

## PUBLICATION UPDATE

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# Criminal Defense Techniques

Publication 202

Release 144

May 2025

### HIGHLIGHTS

- Release 144 of Criminal Defense Techniques incorporates case law developments throughout the treatise to keep the material current and effective for practitioners. Key changes are discussed below.

This release of **Criminal Defense Techniques** includes updates to **48** chapters incorporating the latest case and statutory developments on multiple topics.

This **Release 144** includes precedents issued by the United States Supreme States Court during as well as several noteworthy decisions from the Circuit Courts and State Supreme Courts.

General overview of the highlights for this **Release 144** includes:

While there were no significant

criminal law decisions issued by the United States Supreme Court during this release period, there were several noteworthy decisions from the Circuit Courts and various State Supreme Courts.

In the area of speedy trial, New York continues to grapple with the speedy trial implications of its sweeping statutory changes of 2019 which pinned together bail and discovery reforms with the prosecution's ability to legitimately claim exclusions from the running of speedy trial time. In *People v. King*, 42 N.Y.3d 424, 222 N.Y.S. 3d 16, 247 N.E.3d 86 (2024), the Court of Appeals ruled that the 2019 amendments did not apply to cases where the prosecution stated readiness before the effective date of the changes. *Pennsylvania, in Commonwealth v. Lear*, 325 A.3d 552 (Pa., 2024), continued to exclude delays caused by

the COVID-19 pandemic-related emergency court closures and restrictive protocols, and in *United States v. Wilson*, 122 F.4th 317 (8th Cir., 2024), the Eighth Circuit held that Speedy Trial Act provisions for exclusions due to an ends-of-justice continuance (§ 3161(h)(7)) and other delays (§ 3161(h)(1)) can apply concurrently.

In *United States v. Turner*, 124 F.4th 69 (1st Cir., 2024) and *United States v. Bailey*, 121 F.4th 954 (1st Cir., 2024), the First Circuit held that challenges to weapon related charges based on a Second Amendment violation must first be raised in a *Federal Rule of Criminal Procedure* Rule 12(b)(3) motion to dismiss to survive an appeal waiver.

The *Colorado Supreme Court*, in *People v. Whittington*, 556 P.3d 805 (Colo., 2024) held, in a case where the People untimely provided certain evidence to defendant in violation of Colo. R. Crim. P. 16, that it was error for the trial court to exclude all late-disclosed evidence from the preliminary hearing without making any findings to support this severe discovery sanction, especially as the trial court found no willful misconduct and no basis to conclude that the People had exhibited a pattern of discovery violations. In *State v. Grad*, 2024 Ill LEXIS 2777 (Ill., 2024), the Illinois Supreme Court held that a significant post-trial change in scientific knowledge of a principal related to causation that undergirded a defendant's conviction at trial could constitute newly discov-

ered evidence which could lead to a different outcome vitiating the original conviction. Also in Illinois, in a case involving a well-known actor, (*People v. Smollett*, 2024 Ill LEXIS 707 (Ill., 2024)), the State's reneging on a promise in a plea agreement not to pursue additional charges against the defendant was found to constitute a due process violation.

In other cases involving guilty pleas, the Nebraska Supreme Court held in *State v. Haas*, 12 N.W.3d 787 (Neb., 2024), that a defendant's representation that he would be "fine" without his medication was enough to accept a plea and not question the defendant's competence. In *Commonwealth v. Torres*, 246 N.E.3d 360 (Mass., 2024), the Massachusetts Supreme Judicial Court set forth the standard for evaluating a defendant's claim that he would not have plead guilty if his counsel had properly advised him on immigration consequences.

Regarding jurors, the Fourth Circuit held in *United States v. Laffitte*, 121 F.4th 472 (4th Cir., 2024), that it was a violation of a defendant's 5th and 6th Amendment rights to summarily remove a juror who complained of "anxiety" and in *United States v. Davis*, 126 F.4th 610 (8th Cir., 2025), the Eighth Circuit held that the fact that an impaneled juror was a victim of a similar crime fifty years before the trial was not an "extreme situation" warranting a finding of implied bias.

Several cases involving federal sentences are highlighted in Chapters

46 and 121 with particular focus on whether sentencing guidelines are either misapplied or departed from unreasonably. Additionally, the application of a lifetime ban on obtaining federal benefits as a part of a sentence is examined in *United States v. Phillips*, 124 F. 4th 522 (8th Cir., 2024) and the reach of a restitution award under the Mandatory Victim Restitution Act is examined in *United States v. Acevedo-Osorio*, 118 F.4th 117 (1st Cir., 2024).

In the area of suppression, *United States v. Turner*, 125 F. 4TH 892 (8TH Cir., 2025), examines when the questioning of an inmate in prison can be considered “custodial.” In State search cases, Illinois ruled, in *People v. Redmond*, 248 N.E.3d 1026 (Ill., 2024), that the odor of burnt cannabis alone without other inculpatory facts is insufficient to provide probable cause to search a vehicle. Swerving repeatedly in quick succession over a highway fog line does provide probable cause to stop a vehicle in New York under *People v. Rufus*, 2024 N.Y. LEXIS 2019 (2024) and in *State v. Pulizzi*, 559 P.3d 1220 the Idaho Supreme Court held that Article 1 Section 17 of the State’s Constitution and the Twin Falls City waste collection ordinance do not provide a defendant with any greater protection against a search by police of trash which has been placed outside the curtilage of a home protection than the Fourth Amendment of the US Constitution.

Some **specific highlights** include the following chapters which have

not been updated in a while:

**Chapter 25a: Examination of Eyewitnesses:** The sections regarding expert witnesses testimony were expanded to include a discussion of cases interpreting changes to *Federal Rules of Evidence Rule 702* which addresses the admissibility of expert testimony. *Rule 702* was amended in 2023 to reinforce the gatekeeping function of the court by providing that the proponent of the expert testimony must demonstrate that the expert’s testimony is more likely than not to meet admissibility requirements.

**Chapter 33: Demonstrative Evidence:** This chapter was completely revised to include updated caselaw as well as integration and analysis of new *Federal Rules of Evidence Rule 107* and changes to *Rule 1006*. Effective December 1, 2024, new *Rule 107* applies to illustrative aids, defining them not as evidence but rather as something to assist the trier of fact in understanding evidence or argument. In addition, *Rule 1006* was amended to allow courts to permit a summary of voluminous documents to be admitted as evidence to prove the content of voluminous admissible evidence. A summary of voluminous evidence that is offered solely to assist the trier of fact in understanding the evidence is governed by *Rule 107*.

**Chapter 54: Defense of an Obscenity Case:** This Chapter adds a discussion on artificial intelligence seeing how ‘virtual’ pornography has affected how the legislature and gov-

ernment looks at artificially generated content to prevent harm to these victims and to address the challenges posed by technological advancements in creating indistinguishable image. Also examined is the reasoning behind the *New York Penal Code* changing its definition of “sexual conduct” to encompass a broader range of activities and to adapt to new forms of sexual gratification.

**Chapter 57: Defense of Drug Abuse:** This Chapter was rewritten to address contemporary issues facing defense attorneys defending drug abuse cases. This Chapter includes an update on state laws that have decriminalized or legalized certain drugs, and the increased focus on prosecuting prescription drug dealers.

**Chapter 58: How to Handle a Misdemeanor or Offense:** All cited statutes and case law have been updated accordingly.

**Chapter 73: Behavior Modification:** This revised Chapter offers a discussion of contemporary behavior modification practices in the nation’s prison systems.

Furthermore, this Release all provides relevant changes to existing cited statutes and updated cases for those Chapters with sample Motions and Forms, including:

**Chapter 1: Bail Reform Act of 1984; Chapter 1b: Federal Pretrial Motion Tactics and Techniques; Chapter 2: Identification Evidence: Constitutional and Evidentiary Principles; Chapter 4: Search and**

**Seizure; Chapter 5: Electronic Surveillance Under Federal Law; Chapter 10: Pretrial Discovery in the Federal Courts; Chapter 11: Pretrial Discovery of Prosecution Witnesses in State Courts; Chapter 12: Misjoinder and Prejudicial Joinder of Offenses and Defendants; Chapter 13: Negotiating a Plea; Chapter 15: Pretrial Discovery of Prosecution Witnesses in State Courts; Chapter 17: Competence to Stand Trial; Chapter 19: Speedy Trial; Chapter 22: Opening Argument; Chapter 23a: Practical Problems in Criminal Evidence—Part 1; Chapter 24: Practical Problems In Criminal Evidence—Part 2; Chapter 24a: Direct Examination: A Criminal Defense Attorney’s Guide; Chapter 25: Impeachment By Prior Inconsistent Statements; Chapter 25a: Examination of Eyewitnesses; Chapter 33: Presenting Demonstrative Evidence; Chapter 36: Closing Argument; Chapter 38: Overturning Jury Verdicts; Chapter 43: State Post-Conviction Remedies; Chapter 44: Federal Habeas Corpus for State Prisoners; Chapter 45: Effectiveness of Guilty Pleases, Chapter 46: Vacation of Illegal Sentences; Chapter 47: Probation, Parole and Other Forms of Conditional Release; Chapter 54: Defense of an Obscenity Case; Chapter 57: Defense of a Drug Abuse Case; Chapter 58: How to Handle a Misdemeanor or Offense; Chapter 73: Behavior Modification; Chapter 85: Essentials for the Prosecution and Defense of Federal Program**

**Fraud; Chapter 102: Bail; Chapter 106: Motions to Dismiss; Chapter 104: Preliminary Hearings; Chapter 106: Motions to Dismiss; Chapter 107: Venue; Chapter 108: Discovery; Chapter 110: Motions to Suppress Confessions and Identification Evidence; Chapter 111: Motions to Suppress Evidence; Chapter 112: Notice of Alibi and Insanity Defense; Chapter 113: Joinder and Severance; Chapter**

**114: Speedy Trial Motions; Chapter 116: Motions and Stipulations Regarding Pleas and Plea Agreements; Chapter 117: Motions To Disqualify Judge or Counsel; Chapter 118: Motions *In Limine*; Chapter 119: Jury Selection and Jurors; Chapter 120: Motions for Acquittal or New Trial; Chapter 121: Sentencing; Chapter 122: Conviction and Post-Conviction Remedies, etc.**

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# Criminal Defense Techniques

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Publication 202      Release 144

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May 2025

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