

### 5.03 Accountability

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of [(an) (the)] offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of [(an) (the)] offense.

[The word “conduct” includes any criminal act done in furtherance of the planned and intended act.]

#### Committee Note

720 ILCS 5/5-2(c) (West 2023), amended by P.A. 96-710, effective Jan. 1, 2010.

Use the bracketed word “an” and use the bracketed paragraph when the offense is different than the planned and intended offense, but done in furtherance of it. *People v. Kessler*, 57 Ill. 2d 493, 315 N.E.2d 29 (1974); *People v. Terry*, 99 Ill. 2d 508, 460 N.E.2d 746 (1984). *See also People v. Fernandez*, 2014 IL 115527, for clarification of the “common design” rule.

When this instruction is given, *ordinarily* insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition of the issues instruction for the offense charged. *See also* Instructions 5.05 and 5.06.

Note, however, that for some offenses, it will be inappropriate to insert that phrase in some or all of the propositions. For instance, in a prosecution for the offense of calculated criminal drug conspiracy based upon the theory that the defendant received something of value greater than \$500 as a result of the offense, the State must prove that the defendant himself received that amount of money. *People v. Holmes*, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist. 1976). *See* Instruction 17.15 and Committee Note thereto. The Third Proposition in the issues instruction for that offense must read: “That the defendant obtained something of value greater than \$500 from such delivery or agreement.” It *cannot* read: “That the defendant, or one for whose conduct he was legally responsible, obtained something of value greater than \$500 from such delivery or agreement.” *See also People v. Griffin*, 247 Ill.App.3d 1, 616 N.E.2d 1242 (1st Dist. 1993), holding that accountability language should not have been inserted into the aggravated criminal sexual assault issues instruction where the age of the person who actually penetrated the victim defines whether that crime ever occurred. *See* Instruction 11.58B.

Other statutes would appear to require that particular conduct be committed by the defendant personally or that a status that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status. *See e.g. People v. Ulloa*, 2015 IL App (1st) 131632, ¶ 21 (error to insert “or one for whose conduct he is legally responsible” language in a criminal drug conspiracy case).

For an example of the use of this instruction, see Sample Sets 27.02 and 27.03.

In addition to Instruction 5.03, use any or all of the supplemental paragraphs below when supported by the evidence:

(1) A parent has a legal duty to aid a small child if the parent knows about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

(2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility. However, mere presence at the scene of a crime does not make a person accountable for an offense. You may consider a person's presence at the scene of a crime along with other circumstances when determining accountability.

(3) Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal intent of the principal or evidence that there was a common criminal design.

(4) A person cannot be found accountable for the conduct of another based on acts taken solely after the commission of the offense. You may consider the defendant's actions after the offense to the extent that they raise an inference of the defendant's prior or concurrent participation in the offense. However, actions taken only after the commission of the offense do not establish an independent basis to hold a defendant accountable for an offense that has already been completed.