

# Crimes Against the Person

*“Crime and the fear of crime have permeated the fabric of American life.”*

— Warren E. Burger

**C**rimes against the person include homicide, assault, battery, and rape. All of these crimes are serious offenses. A defendant found guilty of any one of them may receive a harsh sentence. The law also protects the defendant from overly harsh penalties by defining various levels of these crimes and by considering the circumstances of each offense.

## Homicide

**Homicide**—the killing of one human being by another—is the most serious of all acts. Homicides may be either criminal or non-criminal. Criminal homicide is committed with intent, or a plan. It is also considered criminal homicide if a person’s reckless actions, without regard for human life, result in the killing of another person. Noncriminal homicide can be classified as either “excusable” or “justifiable,” and is not subject to criminal charges.



Visit the *Street Law* Web site at [streetlaw.glencoe.com](http://streetlaw.glencoe.com) for chapter-based information and resources.

Coroners remove a body from the scene of a homicide.





## Where You Live

What forms of homicide exist under your state's criminal statutes? What is the range of punishments for each level of the crime?

## Criminal Homicide

Murder, the most serious form of criminal homicide, is killing that is done with **malice**. Malice means having the intent to kill or seriously harm another person or acting in an extremely reckless manner which shows a lack of regard for human life. At one time, there were no degrees of murder. Any homicide done with malice was considered to be murder and was punishable by death. To reduce the punishment for less-grievous homicides, most states now have statutes that classify murder according to the killer's state of mind or the circumstances surrounding the crime.

**First-degree murder** is usually defined as killing that is premeditated (thought about beforehand), deliberate, and done with malice. It is an action with an intent to kill or cause severe bodily injury or with a depraved indifference to human life. Courts have often found that the premeditation and deliberation can occur very close to the time of the homicide.

**Felony murder** is any killing that takes place during the commission of certain felonies, such as arson, rape, robbery, or burglary. It is not necessary to prove intent; malice is presumed because the homicide occurred during the felony, even if the killing was accidental. Most states consider felony murder to be first-degree murder regardless of whether malice, premeditation, and deliberation exist.

**Second-degree murder** is killing that is done with malice, but without premeditation or deliberation. That is, the intent to kill did not exist until the moment of the murder. Second-degree murder includes intentional but spontaneous killings that are unplanned.

**Voluntary manslaughter** is killing that would otherwise be murder, but that occurs after the victim has done something to the killer that would cause a reasonable person to lose self-control or act rashly. A person who kills someone in a violent argument or quarrel without first planning to do so is guilty of voluntary manslaughter. Words alone, no matter how offensive, do not reduce the severity of a murder to voluntary manslaughter. Also, the killing must occur just after the provocation so that the killer did not have an opportunity to "cool down." A typical example of voluntary manslaughter is when a person discovers his or her spouse with someone else and that person kills the spouse's lover in a jealous rage. Voluntary manslaughter is punished somewhat less severely than murder as a concession to the frailty of human character.

**Involuntary manslaughter** is a killing in which there is no intent to kill at all. It is unintentional killing resulting from conduct so reckless that it causes extreme danger of death or bodily injury. An example of involuntary manslaughter is killing that results from playing with a gun known to be loaded.

**Negligent homicide** means causing death through criminal negligence. **Negligence** is the failure to exercise a reasonable or ordinary



amount of care in a situation, thereby causing harm to someone. Some states classify death by gross, or extreme, negligence as involuntary manslaughter. The most common form of negligent homicide is vehicular homicide. This is killing that results from operating a motor vehicle in a reckless and grossly negligent manner. Any death that results from careless driving may lead to a civil suit for damages, but it is usually not considered a crime unless the death results from gross negligence.

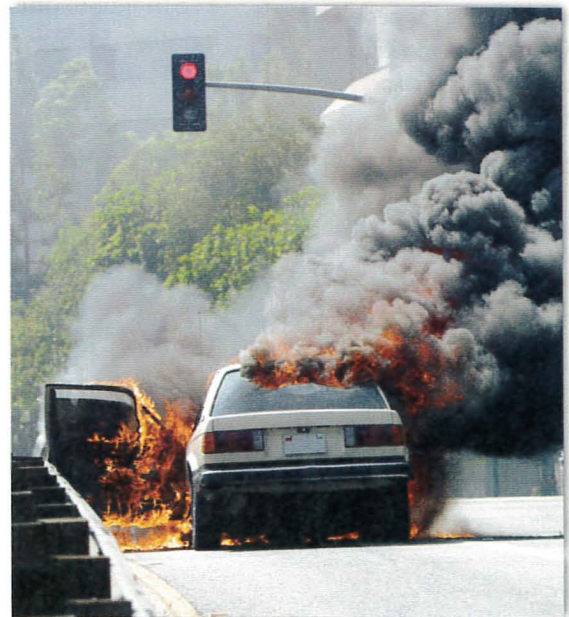


## YOU BE THE JUDGE

### Homicide Cases

**R**ead each of the following situations carefully. For each one, determine who can be charged with homicide and the degree of homicide for which they should be charged. Give your reasons.

- a. Walt decides to shoot Yolanda, whom he blames for all his troubles. As he is driving to her home to carry out the murder, he accidentally hits a jogger who darted out from behind a tree. Stopping immediately, Walt rushes to help the jogger, who is already dead. Assume that Walt was driving at a safe speed and that the collision was unavoidable.
- b. Belva is cheated when she buys a car from Fast Eddie's Car Mart. She attempts to return the car, but Eddie just laughs and tells her to go away. Every time Belva has to make a repair on the car, she gets angry. Finally, she decides to wreck Eddie's car to get even with him. Following him home from work one evening, Belva tries to ram his car, hoping to bend the axle or frame. Instead of bending the frame, the collision smashes Eddie's gas tank, causes an explosion, and kills him.



The car explosion

- c. Alison and Brad decide to rob a bank. Brad drives the getaway car. Alison goes into the bank and pulls out her gun, announcing, "This is a stickup. Don't move!" The bank guard, Gordon, shoots at Alison but misses, killing Dawn, a customer.

## Noncriminal Homicide

Some homicides are not considered crimes at all. Noncriminal homicide is killing that is justifiable or excusable and for which the killer is deemed faultless. Examples of noncriminal homicide include the killing of an enemy soldier in wartime, the killing of a condemned criminal by an executioner, the killing by a police officer of a person who is committing a serious crime and who poses a threat of death or serious harm, and a killing performed in self-defense or in defense of another person.

## Suicide

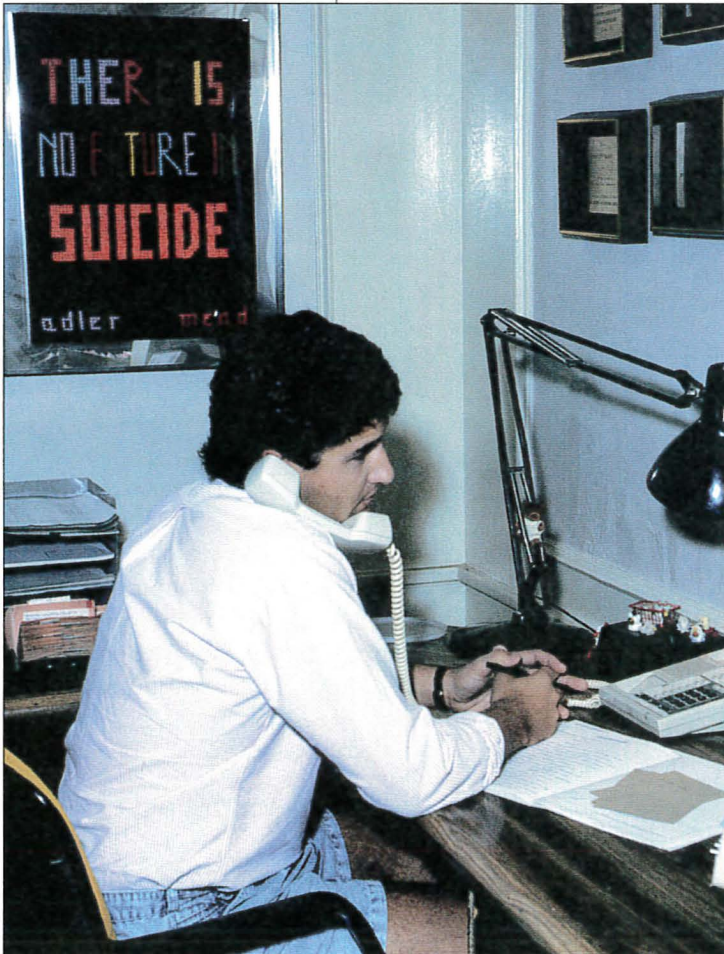
**Suicide**, the deliberate taking of one's own life, was once considered a crime. States that regard it as a crime today, however, prohibit only *attempted* suicide. Courts often treat suicide as a plea for help, requiring the person who attempted it to undergo a psychological examination and receive treatment, often in the form of counseling. Someone who helps another person commit suicide can, however, be found guilty of the crime of murder or manslaughter.

Suicide is one of the leading causes of death among teenagers. The Centers for Disease Control and Prevention (CDC) reported that in 2001, 19 percent of teens in grades 9 through 12 reported seriously considering suicide, 15 percent made a plan to commit suicide, and 9 percent attempted suicide. The CDC also reported that, on average, a high school student succeeds in killing himself or herself every 15 minutes.

Although many people have suicidal thoughts at some point in their lives, most never attempt suicide. Many can be helped by suicide hotlines, medication, counseling, and other programs for those who may be considering suicide. Despairing individuals may need someone else to talk to who can help them see positive alternatives to ending their life.

There are many national hotlines that may be helpful for teens considering suicide, a few of which are described here. The National Crisis Helpline assists by locating the nearest crisis service in the United States, and can be reached by calling toll-free 1-800-999-9999.

Hotlines and other services are available for people who are considering suicide. How can hotlines help such individuals?





## The Case of . . .

### The Dying Cancer Patient

**W**ilfred, age 75, has been suffering from cancer for 10 years. The pain associated with the cancer is severe and has become worse over time. Wilfred's doctors say there is no treatment to either slow down the cancer's growth or substantially reduce the pain. Wilfred asks Martha, his wife of 50 years, to relieve him of the terrible pain. He asks her to bring him a bottle of pills that would help him end his own life. Martha, who cannot stand watching Wilfred suffer anymore, gives him the pills. He swallows them all, slowly fades off to sleep, and dies.

#### Problem 9.1

- a. Was Wilfred's request related to suicide? Explain.
- b. If you were the district attorney in the state where Martha lives, would you file criminal charges against her? Explain.
- c. If manslaughter charges were filed and you were on the jury, would you vote to convict Martha? Give your reasons. If Martha were convicted, what sentence should she receive? Why?
- d. If the bottle of pills had been given to Wilfred by a physician instead of by his wife, would your answers have been different? Give your reasons.
- e. If you were a state legislator, would you advocate a law allowing assisted suicide? Explain.

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The National Youth Crisis Hotline provides guidance and support to teens in crisis. Volunteers discuss issues and provide referrals in such areas as suicide prevention, pregnancy, gangs, runaway services, eating disorders, physical abuse, and substance abuse. The National Youth Crisis Hotline can be reached by calling toll-free 1-800-HIT-HOME (448-4663) or 1-800-442-HOPE (4673). It also offers information online at [www.1800hithome.com](http://www.1800hithome.com).

You can also use the phone book or Internet to find suicide hotlines and prevention programs located in your community. A directory of suicide hotlines for every state can be found online at [www.suicidelines.com](http://www.suicidelines.com). There may also be programs especially for teenagers or the elderly.

### Assault and Battery

**Assault** is any attempt or threat to carry out a physical attack upon another person. **Battery** is any unlawful physical contact inflicted by one person upon another person without consent. Actual injury is not necessary. The only requirement is that the person must have intended to do bodily harm. Today, there is often not much difference in law or practice between the uses of the words *assault* and *battery*.



#### Where You Live

What are the classifications for assault and for battery in your state's criminal statutes?



■ Anti-stalking laws protect people from harassment and threats. *Does your state have anti-stalking laws?*

Just as there are degrees of murder, there are also different classifications for assault and battery. Many states now have separate statutes for assault with intent to rob or assault with intent to murder. Aggravated battery is often defined by the harm inflicted: an unarmed assault that results in a serious physical injury is an aggravated battery rather than a simple assault.

Assaults typically result from arguments between people who know each other. In such arguments, rage—often stimulated by alcohol or jealousy—leads to violence. Whether the violence leads to serious injury or death often depends on the presence of a weapon.

**Stalking** occurs when a person repeatedly follows or harasses another person and makes threats, causing the victim to fear death or bodily injury. Women are the targets of most of the cases of stalking that occur each year. To deal with the growing problem of harassment, most states now have anti-stalking laws.

**Sexual assault** is a specific kind of assault that can include rape or attempted rape. Sexual assault includes a wide range of victimizations from verbal threats of a sexual nature to unwanted sexual contact between the victim and the offender. Like assault and battery, sexual assault can be an attack that is either completed or attempted. The unwanted contact might include grabbing or fondling and may, but does not have to, involve force. Contrary to traditional views of male and female roles, both men and women are capable of committing and being victims of sexual assault.

## Rape

Traditionally, the law has recognized the separate crimes of rape and statutory rape. **Rape** is sexual intercourse without consent. An aggravated form of rape occurs when the perpetrator uses a weapon or some other form of force to compel the victim to have intercourse. **Statutory rape** is intercourse between an adult and a minor.

This area of law is in transition as many states are replacing their rape laws with criminal sexual assault laws. Rape is a serious form of criminal sexual assault. As noted, the crime requires a lack of consent on the part of the victim. There is no consent if the victim is unconscious or mentally incompetent or if drugs or alcohol impair the victim's judgment. The perpetrator and the victim can be of either sex. These laws, therefore, can be used to prosecute women as well as men and can be used to prosecute same-sex criminal sexual assault.



Statutory rape—sexual intercourse between an adult and a minor child—has traditionally been used to punish males for having sexual relations with underage females (generally females under the age of 12 or under the age of 16, depending on the state’s law). Statutory rape differs from rape in a very important way: lack of consent is not an element of the crime. This crime is based on the notion that a minor is incapable of giving legal consent. A male can be prosecuted for statutory rape with a minor even if the female lied about her age. Statutory rape goes to the crime when the victim is younger than the specific age and “consents.” Statutory rape laws are also changing. The tendency is to recognize that either males or females can commit or be victims of statutory rape. There is also a trend in many states not to charge a person with statutory rape unless the perpetrator is several years older than the victim, although this age difference requirement is never used to define rape.

There is a range of ways that states define forcible or statutory rape. States also tend to have specific sentencing laws that require more severe punishments for certain forms of sexual assault. When the victim is under a certain age, over a certain age, disabled, or threatened with a weapon, punishment may be more severe.

In the past, defendants in rape cases were allowed to present evidence to the jury about the victim’s past sexual behavior and reputation in order to show that she had probably consented to the act. Most states and the federal system have passed “rape shield” laws, which now prohibit introducing such evidence. To convict a person



Authorities must confirm the rape victim’s story in order to proceed with the case. *What are “rape shield” laws?*



## Where You Live

How do the sexual assault or rape laws work in your state? Have they changed in recent years? Do they need to be changed? If so, how?

of rape, some states require independent proof that the act took place. This means confirmation or support for the story of the victim, including testimony of a witness, a doctor's report that sexual intercourse took place, or a prompt report to the police.

The trend has been to be more protective of victims—that is, to make sure the defendant and not the victim is put on trial. Yet it is also true that the sometimes unclear nature of male-female relationships, as well as same-sex relationships, presents challenges for the criminal justice system. While criminal sexual assault is a serious crime and should be punished as such, the criminal justice system must also protect against punishing an accused person unless the victim clearly expresses a lack of consent.

In recent years, the term **acquaintance rape** (also known as **date rape**) has been used to describe a sexual assault by someone known to the victim—a date, steady boyfriend, neighbor, or friend. Many victims of acquaintance rape do not report the assault. This may be because they do not realize an attack that occurs on a date can in fact constitute a rape.

### Problem 9.2

For each case below, assume that the two people have sexual intercourse. Assume that the police find out about the sexual activity in each instance. How should each situation be handled?

- a. At midnight, a man breaks into the home of a woman he does not know. He goes to her bedroom, awakens her, pulls out a knife, and threatens to stab her unless she has sex with him. She tells him that she does not want to have sex. But then she says, "If you are going to do this, you'd better use a condom." He agrees.
- b. A famous boxer serves as a judge at a beauty contest. After the contest, he invites an 18-year-old contestant to his hotel room. She meets him there. Later, she says he forced her to have sex.
- c. A male high school student, aged 17, and a female high school student, aged 14, go out on a date. After attending a party, they agree to have intercourse in his car. The next day, he brags about this at school, and she goes to the police. There is some evidence that he is part of an informal organization of high school seniors who are involved in a competition to have sex with as many girls as possible.
- d. Leo and Nina are college juniors who have had three dates. On these dates, they have never engaged in any sexual activity beyond a brief good-night kiss. On their fourth date, he invites her to an all-night drinking party at his fraternity house. She drinks too much, goes up to his room alone around 1:00 A.M., and falls asleep. In the morning, she wakes up to discover that she and Leo had intercourse during the night.
- e. Lori, a 25-year-old high school teacher, becomes a good friend of Jim, a 17-year-old student in one of her classes. On a senior class trip to the state capital, Jim knocks on her hotel room door late at night. Lori lets him in, and they have sexual intercourse.