

## Joint Criminal Enterprise

If you are present as part of a group and a crime is committed by members of that group, you risk being charged with that crime, even if you did not play any *active* role in the commission of the offence.

This is an area of law known as *Joint Criminal Enterprise*.

This law is commonly used to charge young people for group offences in the Children's Court, in particular for robbery offences, break & enters and serious group assaults.

### **How does the law work? When can I be held legally liable for a crime as a principle offender?**

The law says that you are guilty of a crime as a principal offender if you are:

- present when the crime was committed,
- knew what was going on, and
- were in some sort of agreement with other members of the group to commit the crime.

In these circumstances, the law says that you were part of a *joint criminal enterprise* to commit that crime. In other words, the crime is seen to have been committed by a group acting as a team, and you are one of the team members.

If a group of people acting as a team committed the crime, then each member of the group or team is held equally responsible, and will face the same penalty, regardless of who did what.

In the case of robbery offending, anyone who was even present will be seen to have taken a role in standing over the victim. Apart from their presence, they may have been completely inactive, but the law still holds them equally responsible for the offence.

### **What does it mean to be "present" when a crime is committed?**

Being present means that you were in the immediate proximity of the offence at the time it was committed. It usually means you were right at the scene, and could see what was going on. But it can also include people who were waiting outside, or a few metres away, from a crime scene acting as a lookout.

See Factsheet – '*Assisting in the Commission of an Offence*'.

## When has someone entered an “agreement” to commit a crime?

The law says there is an agreement to commit the crime amongst members of a group if there is *any* form of communication that would make everybody aware of anyone’s intention to commit the crime.

The crime does not have to be planned. Nor does the communication need to be spelt out. In fact it doesn’t even have to be verbal. It can be as little as a glance, a gesture, a nod in the direction of a victim, or a few words muttered. It depends on the situation.

If there is anything going on which makes it obvious to everyone present what is about to happen, and everyone follows along, the courts will find that an agreement existed to commit the crime.

If you realise that you are in one of these high-risk situations, you need to leave immediately.

If you follow along, remain present, or get involved, you risk being charged and held responsible for the actions of the others you are with.

## How does this area of law affect young people?

These laws affect young people far more than adults. The main reason is that many young people associate in groups. The other reason is that crimes committed by young people are usually not planned.

Many young people also find it hard to pull away or back out of a crime situation once it is unfolding – they tend to go with the flow and don’t make active decisions. Perhaps this is because they are less aware than adults of the consequences.

The other major issue is that young people often don’t want to be seen to ‘bail out’ on their friends, especially in the heat of the moment. Many young people feel that friendship means that you always back up your mates, no matter what.

**Example 1** – If you are with your mate and he tells you that he wants to “roll” someone and you follow along and stand next to him while he does it, you will both be charged as principal offenders with the crime of Robbery in Company.

If your mate pulls out a knife while he is doing the robbery, and you still stand by, you will be charged with Armed Robbery.

**Example 2** – If you are with a friend at the supermarket and they start shoplifting and they ask you to “watch their back”, if you act as a lookout, or stand close to them to stop others from seeing them stealing, you will be charged, just like them, with shoplifting. This is *assisting in the commission of the offence* and makes you guilty as a principal offender.

**Example 3** - If you are with a group of friends and they plan to break into a house, and they ask you to drive them to the scene and wait outside in the car, you could be charged as a principal offender with *Aggravated Break and Enter*. You can get the same punishment as they get.

**Example 4** – If you are at the train station with a friend, and he asks you to hold onto his gear while he tags some trains, if you stand there looking out for security guards and holding his gear while he commits the crime, you will be charged with a graffiti offence. No matter

how innocent this may seem, you will be seen to be acting as a lookout, or assisting with the commission of the crime.

**Why should I be held responsible for someone else's actions? It seems unfair.**

The law says that you are only guilty as a principal offender if you are present, assisting *and* you know what's going on.

Sometimes you may not be intending to assist, or may not fully know what's going on. For example, you may not know that the person you are with is intending to pull out a knife. However, if you remain present once a knife is pulled, it does look like you are happy to still go along with the crime.

If you remain present during a crime, it looks like you are backing up the other offenders. If you remain present during a robbery offence in particular, it looks like you are standing over the victim.

You need to remember that often, no matter how minor your role, you are enabling the offence to occur. Without you, the main offenders may not have been able to pull it off. In a robbery offence, even if you are just standing there, your presence is causing fear to the victim. If the main offender were alone, the victim probably would not hand over their property.

You need to take responsibility and think about your actions in these group situations – because you will be held legally responsible for everything that unfolds.

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*This Fact Sheet is designed to give you a very basic understanding of how the law works. If you have a legal problem, or want to know how these laws apply to a specific situation, you should speak to a lawyer. If you are under 18, you can call the Legal Aid Youth Hotline 1800 10 18 10.*