

# Restore Justice Foundation

## Criminal Justice Issues and Prisoners' Rights

<https://restorejustice.org/about-us/resources/know-more/know-more-law-of-accountability/>

### Policy Issue Resources

*The criminal legal and prison systems in Illinois can often feel like a jigsaw puzzle, full of interlocking laws, policies, and eccentricities that can be overwhelming even to experienced advocates. Restore Justice publishes a series of [Know More](#) posts. Each post will provide a straightforward overview of a different aspect of the Illinois criminal legal system.*

In Illinois, it is legal for a person to be arrested, charged, and convicted of a crime they not only did not commit but also did not plan, agree, or intend to commit, and at which they were not even present. Like many states, Illinois has enacted a statute generally known as an accomplice liability law, which allows a person to be held criminally responsible for someone else's actions. In Illinois, this statute is called the law of accountability, or accountability theory.

The law of accountability is a legal mechanism the state uses to convict people of crimes with which they were associated but did not commit. Accountability is not the definition of a criminal offense, but rather is applied to people who were accessories or passive participants in a crime.

Specifically, the law of accountability states that a person is legally responsible for another person's illegal conduct if *either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense (720 ILCS 5/5-2)*. In cases where the law of accountability has been challenged, Illinois Courts have held that to prove a defendant possessed the intent to promote or facilitate the crime, evidence may be presented that (1) the defendant shared the criminal intent of the person who actually committed the crime, or (2) there was a common criminal design or plan. The second holding has become known as the common-design rule.

Under the common-design rule, if two or more people engage in or agree to engage in a criminal act together, any additional criminal acts committed by one person are considered to be the acts of all persons. Everyone is held equally responsible for the consequences of further acts. Under this rule, evidence that a person attached themselves to a group of people intent on committing one crime can be used to sustain his or her conviction for any other offense committed by a member of the group. This means that if someone assists in any way in the planning or commission of a crime, or exhibits more than mere presence at the scene of the crime, that person can be charged, convicted, and sentenced as if they actually committed the crime.

The court uses six factors to determine if a person is accountable for the unlawful acts of another person. These factors are: (1) being present during the commission of the crime (unless the person attempted to leave or prevent the crime), (2) acting as a lookout, (3) fleeing the scene after the crime, (4) continuing to associate with the principle actor after the criminal act, (5) failing to report the incident, and (6) accepting illegal proceeds of the crime. **The law of accountability allows a person to be convicted for crimes committed by another person, even if the other person has not been charged or has been acquitted or found guilty only of a lesser offense (720 ILCS 5/5-3).**

The law of accountability is a tool that is especially useful to law enforcement in cases that involve what they perceive to be criminal organizations or [gangs](#). Because accountability can be used to threaten lesser participants with long criminal sentences, law enforcement can, in many cases, leverage information and plea deals that they could not otherwise secure.

Typically, to be found guilty of any crime there must be evidence of a criminal act (actus reus) and a criminal mindset (mens rea). The [law of accountability bypasses this two-part legal requirement](#) by relying on something called the natural and probable cause doctrine ([Heyman, 2010](#)). Under this doctrine, a person can be held legally responsible for *all* of the illegal conduct of another person if the subsequent crime was a foreseeable consequence of the first, no matter how indistinct.

The law of accountability is pernicious because it can be applied to any other criminal offense. This means that a person can be held accountable for *any* crime felony or misdemeanor committed by another person if a relatively low standard of evidence, under the natural and probable cause doctrine, is met. Moreover, the common-design rule makes a person legally responsible not only for the crime they helped to plan or commit but also for *all* other offenses committed by a co-offender during the commission of the planned offense, even if the crime was not a part of the original plan.

Under the common-design rule, the only necessary element to support a conviction is the decision to engage in the initial crime. **Consequently, the common-design rule ignores the degree of participation and the intent of the person charged with the crime**, and, instead, holds them liable for every criminal act committed. Because of this, the law of accountability blurs the lines between so-called violent and non-violent offenders. Because the law of accountability is designed to catch passive participants and those with peripheral roles in a crime, the people convicted under this rule usually did not personally cause harm or violence. As a result, there are likely hundreds of people who have been convicted of and are currently serving life, de facto life, and other long-term sentences for so-called violent crimes, including murder, but who have not personally committed any acts of violence.

Because our criminal legal data systems do not differentiate between who was convicted for actually committing an offense and who was convicted under the theory of accountability, the exact number of those affected is unknown. We have no way to know how many of the [more than 6,500 people](#) currently in Illinois Department of Corrections custody or under state supervision who were convicted of murder were actually charged under the theory of accountability.

Youthful offenders are [more likely to act in groups](#) (or [co-offend](#)) and are more susceptible to peer pressure. They are, thus, disproportionately affected by the law of accountability. The US [Supreme Court established](#) that children lack maturity and have an underdeveloped sense of responsibility that makes them more reckless, impulsive, and risk-prone than adults, and that they are also more susceptible to rehabilitation. But, when convicted under a theory of accountability, children are often branded violent offenders for life and are subject to the same sentencing range as the person who actually committed the violent act. This is true even if they did not inflict any harm or commit any acts of violence. Young people convicted of murder under the law of accountability usually receive life, [de facto life](#), or other extreme sentences.

#### Possible Scenarios that Could Lead to a Conviction Under a Theory of Accountability:

In these three scenarios, Jack could be charged with one or more crimes under the law of accountability, even though he (1) did not possess or fire a weapon, (2) may not have known that Jill possessed a weapon, (3) was not present, (4) did not know a crime would occur, and/or (5) was a juvenile while Jill was an adult. Jack could be charged and sentenced as if he himself committed these crimes.

The theory of accountability has a long history in criminal law. It originated from the [common law](#), or the body of law derived from judicial decisions. The [Model Penal Code](#) (Penal Code) sought to limit the law of accountability, especially as it related to the common-design rule. The Penal Code established very basic requirements for imposing criminal liability for another person's crime. Specifically, the Penal Code required the purposeful promotion or facilitation of the planned offense, as Michael G. Heyman [explains in this 2014 journal article](#).

In 1954, the Illinois Bar Association and Chicago Bar Association established a joint committee to update the Illinois Criminal Code. The committee completed its work in 1960, and the governor and General Assembly then approved the changes. The new draft, known as the [Criminal Code of 1961](#), took effect on January 1, 1962.

The [Criminal Code of 1961](#) (Criminal Code), like the Penal Code, removed references to the common law, including the common-design rule ([John F. Decker and Christopher Kopacz](#)). In fact, the accountability section of the Criminal Code is taken virtually verbatim from the Penal Code, which requires an individual to intentionally assist another person in the commission of a crime in order for that individual to be held criminally liable. As such, it sought to eliminate the common-design rule.

Nevertheless, since the enactment of the Criminal Code of 1961, judicial opinions [resurrected and incorporated the common-design rule into Illinois accountability law](#). Entirely ignoring both the statutory language and legislative history, the [Illinois Supreme Court] proclaimed the accountability statute as embodying the intent of incorporating the principle of the common-design rule, Heyman [writes in a 2013 journal article](#). By doing so, the Illinois Courts have resurrected a common law rule of accountability for which there is no statutory authority, Heyman explains. However, in 2008, the Illinois General Assembly made the common-design rule a part of the accountability statute by adding the following paragraph:

When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability ([720 ILCS 5/5-2](#)). By codifying the common-design rule, the Illinois General Assembly solidified an incredibly expansive mechanism for convicting offenders of criminal acts in which they did not partake and never intended to partake, [Brooke Troutman writes](#). This is contrary to the intent of the drafters of the Model Penal Code, the Illinois Criminal Code of 1961, and the recommendations of the Illinois Criminal Code Reform and Rewrite Commission, which also recommended [the elimination of the common-design rule for complicity liability](#).

#### The following resources will provide you with more information about the theory of accountability:

Brooke Troutman, *A More Just System of Juvenile Justice: Creating a New Standard of Accountability for Juveniles in Illinois*, 108 J. Crim. L. & Criminology 197 (2018). Retrieved from: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7621&context=jclc>

Final Report of the Illinois Criminal Code Reform and Rewrite Commission, Public Law and Legal Theory Research Paper No. 09-40 (2003). Retrieved from: <https://poseidon01.ssrn.com/delivery.php?id=4511181210200280931160030741050650940580330020110360161260800021220000260101200820270560580100540130970150880280850001230810061050320540330161190670880820071010750640620530690>

Michael G. Heyman, The Natural and Probable Consequences Doctrine: A Case Study in Failed Law Reform, 15 Berkeley J. Crim. L. 388 (2010). Retrieved from: <https://repository.jmls.edu/cgi/viewcontent.cgi?article=1047&context=facpubs>

Michael Heyman, Losing All Sense of Just Proportion: The Peculiar Law of Accomplice Liability, 87 St. Johns Law Rev. 129 (2013). Retrieved from: <https://repository.jmls.edu/cgi/viewcontent.cgi?article=1454&context=facpubs>

Michael G. Heyman, Clinging to the Common Law in an Age of Statutes: Criminal Law in the States, 99 Minnesota L. Rev. 29, 31 (2014). Retrieved from: [http://www.minnesotalawreview.org/wp-content/uploads/2014/12/Heyman\\_2fint.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2014/12/Heyman_2fint.pdf)

Sabo, Victoria, Social Relationships in Young Offenders: Relevance to Peers, Poverty, and Psychological Adjustment (2017). Electronic Thesis and Dissertation Repository. 4364. Retrieved from: <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=6097&context=etd>

720 ILCS 5/5-2 (When accountability exists).

720 ILCS 5/5-3 (Separate conviction of person accountable).

Black's Law Dictionary, 279 (7th ed. 1999)

Brooke Troutman, A More Just System of Juvenile Justice: Creating a New Standard of Accountability for Juvenile in Illinois, The Journal of Criminal Law & Criminology, 108 J. Crim. L. & Criminology 197, 215

(2018).

Co-Offending with Peers. Co-offending has recently become a burgeoning topic in the youth offending literature. High prevalence of peer interaction in adolescence may present more opportunities for co-offending. Indeed, youth are more likely to co-offend in comparison to their adult counterparts, and with a higher number of offenders involved (Weerman, 2003). <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=6097&context=etd>

Final Report of the Illinois Criminal Code Reform and Rewrite Commission, Public Law and Legal Theory Research Paper Series Research Paper No. 09-40 (2003).

Illinois Criminal Law: A Survey of Crimes and Defenses, 3:03

Michael G. Heyman, *The Natural and Probable Consequences Doctrine: A Case Study in Failed Law Reform*, 15 Berkeley J. Crim. L. 388, 395 (2010).

Michael G. Heyman, Losing All Sense of Just Proportion: The Peculiar Law of Accomplice Liability, 87 St. Johns Law Rev. 129, 155, note 122 (2013).

Michael G. Heyman, Clinging to the Common Law in an Age of Statutes: Criminal Law in the States, 99 Minnesota L. Rev. 29, 31 (2014).

Model Penal Code Pt. I: General Provisions (Official Draft and Revised Comments 1985), Pt II: Definition of Specific Crimes (Official Draft and Revised Comments 1980).

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