [recovered] before any justice of the peace in an action of debt: *Provided*, that the provisions of this act shall not apply to physicians in their practice.

*Laws* 1867, 89. 28 Feb. § 1. **33. MISCARRIAGE.** If any person shall, by means of any instrument or instruments, or any other means whatever, cause any pregnant woman to miscarry, or shall attempt to procure or produce such miscarriage, the person so offending shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be confined in the penitentiary, for a period not less than two, nor more than ten years.

*Ibid.* § 2. **34.** If any person shall, in the attempt to produce the miscarriage of a pregnant woman, thereby cause and produce the death of such woman, the person so offending shall be deemed guilty of murder, and shall be punished as the law requires for such offenses.

*Ibid.* § 3. **35.** The provisions of this act shall not apply to any person, who procures or attempts to produce the miscarriage of any pregnant woman, for bona fide medical or surgical purposes.

*R. S.* § 47, 158. *P.* 365. *S.* 381. **36. MAYHEM.** Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than three years: *Provided*, that no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases, where the fact shall happen in actual fight, the party accused, being thereof duly convicted, shall be adjudged guilty of a high misdemeanor, and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding \$1000.

*Ibid.* § 48. **37. RAPE.** Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of 14 years and upwards, who shall have carnal knowledge of any female child under the age of 10 years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary for a term not less than one year, and may extend to life.

*Ibid.* § 49. **38. EMISSION.** It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

*Ibid.* § 50. **39. CRIME AGAINST NATURE.** The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

*Ibid.* § 51. **40. ASSAULT.** An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

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*Ibid.* § 52. **41. ASSAULT WITH INTENT, ETC.]** An assault with an intent to commit murder, rape, mayhem, robbery or larceny, shall subject the offender to confinement in the penitentiary for a term not less than one year, nor more than 14 years. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another, a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person thereof duly convicted, shall be *fined in a sum not exceeding \$1000., and imprisoned not exceeding one year in the county jail.*

*Laws 1859, 153. 19 Feb. [28 Apr.] § 1.* **42. ASSAULT WITH DEADLY WEAPON.—**  
\* \* The preceding section] is hereby amended so that hereafter, in all convictions for an assault with a deadly weapon, as defined in said section, the person so convicted shall be fined not exceeding \$1000., nor less than \$25., or imprisoned in the county jail for a period not exceeding one year, or both, in the discretion of the court.

*R. S. § 53, 159. P. 366. S. 381.* **43. ASSAULT AND BATTERY.]** Assault and battery is the unlawful beating of another.

*Ibid.* § 54. **44. FALSE IMPRISONMENT.]** False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall be fined in any sum not exceeding \$500., or imprisoned not exceeding one year in the county jail.

*Ibid.* § 55. **45. KIDNAPPING DEFINED.]** Kidnapping is the forcible abduction or stealing away of a man, woman or child, from his or her own country, and sending or taking him or her into another.

*Ibid.* § 56. **46. KIDNAPPING PUNISHED.]** Every person who shall forcibly steal, take or arrest any man, woman or child, whether white, black or colored, in this state, and carry him or her into another country, state or territory; or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this state, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year, and not more than seven years, for each person kidnapped or attempted to be kidnapped.

*Ibid.* § 57. **47. KIDNAPPING NEGRO OR MULATTO.]** Every person who shall hire, persuade, entice, decoy or seduce, by false promises, misrepresentations and the like, any negro, mulatto or colored person, not being a slave, to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto or colored person, any person so offending shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section.

*Laws 1863, 70. 13 Feb. § 1.* **48. STRIKES, ETC.]** If any person shall, by threat, intimidation or otherwise, seek to prevent any other person from working at any lawful business, on any terms that he may see fit, such person so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding \$100.

*Ibid.* § 4. **49. MISCONDUCT IN COAL BANK.]** If any person shall enter the coal banks of another, with intent to commit any injury thereto, or by means of threats, intimidations, or other riotous or unlawful proceedings, to cause or induce any person employed therein to leave his employment, such person shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be subject to a fine not exceeding \$500., or imprisoned in the county jail not exceeding six months, or both.