

*A Handbook of*  
*Criminal*  
*Law*  
*Terms*

*Bryan A. Garner, Editor*

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Accurate, brief, clear  
definitions with examples.

Covering several  
fields, from criminology  
to criminal procedure  
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# A Handbook of Criminal Law Terms

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## PREFACE

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If you've ever read a criminal-law treatise, you've probably felt a lump in your throat. The subject deals with base matters, and sometimes it can be frightening. Yet precisely because it deals with the darker side of life, it almost always maintains a high level of human interest.

In criminal law as in other legal subjects, clear thinking is crucial. And the first step toward clear thinking involves critical thought about how we use words and phrases. To avoid slipping into any number of fallacies, we need to know precisely what we're talking about. For that purpose, a good glossary can be indispensable.

This one pulls together the terminology from several related but distinct fields, such as substantive criminal law, criminal procedure, criminology, and penology. It is probably the most inclusive such glossary ever assembled.

One of the great challenges of this project was that, even though many terms are quite ancient, the legal vocabulary is constantly growing. The field known as *criminalistics* dates only from the mid-20th century, but many terms are even newer. There are police terms such as *preventive detention* and *protective sweep*. Judge-made law continues innovating phrases such as *independent-source rule*

## PREFACE

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and *open-fields doctrine*. New categories such as *credit-card crime* and *cyberstalking* reflect technological and social changes. Meanwhile, legislation continues to be a source of new terms, such as *Brady Act* and *Megan's law*.

Whatever your needs — whether you're involved in a *Fatico hearing*, alleging a *Falconer error*, or challenging an *FCPV* — my colleagues and I hope this book will help you thread the maze of legal language.

For his painstaking review and expert comments on the manuscript, we wish to thank Professor Stephen A. Saltzburg of George Washington University Law School.

Finally, Karen Magnuson served as copy editor, as she has on several of my other book projects. Her work has been invaluable.

BRYAN A. GARNER

Dallas, Texas  
January 2000

# A Handbook of Criminal Law Terms

## A

**abandonment**, *n.* See RENUNCIATION.

**abduction** (ab-dək-shən), *n.* **1.** The act of leading someone away by force or fraudulent persuasion. ● Some jurisdictions have added various elements to this basic definition, such as that the abductor must have the intent to marry or defile the person, that the abductee must be a child, or that the abductor must intend to subject the abductee to concubinage or prostitution. **2.** *Archaic.* At common law, the crime of taking away a female person without her consent by use of persuasion, fraud, or violence, for the purpose of marriage, prostitution, or illicit sex.—**abduct**, *vb.*—**abductor**, *n.*—**abductee**, *n.* See KIDNAPPING.

**aberrant behavior** (a-ber-ənt). A single act of unplanned or thoughtless criminal behavior. ● Many courts have held that aberrant behavior justifies a downward departure—that is, a more lenient sentence—under the federal sentencing guidelines, based on a comment in the introduction to the *Guidelines Manual* to the effect that the guidelines do not deal with

## ABERRANT BEHAVIOR

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single acts of aberrant behavior. *U.S. Sentencing Guidelines Manual*, ch. 1, pt. A, ¶ 4.

**abet** (ə-bet), *vb.* **1.** To aid, encourage, or assist (someone), esp. in the commission of a crime <abet a known felon>. **2.** To support (a crime) by active assistance <abet a burglary>.—**abetment**, *n.* See AID AND ABET. Cf. INCITE.

**abettor.** A person who aids, encourages, or assists in the commission of a crime.—Also spelled *abetter*. See *principal in the second degree* under PRINCIPAL.

**abnormal law.** The law as it applies to persons who are under legal disabilities such as infancy, alienage, insanity, criminality, and (formerly) coverture.

**abortion**, *n.* **1.** The spontaneous or artificially induced expulsion of an embryo or fetus. ● In *Roe v. Wade*, the Supreme Court first recognized a woman's right to choose to end her pregnancy as a privacy right stemming from the Due Process Clause of the 14th Amendment. 410 U.S. 113, 93 S.Ct. 1409 (1973). **2.** *Archaic.* At common law, the misdemeanor of causing a miscarriage or premature delivery of a fetus by means of any instrument, medicine, drug, or other means. ● Many American states made this a statutory felony until the *Roe v.*



## ABSOLUTE PARDON

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*Wade* decision.—Also termed *procuring an abortion*.—**abort**, *vb.*—**abortionist**, *n.*

**abscond** (ab-skond), *vb.* **1.** To depart secretly or suddenly, esp. to avoid arrest or prosecution. **2.** To leave a place, usu. hurriedly, with another's money or property.—**abscondence** (ab-skon-dənts), *n.*

**absolute contraband.** See CONTRABAND.

**absolute disparity.** The difference between the percentage of a group in the general population and the percentage of that group in the pool of prospective jurors on a venire. ● For example, if African-Americans make up 12% of a county's population and 8% of the potential jurors on a venire, the absolute disparity of African-American veniremembers is 4%. The reason for calculating the disparity is to analyze a claim that the jury was not impartial because the venire from which it was chosen did not represent a fair cross-section of the jurisdiction's population. Some courts criticize the absolute-disparity analysis, favoring instead the comparative-disparity analysis, in the belief that the absolute-disparity analysis understates the deviation. See FAIR-CROSS-SECTION REQUIREMENT; DUREN TEST; STATISTICAL-DECISION THEORY. Cf. COMPARATIVE DISPARITY.

**absolute pardon.** See PARDON.



## **ABSOLUTE PRESUMPTION**

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**absolute presumption.** See *conclusive presumption* under PRESUMPTION.

**absolute privilege.** See PRIVILEGE (1).

**absolution** (ab-sə-loo-shən). **1.** Release from a penalty; the act of absolving. **2.** An acquittal of a criminal charge.

**abstract of conviction.** A summary of the court's finding on an offense, esp. a moving violation.

**abstract question.** See HYPOTHETICAL QUESTION.

**abuse** (ə-byoos), *n.* **1.** A departure from legal or reasonable use; misuse. **2.** Physical or mental maltreatment.

***abuse of the elderly.*** Physical or psychological abuse of an elderly person by a caretaker. ● Examples include deprivation of food or medication, beatings, oral assaults, and isolation.—Also termed *elder abuse*.

***carnal abuse.*** See *sexual abuse*.

***child abuse.*** The act or series of acts of physically or emotionally injuring a child. ● Child abuse may be intentional (as with sexual molestation) or negligent (as with some types of child neglect).—Also termed

## ABUSE-OF-THE-WRIT DOCTRINE

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*cruelty to a child; cruelty to children.* See BATTERED-CHILD SYNDROME. Cf. CHILD NEGLECT.

*elder abuse.* See *abuse of the elderly*.

*sexual abuse.* 1. An illegal sex act, esp. one performed against a minor by an adult.—Also termed *carnal abuse*. 2. See RAPE (2).

*spousal abuse.* Physical, sexual, or psychological abuse inflicted by one spouse on the other spouse. See BATTERED-WOMAN SYNDROME.

**abuse** (ə-byooz), *vb.* 1. To depart from legal or reasonable use in dealing with (a person or thing); to misuse. 2. To injure (a person) physically or mentally. 3. To damage (a thing).

**abuse excuse.** The defense that a defendant is unable to tell right from wrong because of physical or mental abuse suffered as a child. ● Like the traditional excuse of insanity, the abuse excuse is asserted by a defendant in an effort to avoid all culpability for the crime charged.

**abuse of the elderly.** See ABUSE.

**abuse-of-the-writ doctrine.** The principle that a petition for a writ of habeas corpus may not raise claims that should have been, but were not, asserted in a previous petition. Cf. SUCCESSIVE-WRIT DOCTRINE.

## ABUSIVE

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**abusive** (ə-byoo-siv), *adj.* 1. Characterized by wrongful or improper use <abusive trial tactics>. 2. Of or relating to a person who treats another badly <abusive parent>.—**abusively**, *adv.*

**accessorial** (ak-sə-sor-ee-əl), *adj.* Of or relating to the accessory in a crime <accessorial guilt>.

**accessory** (ak-ses-ə-ree), *n.* A person who aids or contributes in the commission or concealment of a crime. ● An accessory is usu. liable only if the crime is a felony.—**accessory**, *adj.*—**accessoryship**, *n.* Cf. PRINCIPAL.

***accessory after the fact.*** An accessory who knows that a crime has been committed and who helps the offender try to escape arrest or punishment. ● Most penal statutes establish the following four requirements: (1) someone else must have committed a felony, and it must have been completed before the accessory's act; (2) the accessory must not be guilty as a principal; (3) the accessory must personally help the principal try to avoid the consequences of the felony; and (4) the accessory's assistance must be rendered with guilty knowledge.—Sometimes shortened to *accessory after*.

***accessory at the fact.*** See *principal in the second degree* under PRINCIPAL.

***accessory before the fact.*** An accessory who assists or encourages another to commit a crime but who is not present when the offense is actually committed. ● Most jurisdictions have abolished this category of accessory and instead treat such an offender as an accomplice.—Sometimes shortened to *accessory before*. See ACCOMPLICE.

**access to counsel.** See RIGHT TO COUNSEL.

**accidental killing.** Homicide resulting from a lawful act performed in a lawful manner under a reasonable belief that no harm could occur.—Also termed *death by misadventure*; *homicide by misadventure*; *killing by misadventure*; *homicide per infortunium*. See *justifiable homicide* under HOMICIDE. Cf. *involuntary manslaughter* under MANSLAUGHTER.

**accomplice** (ə-kom-plis). 1. A person who is in any way involved with another in the commission of a crime, whether as a principal in the first or second degree or as an accessory. ● Although the definition includes an accessory before the fact, not all authorities treat this term as including an accessory after the fact. 2. A person who knowingly, voluntarily, and intentionally unites with the principal offender in committing a crime and thereby becomes punishable for it. See ACCESSORY. Cf. PRINCIPAL.

## **ACCOMPLICE LIABILITY**

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**accomplice liability.** See LIABILITY.

**accomplice witness.** See WITNESS.

**accountant-client privilege.** See PRIVILEGE (3).

**accumulative sentences.** See *consecutive sentences* under SENTENCE.

**accusation, *n.*** 1. A formal charge of criminal wrongdoing. • The accusation is usu. presented to a court or magistrate having jurisdiction to inquire into the alleged crime. 2. An informal statement that a person has engaged in an illegal or immoral act.

***malicious accusation.*** An accusation against another for an improper purpose and without probable cause. See MALICIOUS PROSECUTION.

**accusatorial system.** See ADVERSARY SYSTEM.

**accusatory** (ə-kyoo-zə-tor-ee), *adj.* Of, relating to, or constituting an accusation.

**accusatory body.** A body (such as a grand jury) that hears evidence and determines whether a person should be charged with a crime.

## ACQUAINTANCE RAPE

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**accusatory instrument.** See CHARGING INSTRUMENT.

**accusatory part.** The section of an indictment in which the offense is named.

**accusatory pleading.** See PLEADING.

**accusatory procedure.** See ADVERSARY SYSTEM.

**accusatory stage.** The point in a criminal proceeding when the suspect's right to counsel attaches. • This occurs usu. after arrest and once interrogation begins. Cf. CRITICAL STAGE.

**accuse, *vb.*** To charge (a person) judicially or publicly with an offense; to make an accusation against <she accused him of the crime> <he was accused as an accomplice>.

**accused, *n.*** A person who has been blamed for wrongdoing; esp., a person who has been arrested and brought before a magistrate or who has been formally charged with a crime (as by indictment or information).

**accuser.** A person who accuses another of a crime.

**accusing jury.** See GRAND JURY.

**acquaintance rape.** See RAPE.



## ACQUIESCENCE

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**acquiescence** (ak-wee-es-ənts). A person's tacit or passive acceptance; implied consent to an act.

**acquisitive offense.** See OFFENSE.

**acquit**, *vb.* To clear (a person) of a criminal charge.

**acquittal**, *n.* The legal certification, usu. by jury verdict, that an accused person is not guilty of the charged offense.

***acquittal in fact.*** An acquittal by a jury verdict of not guilty.

***acquittal in law.*** An acquittal by operation of law, as of someone who has been charged merely as an accessory after the principal has been acquitted.

***implied acquittal.*** An acquittal in which a jury convicts the defendant of a lesser-included offense without commenting on the greater offense. • Double jeopardy bars the retrial of a defendant who has received an implied acquittal.

**acquitted**, *adj.* Judicially discharged from an accusation; absolved.

**act**, *n.* **1.** Something done or performed, esp. voluntarily; a deed. **2.** The process of doing or

## ACT OF COMMISSION

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performing; an occurrence that results from a person's will being exerted on the external world; ACTION (1).—Also termed *positive act*; *act of commission*.

**action.** 1. The process of doing something; conduct or behavior. 2. A thing done; ACT (1). 3. A civil or criminal judicial proceeding.

***criminal action.*** An action instituted by the government to punish offenses against the public.

***penal action.*** 1. A criminal prosecution. 2. A civil proceeding in which either the state or a common informer sues to recover a penalty from a defendant who has violated a statute. • Although civil in nature, a penal action resembles a criminal proceeding because the result of a successful action is a monetary penalty intended, like a fine, to punish the defendant. See COMMON INFORMER.

**active case.** See CASE.

**active concealment.** See CONCEALMENT.

**active euthanasia.** See EUTHANASIA.

**act of attainder.** See BILL OF ATTAINDER.

**act of commission.** See ACT.

## ACTUAL CAUSE

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**actual cause.** See *but-for cause* under CAUSE (1).

**actual escape.** See ESCAPE (2).

**actual-evidence test.** See SAME-EVIDENCE TEST.

**actual force.** See FORCE.

**actual innocence.** See INNOCENCE.

**actual malice.** See MALICE.

**actual physical control.** Direct bodily power over something, esp. a vehicle. ● Many jurisdictions require a showing of “actual physical control” of a vehicle by a person charged with driving while intoxicated.

***actus reus*** (ak-təs ree-əs *also* ray-əs). [Law Latin “guilty act”] The wrongful deed that comprises the physical components of a crime and that generally must be coupled with *mens rea* to establish criminal liability; a forbidden act <the *actus reus* for theft is the taking of or unlawful control over property without the owner’s consent>.—Also termed *deed of crime*; *overt act*. Cf. MENS REA.

**addict** (a-dikt), *n.* A person who habitually uses a substance, esp. a narcotic drug.—**ad-**