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## Federal Homicide: From Murder to Manslaughter

The Supreme Court has described criminal activity as typically consisting of the “concurrence of an evil-meaning mind with an evil-doing hand.” One category of crime, “homicide,” involves the same evil act: the unlawful killing of another person. What generally distinguishes between the different grades of homicide, such as first- and second-degree murder, is the mental state of the defendant. The terminology used to describe these mental states across state and federal law varies and the lines between them can be blurry.

Homicide is primarily prosecuted at the state level, owing to the limited reach of federal criminal law; that is, a federal homicide case may be brought only if there is a federal jurisdiction over the offense, such as if the offense was committed on federal property. Still, in fiscal year 2024, over 500 federal sentences were imposed for homicide offenses, according to data on the applicable federal sentencing guidelines (U.S.S.G. §§ 2A1.1 - 2A1.4).

This In Focus explains the distinctions between the different forms of homicide in federal law. It does not discuss other federal offenses that may involve the death of another. Nor does it address possible defenses to a homicide offense, such as when the killing was done in self-defense. In addition to summarizing the contents of federal homicide offenses, this In Focus identifies the penalties for these offenses. Generally, as the culpability of the offense increases, so too does the penalty exposure for that offense. This document closes with considerations for Congress.

### Grades of Homicide

Chapter 51 of Title 18, titled “Homicide,” addresses both murder (18 U.S.C. § 1111) and manslaughter (18 U.S.C. § 1112) offenses. Murder is divided into first-degree and second-degree murder, and manslaughter is split into voluntary and involuntary components.

### Murder: “Malice Aforethought”

Murder is defined in federal law as the unlawful killing of another with “malice aforethought.” The roots of this concept may be traced to at least the 16th century. While courts have observed that “malice aforethought” embodies “abstract and archaic” language, in modern times it has been understood to apply when the defendant “harbored before the killing a conscious intention to kill,” irrespective of any ill will.

### First-Degree Murder: “Malice Aforethought” with “Premeditation”

Federal law identifies four types of first-degree murder: *First*, first-degree murder constitutes any killing that is “willful, deliberate, malicious, and premeditated.” This

mental state requirement generally means that the prosecution must prove that the defendant had the opportunity to deliberate on the act and did so deliberate. A defendant need not deliberate for a lengthy period of time for the killing to qualify as first-degree murder. For example, a defendant who retrieves a firearm and returns to a residence to kill another has been found to have demonstrated evidence of premeditation.

*Second*, federal law expressly identifies unlawful killing perpetrated “by poison” or by “lying in wait” as types of premeditated murder. For instance, a person who obtains and intentionally puts a lethal dose of strychnine in another’s drink may be guilty of first-degree murder by poison. A person who is “watching and waiting in a concealed position with the intent to kill” the victim may be guilty of first-degree murder by “lying in wait.”

*Third*, “felony murder” constitutes a form of first-degree murder that does not require an intent to kill. As the Supreme Court has recounted, a defendant who “commits an unintended homicide while committing another [enumerated] felony” may be guilty of first-degree murder. Generally, under the felony-murder rule, the premeditated intent to commit the felony is imputed to the death that occurred during the commission of a serious or dangerous felony. Under federal law, only certain felonies count for purposes of felony murder. These predicate felonies include arson, kidnapping, treason, espionage, aggravated sexual abuse or sexual abuse, child abuse, burglary, and robbery.

*Fourth*, federal law provides that first-degree murder may be “perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed.” This language encompasses circumstances in which a defendant has the premeditated intent to kill one person, but kills another. As formulated by the Supreme Court, “D’s killing of A, while intending to murder B” qualifies as first-degree murder because the defendant possessed a premeditated intent to kill.

Federal law specifies the penalty for first-degree murder is death or life imprisonment. A fine is not included as an option in the statute, but the default fine statute, 18 U.S.C. § 3571, would apply. Attempted murder, whether first- or second-degree, is punished by imprisonment of “not more than twenty years,” fine, or both.

### Second-Degree Murder: “Malice Aforethought” Without “Premeditation”

Second-degree murder, while involving the unlawful killing of another with “malice aforethought,” differs from first-degree murder because it does not involve “premeditation.”

“Malice aforethought” suggests the formation of an intent to kill prior to acting. By contrast, “premeditation” speaks to deliberating before acting, that is, forming the intent to kill *and* being “fully conscious of that intent.”

At least two doctrines help identify what constitutes second-degree murder. *First*, as a corollary to the first-degree murder felony-murder rule, second-degree felony murder occurs when a death results from the commission of a non-enumerated felony, such as certain assaults. *Second*, under a “depraved heart” theory, a defendant may commit second-degree murder if they kill another with “extreme recklessness evincing disregard for human life.” For example, a defendant who drove in the wrong lane of a highway with a blood alcohol content three times the legal limit, causing a fatal crash, was found to have committed second-degree murder under the depraved-heart doctrine.

One court asserted that “one who meditates an intent to kill and then deliberately executes it is more dangerous, more culpable or less capable of reformation than one who kills on sudden impulse.” An individual convicted of second-degree murder therefore faces less severe punishment than one convicted of first-degree murder, specifically imprisonment “for any term of years or for life.” A fine under the catch-all fine provision, 18 U.S.C. § 3571, may be imposed.

### Manslaughter: Absence of Malice

The courts have recognized that, at common law and in federal law, “[t]he presence or absence of malice mark[s] the boundary which separate[s] the crimes of murder and manslaughter.” As indicated above, manslaughter is of two types: voluntary and involuntary.

Under federal law, the penalty for voluntary manslaughter is a fine, imprisonment of “not more than 15 years, or both.” Involuntary manslaughter carries a penalty of a fine, imprisonment of “not more than 8 years, or both.” Attempted manslaughter, whether voluntary or involuntary, is punishable by imprisonment of “not more than seven years,” a fine, or both.

### Voluntary Manslaughter: Mitigated Intentional Killing

Federal statute defines “manslaughter” as “the unlawful killing of a human being without malice.” The statute specifies that “manslaughter” is “voluntary” if committed “[u]pon a sudden quarrel or heat of passion.” With voluntary manslaughter, the mental state of an intentional killing is the same as that for murder, but “attendant circumstances—heat of passion with adequate provocation—make the offense less blameworthy” compared to a killing “which was long premeditated and carried out in cold blood.” That is, without these mitigating circumstances, “the crime of voluntary manslaughter would be murder.”

Manslaughter stemming from a “sudden quarrel” generally takes place “when the parties ‘willingly engage in mutual combat, and during the fight one kills the other as the result of an intention to do so formed during the struggle.’” A

historical example is a killing occurring during a “drunken brawl.” Similarly, “heat of passion” often refers to “a passion of fear or rage in which the defendant loses [their] normal self-control” in response to circumstances that “would provoke such a passion in an ordinary person.” An example is a husband, on returning home to find his wife committing adultery, becoming overwhelmed by anger and shooting the wife or lover. “Sudden quarrel” and “heat of passion” are similar in that they both capture the presence of adequate provocation, which impairs the self-control of the defendant; the quick onset of the deadly encounter, which limits the opportunity for the defendant to reflect and deliberate; and the absence of a cooling-off period, which denies an opportunity for self-control to be regained.

### Involuntary Manslaughter: Misdemeanor Manslaughter and Gross Negligence

The federal manslaughter statute indicates that “involuntary” manslaughter may happen in two ways: *First*, as a parallel to first- or second-degree felony murder, involuntary manslaughter covers a death caused by “the commission of an unlawful act not amounting to a felony,” such as speeding. This is generally referred to as the “misdemeanor manslaughter” rule. *Second*, involuntary manslaughter occurs when the defendant commits a lawful act causing death, but the act was committed “in an unlawful manner” or “without due caution and circumspection.” An example could be giving another a deadly amount of medicine.

Unlike voluntary manslaughter, involuntary manslaughter is not an intentional killing. Instead, the mental state applicable to involuntary manslaughter is lower on the mental state hierarchy, requiring, at a minimum, a showing that the defendant acted with “gross negligence” that reflects a “wanton or reckless disregard for human life.”

### Considerations for Congress

The federal homicide statutes discussed in this document have not been amended since 2008. Of these homicide offenses, the felony-murder rule has perhaps been the subject of the most significant scrutiny. The Supreme Court has endorsed the rule, citing jurist William Blackstone for the proposition that an individual who commits an unlawful act “is criminally guilty of whatever consequence may follow the first misbehaviour.” In a 2023 case, however, a few Supreme Court Justices expressed concern that an individual who committed a felony, without shooting anyone, could still be put to death for first-degree murder. Congress could amend the first-degree murder statute to address felony murder, or it could leave resolution of the rule’s propriety to the courts.

Congress could call upon the Attorney General and others for information on what changes to the statutes may be appropriate, if any, in light of how the homicide statutes are being interpreted and applied in the courts.

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