**SIMILAR, BUT DIFFERENT, CRIMES**

How does a prosecutor or district attorney decide with what crime to charge someone who has been arrested? Sometimes, this is an easy call to make, but other times, it can be difficult. Why? Many crimes are similar in their descriptions. It’s very important that the prosecutor makes this decision correctly. If they do not, someone may be charged with a lesser crime than the one they actually committed and (if found guilty) serve a lesser punishment than what they should be serving. On the other side, someone could be charged with a more serious crime than the one that they actually committed, and this may result in a jury finding them innocent of that more serious crime when they would normally find them guilty of a lesser crime. This could allow a criminal to walk free.

Let’s look at some differences between similar crimes.

**What's the difference between homicide, murder and manslaughter?**

People are often confused by the terms homicide, murder, and manslaughter. When reading the newspaper, they wonder why one defendant gets life for murder, while another person gets probation for manslaughter, which, in a way, sounds worse than murder. It even gets more confusing when people are confronted with terms like felony murder. After all, aren’t all murders felonies?

Homicide is simply the killing of one person by another. It may or may not be illegal. Soldiers in battle commit homicide without committing a crime. Citizens kill intruders in their homes without committing a crime. So, what is it that separates a legal homicide from an illegal murder? And, what makes one killing a murder and another a manslaughter?

Murder is a homicide committed with “malice aforethought.” That doesn’t mean it is a malicious killing. Malice aforethought is the common law way of saying that it is an unjustified killing. And, for a killing to be a murder, there typically has to be either an intent to kill, or, at minimum, conduct so reckless that it is punishable as murder.

Murder usually is broken down into degrees. First degree murder punishes premeditated killings, the killing of especially vulnerable people (such as children), and unintended killings done while intentionally committing another serious felony. This last kind of first-degree murder is called felony murder.

Most people equate premeditation with long term planning. However, in most criminal codes, premeditation doesn’t mean that the killing was planned for weeks or days. Premeditation often is defined as any planning or design to cause the death before the act of killing occurred. Second degree murder usually includes all intentional killings that are not premeditated, and some killings that resulted from conduct so reckless it showed a grave indifference to the sanctity of human life or the welfare of others.

As mentioned above, felony murder is a subset of either first degree murder and, in some criminal codes, voluntary manslaughter. It punishes people who didn’t actually do the killing. If a person participates in a felony, and that felony caused someone’s death, all the participants in the felony can be charged with murder. Common examples of this include the get-away driver in a convenience store robbery who is charged with felony murder after the actual robber shoots the clerk. Or, the burglar who inadvertently scares a home owner so badly that the home owner dies of a heart attack.

Manslaughter is typically treated as a much less severe crime than murder. Manslaughter can be broken up into degrees, or categorized as voluntary and involuntary manslaughter.

Voluntary manslaughter is the killing of another person under extreme provocation or while under the heat of passion. Typically, it does not require an intent to kill, but rather than the intent to do something else. Involuntary manslaughter usually involves acts of negligence or recklessness that lead to another person’s death. Vehicular homicide or vehicular manslaughter – causing a person’s death through driving while intoxicated – can be charged on its own or as part of involuntary manslaughter, depending on the laws of a particular state.

