

Homicide – Common Law

Definition: The illegal, unjustified killing of another human being

There are several different gradations of homicide under the common law:

- **First Degree Murder:** Intentional murder with aggravating factors (such as pre-meditation)
- **Second Degree Murder:** Murder with “malice aforethought”
- **Voluntary Manslaughter:** Intentional homicide with mitigating circumstances
- **Involuntary Manslaughter:** Homicide committed as a result of criminal recklessness or criminal negligence*
 - NOTE: Some states have developed a lesser crime called “criminally negligent homicide”
 - Under old British law, the differences between these four gradations of murder were not really clarified; today, however, the differences between these levels are, in deed, very important for sentencing purposes

Second Degree Murder

- Under the common law, any intentional homicide that is committed with malice aforethought that is not First Degree Murder is, by default, Second Degree Murder.

“Malice Aforethought” (under common law):

(1) intent to kill

(2) intent to inflict serious bodily injury

(some states reduce this to voluntary manslaughter)

(3) intent to commit a felony from which a death results

(felony-murder rule)

(4) Acting in a manner that shows a “depraved indifference to human life”

(i.e., extreme recklessness) that results in a death.

- **Penalty:** Usually a long mandatory prison term or even life imprisonment (with possibility of parole after a certain number of years)

First Degree Murder

- Requires **intent to kill**; not just “malice aforethought”
- Requires some aggravating circumstances (which vary among states), such as:
 - Pre-meditation
 - Commission in the course of a violent felony (*not* the same as felony-murder).
 - Murder by vicious method (e.g. bombing or explosion-California)
 - Murder by torture
 - Killing a police or peace officer in the course of his or her duty (New York)
 - Murder of a child under certain circumstances (Alaska)

Penalty:

- **Death**
- **Life Imprisonment**
- **Less than life imprisonment**

QUIZ TIME

Premeditation

- Generally means with advance planning; as opposed to a “spur of the moment” action.

- Is a pre-meditated murder worse than a spur of the moment murder?

- Does this sound like a pre-meditated murder?

-“We went into the bedroom a little before 3 o'clock, Wednesday morning, where we continued to argue. Generally, she just laid there in bed with her back to me facing the wall. She would just talk to me over her shoulder. I became upset and angrier especially when she started saying things about my kids and me. Sometime between 3 and 4 o'clock in the morning I remembered the gun on the window sill just over my head. I think she dozed off. I reached up, grabbed the pistol, brought it down, and shot her twice in the back of the head.”

– The “no time is too short” rule!

- “No time is too short for a wicked man to frame in his mind the scheme of murder.”

- Pennsylvania Supreme Court, 1963

What murder is not pre-meditated??