

# WITNESS CRIME

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It's clear that you can be prosecuted for the things you do, but can you be prosecuted for something you fail to do as well? Suppose you're a witness to a crime and you don't report it to the police. Will fear or reluctance of getting involved result in criminal charges?

In most states, mere failure to report a crime isn't a crime in itself. However, there are some exceptions. Below, you'll find a number of instances in which failing to report a crime could expose you to criminal liability.

### **Failure to Report Laws**

In most states failure to report isn't illegal, but a small minority of states have enacted laws punishing individuals who fail to report certain types of crimes to the authorities. Under Texas law, for example, you can be charged with a Class A misdemeanor for failing to report an offense that resulted in serious bodily injury or death. In Ohio, on the other hand, it's illegal to knowingly fail to report a felony.

Take a look at your state's penal code or consult with an attorney to determine whether your state has a failure to report law.

### **Accessory After the Fact**

While merely failing to report a crime is one thing, helping to conceal a crime is another. A person can generally be charged with accessory after the fact, or aiding and abetting, if he or she wasn't actually present during the commission of a crime, but took actions to conceal the crime or help the perpetrators avoid capture.

For example, hiding a weapon that was used in a robbery will probably make you an accessory after the fact under the laws of most states, even if you took no part in the actual robbery. These incidents of failure to report a crime can have serious consequences. Depending on the severity of the underlying crime, aiding and abetting can be either a misdemeanor or a felony in most states.

### **Mandatory Reporting Laws**

Many states have mandatory reporting laws requiring certain types of people to report crimes against children. These "mandatory reporters" generally include parents, teachers, school administrators, clergy, medical professionals, therapists, social workers, and others. In some states, however, anyone who believes child abuse is taking place must report it.

Once a mandatory reporter witnesses an act of abuse or finds evidence of child abuse, he or she has a duty to report the incident to the appropriate authorities. That usually includes sharing important details about the incident, like the names of the victim and perpetrator. Failure to report an incidence of child abuse is a misdemeanor offense in most states.

### **Charged with Failure to Report a Crime? Get Legal Help**

There are several instances where remaining silent and failing to report a crime to authorities can have negative consequences for you. From mandatory reporting laws to becoming an accessory after the fact, crime in any form simply doesn't pay. But if you've been accused of failing to report a criminal offense, you may have options. Speak with a criminal defense attorney in your area today to discuss the specific facts of your case and receive personalized legal advice on how to proceed.

Can I be charged with a crime if only one person says I did it and there are no other witnesses or evidence (commonly called "he said/she said" cases)? Answer: YES.

This is a question that we are frequently asked in cases involving relationships such as spouses, lovers, family members etc... These cases usually involve domestic violence, assault crimes, stalking, sex crimes or other personal crimes. The prosecutor may opt to charge a person with the alleged crime even though the suspect denies the allegations, there are no other witnesses and there is a complete lack of any other evidence (no injuries, no video, no confession).

### **Evidence Traps in He Said/She Said cases**

The police agency assigned to cases such as this are often aggressive and will attempt to try and gain a confession from the accused to strengthen the case for prosecution. Sometimes in “he said/she said” cases, the alleged victim will call the suspect on the telephone with a script of loaded questions. A recording of the conversation can be used as evidence unless it is obtained illegally (Michigan Law-recording conversations). The phone call may be initiated with police encouragement before the suspect has knowledge that a police report has been filed!

Sometimes, the only evidence is the statement by an angry party in a tumultuous relationship who is seeking attention, revenge or retaliation. Far too often, the police attempt to get the suspect to talk for the purpose of proving facts surrounding the alleged incident such as alcohol consumption or an argument. Remember, the police rarely call someone unless a police report alleging a crime is filed. For this reason, you should refrain from talking to the police.

- Can I be charged with a crime if only one person says I did it and there are no other witnesses or evidence? **Answer: Yes**
- Do court appointed lawyers work for the police and prosecutor? Answer: Most often YES
- Can you be charged for knowing about a crime and not saying anything? **Answer: Most likely YES**
- If you witness a crime, are you obligated to report it to the police? **Answer: Most likely YES**
- What if you are aware that a crime is going to be committed, but you do nothing to prevent it from occurring? **Answer: You could be charged with a crime for knowing about a crime and not saying anything.**
- Can you be criminally charged if you do nothing at all? **Answer: YES**



Many people are unaware of their legal obligation when it comes to reporting criminal activity. Some don't want to get involved for fear of becoming a victim themselves. There is always the possibility that you risk harm to yourself or a third party if you divulge information about a crime you suspect has already been committed, or know of before it happens.

Others may feel they have a moral obligation to respond as a Good Samaritan and expose criminals for their wrongdoing. However, there is a big difference between a feeling of ethical responsibility and a legal duty to act.

Generally speaking, most people are under no legal obligation to report a crime, whether they knew about it in advance, witnessed its commission, or found out about it after the fact. However, there are exceptions to this law that you ought to know about.

Let's take a brief look at some examples of when you can be held liable for having knowledge of a crime...

## **Aiding and Abetting a Crime**

In most states you can be charged with the crime that was committed if you aided or abetted in its commission, but did not actually commit the crime yourself. The phrase "aiding and abetting" is meaning that you assisted another person to commit a crime.

You don't have to be actually present at the scene of the crime to be charged under what is known as "accomplice liability." If you willfully participated in the planning of a crime prior to its commission, you can be held criminally liable as an "accessory before the fact."

If you take a passive role during a crime in progress, such as acting as a lookout or disabling a security device, you can be prosecuted as a perpetrator in the second degree (an accomplice).

Finally, if you help to conceal a crime already committed (hiding stolen money or weapons used in the crime's commission, for example), or give assistance to perpetrators of crime to help them avoid detection, arrest or prosecution, you can be charged as an "accessory after the fact."



In these situations, you are culpable under the accomplice liability theory because you knew of the illegal plan and willfully did something to cause it to be carried out or concealed.

Some people have a legal duty to report suspected or actual cases of child abuse or neglect under Mandatory Reporting Laws. A mandatory reporter does not have to actually witness a child being abused or neglected. Rather, a “reasonable suspicion” from other sources that child abuse or neglect has occurred is enough to trigger this responsibility.

### **Administrators of youth centers and activities;**

- Medical care professionals (doctors, nurses, emergency medical technicians, etc.);
- Law enforcement officers;
- Social workers;
- Clergy members, outside of a “penitential communication” (confession);
- Firefighters;
- Therapists; and
- Computer technicians.

### **State law broadly covers instances of child abuse and neglect, including but not limited to any sexual abuse of a minor, no matter how slight, whether over or under the clothes:**

- Sexual exploitation;
- Child endangerment;
- Physical injury, such as:
- Hitting;
- Kicking;
- Throwing harmful objects or substances; and
- Pulling hair;
- Verbal abuse;

Failure to provide adequate food, clothing, shelter, medical attention education and emotional abuse or neglect is reportable.

If you are convicted of failure to fulfill a legal duty as a mandatory reporter, you can be fined and/or sentenced to serve time in jail. If you willfully prevent someone from filing a mandatory report, you can be punished by the maximum.

### **Failure to Report a Crime under Federal Law (18 U.S.C. section 4)**

• Federal law prohibits concealing information about specific crimes. Under 18 United States Code, Section 4, you may be obligated to report a crime if you are directly asked during a criminal investigation whenever:

- You have knowledge of the commission of a felony;
- The felony actually occurred; and

### **The felony is a federal offense;**

If you willfully conceal the commission of a felony federal offense, you can be charged with “misprision of a felony.” Misprision of a felony is a form of obstruction of justice. If you are convicted, you face up to a \$250,000 fine, imprisonment up to three years, or both fine and imprisonment.

## Can You Report a Crime Anonymously?

Privately-operated, anonymous toll-free hotlines and website portals are available to “tipsters” where you may safely report a crime without revealing your identity. Many law enforcement agencies allow you to anonymously report a crime online as well. However, if you call 911 emergency response, be advised that law enforcement agencies may be able to track your phone number.

Additionally most state law requires mandatory reports of child abuse or neglect to remain confidential. A government agency receiving a report from a mandatory reporter may not divulge the source of a confidentially submitted report of suspected or actual child abuse or neglect to a reporter’s employer without the reporter’s prior consent.

If you have been arrested for failing to provide information about a crime or becoming an accessory to a crime, you need to speak with one of our experienced criminal defense attorneys.

You could be facing serious state or federal charges if you had a mandatory duty to report unlawful activity or you obstructed a criminal investigation.

