

## **NY Homicide**

### **1) Intentional murder**

- a) When a person, with the **intent** to cause death of another, **causes the death** of that person or of a 3<sup>rd</sup> party (transferred intent)
- b) Affirmative **defenses** – mitigate crime, so may be manslaughter:
  - i) Extreme emotional disturbance – heat of passion
  - ii) Aiding a suicide

### **2) Highly reckless murder**

- a) Demonstrating a **depraved indifference** to human life, a person **recklessly** engages in conduct that creates a **grave risk of death** and thereby **causes the death** of another person.
  - i) Force directed at victim but not intended to kill may suffice for conviction.
  - ii) No attempted reckless murder

### **3) First degree murder**

- a) Intentional murder with special circumstances:
  - i) Intended victim was a police officer
    - (1) Was performing official duties
    - (2) Def must reasonably know that victim was law enforcement
  - ii) At time of killing, def was serving life sentence or escaped from life sentence
  - iii) Intended victim was witness or family member of witness to a crime
  - iv) Murder for hire
  - v) Victim (not a participant) was intentionally killed by def/accomplice during or in immediate flight from:
    - (1) Robbery (any degree)
    - (2) Burglary (1<sup>st</sup> or 2<sup>nd</sup> degree)
    - (3) Kidnapping (1<sup>st</sup> degree)
    - (4) Arson (1<sup>st</sup> or 2<sup>nd</sup> degree)
    - (5) Rape (1<sup>st</sup> degree), sodomy or sexual abuse
    - (6) Escape (1<sup>st</sup> degree)
    - (7) Attempted murder in the 2<sup>nd</sup> degree (1<sup>st</sup> degree)
  - vi) During intentional killing, def kills additional person(s) or recidivism
  - vii) Torture murders
  - viii) Serial murders (24 month rule)
  - ix) Victim killed because he was a judge

b) Note – NY Court of Appeals declared NY death penalty statute unconstitutional.

### **4) Second degree murder**

- a) Forms of 2<sup>nd</sup> degree murder
  - i) Intentional murder but with no special circumstances
  - ii) Highly reckless murder

- iii) Felony murder
      - (1) Victim (not a participant) was unintentionally killed by def/accomplice during or in immediate flight from:
        - (a) Burglary, robbery, arson, kidnapping, rape, sodomy, aggravated sexual abuse, escape (1<sup>st</sup> or 2<sup>nd</sup> degree)
      - (2) This conviction is possible even if underlying felony is dismissed.
      - (3) Accomplice defense to felony murder if he:
        - (a) Did not commit or aid in commission of homicidal act;
        - (b) Was not armed with deadly weapon;
        - (c) Had no reasonable grounds to believe others were armed; and
        - (d) Had no reason to believe any participant intended to engage in conduct likely to result in death.
  - b) Defenses
    - i) Insanity
    - ii) Infancy (under 13 years old)
    - iii) Must have culpability relating to material element of underlying crime
- 5) **First degree manslaughter (voluntary)**
  - a) Intending serious bodily harm resulting in death
  - b) Heat of passion
- 6) **Second degree manslaughter (involuntary)**
  - a) Reckless
    - i) Conscious disregard of a substantial risk, which causes death of another.
  - b) Intoxication is no defense
- 7) **Criminally negligent homicide (MS involuntary manslaughter)**
  - a) Elements:
    - i) "Serious blameworthy conduct" related to substantial/unjustifiable risk of death
    - ii) Foreseeable that act would cause death
- 8) **Vehicular assault and vehicular homicide**
  - a) Vehicular homicide – causing death while DWI.
    - i) Degrees follow those below, except death results.
  - b) Vehicular assault – 2<sup>nd</sup> degree
    - i) DWI in a manner that causes serious physical injury to another.
  - c) Vehicular assault – 1<sup>st</sup> degree
    - i) Same as 2<sup>nd</sup> degree except must have BAC of more than .18, revoked license for DWI, DWI conviction in past 10 years, or prior conviction of vehicular assault or homicide.
  - d) Aggravated vehicular assault – same as 1<sup>st</sup> degree but person must have been driving recklessly.