

## CHAPTER 3

### General Principles of Responsibility

#### SECTIONS

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**Editor's note:** Former chapter 3 of this title on General Principles of Responsibility was repealed in its entirety by PL 11-72 § 1. This new chapter 3 was enacted by PL 11-72 § 17 and is part of the Revised Criminal Code Act.

#### **§ 301. Liability for crimes.**

- (1) A person shall be treated as a principal to a crime if that person:
  - (a) directly commits any act constituting a crime;
  - (b) while acting with the state of mind that is sufficient for the commission of the crime, causes an innocent person or person legally incapable, as defined by section 301A of this chapter, to engage in such conduct;
  - (c) having a legal duty to prevent the commission of a crime, fails to make proper effort to do so; or
  - (d) whether or not being present during the commission of the crime, intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime.
- (2) A person liable under subsection (1) of this section is also liable for any other crime committed in the pursuance of the intended crime if that crime is reasonably foreseeable by him as a probable consequence of committing, or attempting to commit, the crime intended.
- (3) A person liable under this section may be charged with and convicted of the crime although other principals to the same crime have not been prosecuted or convicted, or have been convicted of a different crime or degree of crime.

**Source:** PL 11-72 § 18; PL 11-76 § 3.

**Editor's note:** The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

**Case annotations:** 11 F.S.M.C. 301 is one of a set of sections in chapter 3 of National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by rule 7 of the FSM Rules of Criminal Procedure. These general principles are deemed applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. *Engichy v. FSM*, 1 FSM R. 532, 542 (App. 1984).

Under 11 F.S.M.C. 301(2) defendants are held responsible for the natural consequences of joining and encouraging others in unlawful use of dangerous weapons and brutal beatings of others. *Engichy v. FSM*, 1 FSM R. 532, 548 (App. 1984).

In a criminal prosecution under 11 F.S.M.C. 301, where defendants' overt actions indicated their intention to aid those involved in attacks, and where it was reasonably foreseeable by them that somebody might be fatally injured as a probable consequences of the beatings that they aided and abetted, they may be held legally responsible for the death resulting from the assaults even if the defendants did not actually intend that the victims be killed or seriously injured. *Engichy v. FSM*, 1 FSM R. 532, 548 (App. 1984).

### **Aiding and Abetting**

A person is criminally liable under 11 F.S.M.C. 301(1)(d) if he, whether or not being present during the commission of the crime, intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

The terms "aid" and "abet" are frequently used interchangeably, although they are not synonymous. To "aid" is to assist or help another. To "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

Mere presence at the scene of a crime is not enough to hold someone criminally liable under an aiding or abetting theory. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

In order to convict any defendant of either aiding or abetting another, the government will have to prove beyond a reasonable doubt that that defendant did something to, or was prepared to do something to, assist or help the other or to encourage, advise, or instigate the other in the commission of an offense charged. The government will have to do this for each count for each defendant or that defendant will be acquitted on that count. *FSM v. Sam*, 14 FSM R. 328, 332 (Chk. 2006).

Although the prior criminal code provided that no person could be convicted of aiding and abetting unless the information specifically alleged that the defendant aided and abetted and the information provided specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense, that provision was eliminated when the current criminal code was enacted. It is thus no longer necessary for the information to recite each specific act each alleged aider and abetter allegedly committed. *FSM v. Sam*, 14 FSM R. 328, 333 (Chk. 2006).

Since there is no language in the aid or abet statute, 11 F.S.M.C. 301(1)(d), or in the firearms possession or use statutes, 11 F.S.M.C.

1023(5) and (7), that limits the application of one statute to the other, a defendant may be charged with aiding or abetting firearms possession or use. *FSM v. Sam*, 14 FSM R. 328, 333 (Chk. 2006).

Under 11 F.S.M.C. 301(d), a person can be held liable as a principal if he "intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime." *FSM v. Esefan*, 17 FSM R. 389, 397 (Chk. 2011).

Although the terms are frequently used interchangeably, to "aid" is to assist or help another, and to "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. *FSM v. Esefan*, 17 FSM R. 389, 397 (Chk. 2011).

The prosecution may pursue aiding and abetting charges against an accused when he is charged with being present and in the possession of a shotgun while another possessed a handgun and the accused encouraged the other to shoot certain persons. *FSM v. Esefan*, 17 FSM R. 389, 398 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1) (d). *FSM v. Esefan*, 17 FSM R. 389, 398 n.5 (Chk. 2011).

In criminal proceedings where several persons are charged with the murder of the same victim, the plain implication is that while one person's act may have been the direct cause of the death of the victim, the government surely will be contending that all others have participated or aided or assisted the killing in some way. It is inherent in a prosecution against multiple defendants for a single murder that defendants will be confronted with charges that they either actually killed the victim or assisted one or more persons who did so. *Engichy v. FSM*, 1 FSM R. 532, 544 (App. 1984).

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. *FSM v. Hadley*, 3 FSM R. 281, 284 (Pon. 1987).

When there are verdicts that are inconsistent to such an extent that an essential element cannot be proven beyond a reasonable doubt a resulting conviction is reversible error. Thus when someone is convicted of a charge for which an essential element is being aided and abetted by another and that other is acquitted of being an aider and abettor the conviction is reversible error for failure of proof beyond a reasonable doubt of the essential element of being aided and abetted. *Hartman v. FSM*, 6 FSM R. 293, 300-01 (App. 1993).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1) (d). *FSM v. Esefan*, 17 FSM R. 389, 398 n.5 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. *FSM v. Sorim*, 17 FSM R. 515, 523 (Chk. 2011).

When, although the information could have been drawn with greater care, the accused is not misled to his prejudice because the prosecution failed to cite the statute(s) that the codefendants allegedly conspired to violate, the conspiracy count will not be dismissed. *FSM v. Sorim*, 17 FSM R. 515, 523 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. *FSM v. Sorim*, 17 FSM R. 515, 524 (Chk. 2011).

Customarily, persons charged with conspiracy are tried together. *FSM v. Sorim*, 17 FSM R. 515, 524 (Chk. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. *FSM v. Sorim*, 17 FSM R. 515, 525 n.3 (Chk. 2011).

### **§301A. Persons capable of committing crimes.**

All persons are capable of committing crimes except the following:

- (1) Children under the age of 14, unless there is clear proof that at the time of engaging in the wrongful conduct, they knew it was wrong.
- (2) Persons under the legal conservatorship of another, unless there is clear proof that at the time of engaging in the wrongful conduct, they knew it was wrong.
- (3) Persons whose conduct was a result of an ignorance or mistake of fact, which disproves criminal intent.
- (4) Persons who engaged in the wrongful conduct without being conscious.
- (5) Persons whose actions are a result of duress such that they had reasonable cause to and did believe that they would suffer immediate, life threatening injury if they refused to act.

**Source:** PL 11-72 § 19.

**Case annotations:** As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). *FSM v. Wainit*, 13 FSM R. 433, 446 (Chk. 2005).

Only ignorance or mistake of fact is a defense under 11 F.S.M.C. 301A(3). A mistake of, or ignorance of, law is not a defense under the FSM statute. Nor is it generally a defense to penal liability. *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

A criminal defendant may not use mistake or ignorance of the law as a defense. He therefore may not use as a defense a mistaken belief that he had a legal right to resist a search warrant that he thought was invalid (even if it should later be shown to be invalid). *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

Subsection 107(3) makes it a complete defense to a criminal charge that at the time of engaging in the wrongful conduct the defendant was legally incapable of committing a crime as defined in 11 F.S.M.C. 301A. Legal incapacity to commit a crime is often thought to include defenses such as insanity, mental incapacity, infancy, automatism, sometimes intoxication, and crimes where a certain status, not held by the defendant, is a necessary element of the offense. *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

If a statute makes it an offense for a government employee to commit a certain act, a person who did not have the status of a government employee would be legally incapable of violating the statute. Usually this is analyzed as the inability to prove an element of the offense. *FSM v. Wainit*, 13 FSM R. 433, 447 n.8 (Chk. 2005).

Section 301A lists five instances where a person may be legally incapable of committing a crime — infancy; persons under another's legal conservatorship; persons whose conduct was the result of ignorance or mistake of fact, disproving criminal intent; persons who engaged in the wrongful conduct without being conscious; and persons whose actions were the result of life-threatening duress. *FSM v. Wainit*, 13 FSM R. 433, 447 (Chk. 2005).

### **§ 302. Physical or mental disease, disorder, or defect excluding criminal responsibility.**

(1) No person shall be convicted, sentenced, or otherwise punished for any crime committed while suffering from a physical or mental disease, disorder or defect such that the disease, disorder or defect prevented that person from knowing the nature of the criminal act or that it was wrong.

(2) The terms "physical or mental disease, disorder, or defect" do not include voluntary intoxication or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) The party asserting such a condition has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence.

(4) When the defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment shall so state. If the court determines that a person accused of a felony was suffering such a condition at the time of the criminal conduct, judgment in favor of the defendant shall be entered and:

(a) the court shall retain jurisdiction over the accused for a period not to exceed the maximum time of imprisonment allowed for the crime;

(b) the court shall, subject to the law governing the civil commitment or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed or released on such conditions as the court determines necessary; or

(c) the court may, at regular intervals, review the condition and behavior of the defendant and continue or revise any orders as the court determines necessary.

(5) Judgment in favor of the defendant shall reflect the physical or mental disease, defect or disorder suffered by the defendant at the time the crime was committed, the condition of the defendant at the time judgment is entered and the course of treatment, if any is ordered.

**Source:** PL 11-72 § 20.

**Cross-reference:** The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

**Case annotations:** The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. *FSM v. Andrew*, 17 FSM R. 213, 216 (Pon. 2010).

### Insanity

Mental condition defense established by 11 F.S.M.C. 302(1) is an affirmative defense and therefore places squarely upon the defendant the burden to establish "the facts which negative liability" by a "preponderance of the evidence." 11 F.S.M.C. 107(1)(b). *Runmar v. FSM*, 3 FSM R. 308, 312 (App. 1988).

Mental condition defense established by 11 F.S.M.C. 302(1), and other affirmative defenses, do not lift from government the burden of establishing all essential elements of the crime beyond a reasonable doubt. *Runmar v. FSM*, 3 FSM R. 308, 312 (App. 1988).

**§ 303. Evidence of physical or mental disease, disorder, or defect admissible when relevant to element of the offense.**

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the crime.

**Source:** PL 11-72 § 21.

**§ 304. Physical or mental disease, disorder, or defect excluding fitness to proceed.**

(1) No person who, as a result of physical or mental disease, disorder, or defect, lacks capacity to understand the proceedings against him or her, or to assist in his or her own defense, shall be tried, convicted, or sentenced for the commission of a crime so long as such incapacity endures.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him or her shall be suspended, and the court shall commit him or her, for a reasonable period of time, to an appropriate institution for the purpose of restoring fitness to proceed. If the court is satisfied that the defendant may be released on conditions without danger to himself or herself or to the person or property of another, the court shall order his or her release, which shall continue at the discretion of the court, on such conditions as the court determines necessary.

(3) When the court, on its own motion or upon the application of the institution, or the prosecuting attorney, or the defendant, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If the court determines that so much time has elapsed due to the unfitness of the defendant to proceed that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed or released on such conditions as the court determines necessary.

**Source:** PL 11-72 § 22.

**§ 305. Statements for purposes of examination and treatment.**

A statement of a person made pursuant to treatment under this chapter, or made pursuant to an examination for the purpose of assessing criminal responsibility or fitness to proceed, shall not be admissible in evidence against him or her in any criminal proceeding on any issue other than that of his or her physical or mental condition excluding responsibility or fitness to proceed, but it shall be admissible upon those issues of whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt to the crime charged.

**Source:** PL 11-72 § 23.

**§ 306. Intoxication.**

(1) An act committed while in a state of voluntary intoxication is not less criminal by reason thereof. Evidence of voluntary intoxication shall not be admitted regarding the capacity to form any mental states for the crimes charged. Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, when a specific intent crime is charged.

(2) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of this chapter.

(3) When recklessness establishes an element of the crime, if the defendant, due to voluntary intoxication, is unaware of a risk that he or she would have been aware of had he or she been sober, such unawareness is immaterial.

(4) "Intoxication" means a disturbance of mental or physical capabilities resulting from the introduction of substances into the body regardless of whether the substance introduced is legal, illegal, prescribed by a medical practitioner, or otherwise taken for health reasons.

**Source:** PL 11-72 § 24.

**Case annotations:** The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

### **Intoxication**

A contention that defendant's voluntary intoxication absolves him of the legal consequences of his conduct by preventing him from forming the requisite intent to commit a crime is not a defense. The defendant, rather than the rest of the community should bear the risk of his own intoxication. *FSM v. Boaz (I)*, 1 FSM R. 22, 27 (Pon. 1981).

Mere observation by a police officer of a person conducting himself in a manner generally associated with intoxication could be "reasonable grounds" for a cautious person to consider it more likely than not that the person has been consuming alcohol. This of course would depend upon the opportunity to observe actions and mannerisms usually associated with intoxication. *Ludwig v. FSM*, 2 FSM R. 27, 33, n.3 (App. 1985).

In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. *Jonah v. FSM*, 5 FSM R. 308, 312 (App. 1992).

Voluntary intoxication does not excuse a defendant from awareness of the risk of causing serious bodily injury to another through recklessly dangerous behavior. *Machuo v. FSM*, 6 FSM R. 40, 44 (App. 1993).