**Homicide: Murder and Manslaughter**

**by** [**Deborah C. England**](http://www.criminaldefenselawyer.com/law-authors/deborah-england.html)

Murder and manslaughter are two types of homicide (the killing of a human being).

Bottom of Form



We hear the word “murder” used in a lot of situations: “This job is murder!” Environmental activists sometimes refer to the “murder” of animals or even trees. But, under the law, it is not murder to kill an animal, a tree, or any living thing except a human being. A person cannot murder a kitten, no matter how cute the kitten nor how mean the human. Meat is not murder (unless it's served up by Hannibal Lecter.)

The word “homicide,” which includes murder, expressly refers to the human victim. And, only a human being can commit homicide or murder—it’s not murder when a grizzly bear kills a person.

Although the killing of a human by a human sounds pretty simple, there are many types of such killing and some are not even criminal, while others may lead to the gravest penalty—execution. Let’s take a look at the range of crimes falling under the umbrella of the term “homicide.”

What Is Homicide?

Homicide is not itself criminal, but is simply the definition of the killing of one human being by another human being. Homicide encompasses lawful killing (such as a killing in self-defense), intentional killing (murder), state sanctioned killing during war, and negligent killing (manslaughter). Homicide even describes what happens when the state executes someone--another instance of state sanctioned killing.

What is Murder?

The crime of murder is the killing of one human being by another that is:

* intentional (an accidental killing is usually not murder, except in cases of felony murder)
* unlawful (as opposed to the lawful killing by a police officer of a suspect during a shoot-out, for example), and
* done with “malice aforethought.”

Malice aforethought, which is sometimes erroneously called “premeditation” (a type of malice aforethought), describes a state of mind or actions that evidence an:

* intent to kill
* intent to inflict very serious, or “grievous,” bodily harm
* extremely reckless indifference to the value of human life, or
* intent to commit a dangerous felony (which accidentally results in the death of another).

Although the law on murder varies from state to state, most states recognize common degrees of murder. Murder includes premeditated murder (first degree murder), unpremeditated murder where the defendant intended to inflict grievous bodily harm (second degree murder), and felony murder (death caused during the commission of a dangerous felony).

Here are some examples of these common types of murder:

* **First degree murder.**A deliberate, premeditated killing is generally considered a first degree murder. Where the defendant planned the killing (as in a poisoning), she will usually be charged with first degree murder. The Los Angeles district attorney charged O. J. Simpson with two first degree murder counts in the deaths of his ex-wife Nicole Simpson and another person. The district attorney brought the first degree murder charges based on crime scene evidence, including a bloody glove, and on evidence that Simpson allegedly spied on his wife prior to the killings. Such evidence could have indicated a plan or premeditation to commit the crimes.
* **Second degree murder.** In the widely-reported shooting death of Florida teen Trayvon Martin, the prosecutor in Seminole County, Florida, charged neighborhood watch volunteer George Zimmerman with second degree murder. The reason that the prosecutor charged Zimmerman with second degree murder is that Zimmerman shot Martin and there is no evidence that the killing was premeditated. To win a conviction of Zimmerman on the charge, the prosecutor will have to prove to the jury that Zimmerman intended to inflict grievous bodily harm on Martin.
* **Felony murder.** Let’s assume by way of example that Bonnie and Clyde rob a bank. Clyde shoots and kills the guard during a confrontation. Clyde is charged with first degree murder and Bonnie is charged with felony murder because the guard died during Bonnie’s participation as an accomplice in committing the dangerous felony of [armed robbery](http://www.criminaldefenselawyer.com/crime-penalties/federal/Armed-Robbery.htm). Now let’s assume instead that Bonnie waits behind the wheel of the getaway car while Clyde robs the bank. After the robbery, Clyde jumps into the car and Bonnie speeds off, accidentally hitting and killing a pedestrian. Both Bonnie and Clyde are charged with felony murder, again because they accidentally killed the pedestrian while committing a dangerous felony.
* **Aggravating circumstances.** Murder committed under certain circumstances, such as by laying in wait, or murder targeting a person in a particular position, such as a police officer, judge, or firefighter, can lead to a more severe sentence, including the death penalty.

What is Manslaughter?

Manslaughter is the unlawful killing of one human being by another *without* malice aforethought.

There are several types of manslaughter, including:

* **Involuntary manslaughter.** This often refers to unintentional homicide from [criminally negligent](http://www.nolo.com/legal-encyclopedia/what-criminal-negligence.html) or [reckless](http://www.nolo.com/legal-encyclopedia/what-criminal-recklessness.html) conduct. It can also refer to an unintentional killing through commission of a crime other than a felony. In November 2012, a Las Vegas jury found a man guilty of involuntary manslaughter for a single punch to a fellow casino patron who died when he hit his head as he fell.
* **Voluntary manslaughter.** When a murder charge is reduced to manslaughter due to mitigating circumstances, such as heat of passion or diminished capacity, the reduced charge is sometimes voluntary manslaughter.
* [**Vehicular manslaughter**](http://www.criminaldefenselawyer.com/crime-penalties/federal/Vehicular-manslaughter.htm)**.** When this crime is charged, the driver had no intent to kill or cause serious bodily harm but operated a vehicle with criminal negligence (also called “gross negligence”) or during the commission of a misdemeanor and caused another’s death. This charge can include accidental killing by a drunk driver. If the accidental death occurred during the commission of a felony, the charge may be raised to felony murder (discussed above).
* **Intoxication no defense to manslaughter.** Where an intoxicated person acts with criminal negligence and causes the death of another, the intoxicated person may be charged with manslaughter. The fact that the person was too intoxicated to intend to kill or even seriously injure another is no defense, because manslaughter does not require intent to kill.

Common Defenses to Murder

Here are some common defenses to murder.

Justifiable killing/self-defense

In the trial of the Trayvon Martin killing, George Zimmerman will likely argue that he acted in self-defense. If he persuades the jury that he was genuinely defending himself against a life-threatening attack by Trayvon Martin, he may be acquitted.

For more on self-defense that involves the "stand your ground" principle, see ["Stand Your Ground" New Trends in Self-Defense Law."](http://www.criminaldefenselawyer.com/resources/stand-your-ground-new-trends-self-defense-law.htm)

Insanity and diminished capacity

Certain defenses turn on the defendant’s mental capacity to form intent. For example, insanity, intoxication, and even the defendant’s youth may be offered in defense to a murder charge.

* **Mental disorder may be a defense.**A defendant’s mental disorder may be an affirmative defense to intentional crime such as murder. The defendant must state the defense in his written response to the charges and offer proof of the mental disorder at trial in order to obtain a verdict on a lesser charge or a verdict of “not guilty by reason of insanity.” Usually, a defendant who is found not guilty by reason of insanity is not released but is committed to a mental institution instead of prison.
* **Impairment may be a defense.** A person with an impaired mental state, such as that caused by intoxication, mental illness, or head trauma, can offer his diminished capacity as a defense to a charge of murder. Success in making a showing of diminished capacity can lead to a lesser charge or even acquittal, depending on the circumstances.
* **A defendant who is a minor may receive a lesser charge.** The age of the defendant may also be considered in charging and trying him or her for murder or manslaughter. This is because children and adolescents may lack a full appreciation of the consequences of their actions.

Heat of passion

As mentioned above, where a defendant lashes out in the heat of passion, he may be charged with voluntary manslaughter instead of murder, or may avoid charges altogether. Earlier this year, a Texas grand jury convened to consider whether to file charges against a father who caught a man sexually abusing his 4-year-old daughter and beat the assailant so severely that he died.

How Is Murder Punished?

The precise punishment for murder varies from state to state, although murder carries a sentence of imprisonment (often for many years) in all states. In general, sentences for first degree murder range from life in prison without the possibility of parole to life with the possibility parole to many years in prison. Second degree murder almost always carries a lesser penalty than first degree murder (less than life in prison).

In certain states, aggravated first degree murder is punishable by the death penalty. The death penalty is on the books in 33 states, the federal government, and the U.S. military. Five states have abolished the death penalty in the last five years. The District of Columbia abolished the death penalty in 1981.

How Is Manslaughter Punished?

The punishment for manslaughter is generally less than for any degree of murder, although the penalties vary from state to state. An individual convicted of involuntary manslaughter under certain circumstances may not receive a prison sentence, while one convicted of voluntary manslaughter likely would.

Consult With an Attorney

Murder and manslaughter are very serious and complex crimes. If you have questions about murder or manslaughter, or find yourself investigated for or charged with either crime, [speak with a lawyer](http://www.criminaldefenselawyer.com/path/min-path2) experienced in criminal defense law in the state in which you were charged immediately.