Crimes against the person include homicide, kidnapping, assault, battery, robbery, 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 some 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.
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 that 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 the act of 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 it 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 seen as 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 does 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 and thus criminal, 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 criminal offense unless the death results from gross negligence.

**YOU BE THE JUDGE**

**Homicide Cases**

Read each of the following accounts carefully. For each one, determine who can be charged with the crime of homicide and the degree of homicide for which he or she should be charged. Give reasons for your answers.

a. Walt decides to shoot his ex-girlfriend 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 into the road 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 with the jogger 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.

c. Alison and Brad need money to pay their bills and 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 bank customer.
Noncriminal Homicide

Some homicides are not considered crimes at all. Noncriminal homicide is killing that is justifiable or excusable, and therefore 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. Today courts often treat attempted 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.

A suicide occurs in the United States every 15 minutes, and in a typical year there are more suicides than homicides in this country. In 2004, suicide was the third-leading cause of death among people aged 10 through 24 in the United States, accounting for 4,599 deaths. Teen suicide and attempted suicide are considered serious public health problems.

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

Many national hotlines exist to help teens who are considering suicide. Covenant House Nineline assists those in need by locating the nearest crisis service center in the United States and can be reached by calling toll-free 1-800-999-9999.
The National Youth Crisis Hotline provides guidance and support for teens in crisis. Volunteers discuss issues such as suicide, pregnancy, sexually transmitted diseases, gangs, eating disorders, physical abuse, and substance abuse. They also provide referrals for additional counseling. The National Youth Crisis Hotline can be reached by calling toll-free 1-800-442-HOPE (4673).

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.suicidehotlines.com. There may also be programs especially for teenagers or the elderly.

Kidnapping

Kidnapping, also called unlawful imprisonment or abduction, has been recognized as a crime for centuries. Originally this crime referred to stealing children for use as servants or workers, but it now applies to victims of all ages. Kidnapping involves taking away a person against that person’s will. When the victim is taken across state lines, this act also violates federal criminal law.

The Dying Cancer Patient

Wilfred, 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 will help him end his own life. Martha cannot stand watching Wilfred suffer anymore and 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 your answer.

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 be in favor of or against a law allowing assisted suicide? Explain.
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.

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 and assault with intent to murder. The charge is often defined by the harm inflicted. Thus an assault, even though unarmed, that results in a serious physical injury can be considered an aggravated battery.

Assaults typically result from arguments between people who know each other. In such arguments, rage, often triggered by alcohol or jealousy, may lead 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 stalking cases that occur each year. To deal with the growing problem of harassment, most states now have anti-stalking laws. In addition, many states also have laws that criminalize stalking and harassment using electronic communications (sometimes called cyberstalking).

Bullying is a version of assault and battery in which peers or acquaintances intimidate, or put others in fear. In 2005 more than one in four teens reported being a victim of bullying during the previous six months. Bullying causes harm to victims, witnesses, and perpetrators and is sometimes seen as a “gateway behavior.” When bullying is tolerated, it may teach the perpetrator that threats and aggression are acceptable. In one study, nearly 60 percent of boys whom researchers identified as bullies in grades 6 through 9 had been convicted of at least one crime by the age of 24. A substantial number of the bullies had multiple convictions.

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. Contact without consent 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 with someone under the legal age of consent. The legal age of consent varies from state to state.

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 the victim’s judgment is impaired by drugs or alcohol. 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 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 of a minor even if the victim lied about his or her age. Statutory rape laws are also changing. While these laws were traditionally used to prosecute males for having sex with underage females, the trend now 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 forcible rape.

States define forcible or statutory rape in a range of ways. 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 he or 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 of rape, some states require other proof that the act took place. This means confirmation of or support for the account provided by the victim, including testimony of a witness, a doctor’s report that sexual intercourse took place, or a prompt report to the police.

There is a trend, nonetheless, 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 relationships presents challenges for the criminal justice system. While criminal sexual assault is a serious crime, the criminal justice system must also avoid 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. Many victims of acquaintance rape do not report the assault, perhaps because they do not realize an attack that occurs on a date or social encounter 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 legal age of consent in this state is 16. 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 boys 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 goodnight 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.