

# FLORIDA CRIMINAL LAW

Crimes consist of both a mental (mens rea) and a physical element (actus reus). Every criminal statute has an actus reus and a mens rea. **Mens rea** is the mental element. **Mens rea** is a person's awareness of the fact that his or her conduct is criminal. When a person is aware that his or her conduct is criminal, and they do it anyway, they have the intent to commit the crime (they do it intentionally). We usually see this written in statutes as "purposefully," "knowingly," or "recklessly." **Actus reus** is the physical element. **Actus reus** is the act itself. **Actus reus** can also be an omission to act (failure to act). In statutes, the **actus reus** might be "the unlawful killing," "causes great bodily harm," or "the taking of money."

## STATE OF FLORIDA V. STEFAN SCURRY

### Fla. Stat. §782.04 – 1<sup>st</sup> Degree Murder

- (1) The unlawful killing of a human being when perpetrated from a premeditated design to effect the death of the person killed or any human being... constitutes a capital felony...and shall be punishable by life in prison, ineligible for parole, or death.

## STATE OF FLORIDA V. NICHOLAS WURMS

### Fla. Stat. §782.04 – 2<sup>nd</sup> Degree Murder

- (2) The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life...

## STATE OF FLORIDA V. RICARDO ROBERTS

### Fla. Stat. §784.045 – Aggravated Battery

- (1a) A person commits aggravated battery who, in committing battery:
  1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
  2. Uses a deadly weapon.
- (b) A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

## STATE OF FLORIDA V. MITCHELL POLEN

### Fla. Stat. §812.13 - Robbery

- (1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

### Fla. Stat. §782.04 – Felony Murder

- (3) When a human being is killed during the perpetration of, or during the attempt to perpetrate...robbery...by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life.

### Fla. Stat. §777.011 – Principal in First Degree

Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually...present at the commission of such offense.

**Fla. Stat. §810.02 – Burglary**

- (1) Entering a dwelling, [or] a structure...with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter. Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment.

**Fla. Stat. §810.02 – Burglary of an Occupied Dwelling**

- (3) Burglary is a felony of the second degree...if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a...Dwelling, and there is another person in the dwelling at the time the offender enters or remains.

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**FELONY VERSUS MISDEMEANOR**

Misdemeanors are crimes that are less serious than felonies, and thus have less severe penalties. A misdemeanor conviction generally carries a maximum jail sentence of up to one year, whereas a felony conviction has a minimum conviction of at least one year or more. Misdemeanors carry no life-long restrictions, while felony convictions may prevent one from ever buying a gun or voting in elections.

**MISDEMEANORS**

Misdemeanors are classified into First and Second-Degree crimes. First Degree Misdemeanors are punishable by up to one year in jail and/or 12 months of probation and a \$1,000 fine. Some First-Degree Misdemeanors are: battery; cruelty to animals; and possession of drug paraphernalia. Second Degree Misdemeanors are punishable by up to 60 days in jail and/or six months' probation and a \$500 fine. Some Second-Degree Misdemeanors are: driving with a suspended license; disorderly intoxication; and some trespassing charges.

**FELONIES**

Some common felonies in Florida include: assault, battery, carjacking, homicide, incest, kidnapping, robbery, sexual battery, stalking and grand theft. Punishment for a felony can range between one year and death, depending on the felony and degree of the felony.

**Felony of the Third Degree:** Punishable by a term of imprisonment in a state prison, not exceeding five years and a fine of up to \$5,000. Some Third-Degree Felonies are: cocaine possession; burglary; resisting arrest with violence; and a third or subsequent DUI.

**Felony of the Second Degree:** Punishable by a term of imprisonment in a state prison, not exceeding 15 years and a fine of up to \$10,000. Some Second-Degree Felonies are: aggravated battery; serious child abuse; possession of drugs with intent to sell; receiving stolen property; and sexual battery.

**Felony of the First Degree:** Punishable by no more than thirty years imprisonment in a state prison and a fine of up to \$10,000. Some First-Degree Felonies are: robbery with a weapon; human trafficking; and carjacking.

**Life Felony:** Punishable by 40 years to life imprisonment in prison and a fine of up to \$15,000. Usually for violent crimes like kidnapping; accomplice to murder; and molesting a victim less than 12.

**Capital Felony:** Punishable by death or life imprisonment without the possibility of parole in prison. Capital felonies include: murder; capital drug trafficking; armed kidnapping; and some felony crimes when there are death or sexual components to the felony charge.

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**NUMBER OF JURORS**

There are 12 people on a jury in all capital cases and six people on a jury in all other criminal cases.