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Who Makes Criminal Laws?

State legislatures and the U.S. Congress enact criminal laws. State courts have traditionally made criminal laws based on the common law (judge-made law) inherited from England.

The modern trend is for the legislature, rather than the courts, to make criminal law.

Most ordinary crimes are covered by state criminal laws. For example, a burglary that took place within a state, committed by local residents, is covered by state criminal laws and ordinarily will be prosecuted by local prosecutors.

Federal criminal laws deal with:

- Federal property
- Federal employees
- Federal taxes
- Receipt of federal benefits
- Federally guaranteed civil rights
- Crimes involving interstate commerce (transporting goods or individuals across state lines)

For example, it's a federal crime to rob a U.S. Post Office or to assault a federal employee.

What are the Kinds of Crimes?

Crimes are divided into two main categories - felonies and misdemeanors - depending on the crime's seriousness and the length of punishment.

Felonies are crimes generally punishable by more than one year's imprisonment. You have the right to a jury trial when charged with a felony crime. The common law felonies include:

- Murder

- Rape
- Robbery
- Burglary
- Kidnapping
- Treason

Misdemeanors are crimes generally punishable by less than one year's imprisonment.

You have the right to a jury trial when charged with a misdemeanor if the crime is considered serious enough.

The common law system of dividing crimes into felonies and misdemeanors is gradually being replaced with newer systems based on statutes enacted by legislatures.

Many of these newer systems are based on a model law called the "**Model Penal Code**," which classifies crimes by "**degree**."

First-degree crimes include the most serious crimes like:

- Murder
- Sexual assault
- Kidnapping

Fourth degree crimes include the least serious crimes like mischief.

The Model Penal Code also recognizes criminal conduct less serious than crimes, such as **offenses** and **violations**.

Approximately 22 states have adopted some variation of the Model Penal Code.

What are the Elements of Crimes?

Basic Elements

Crimes (except for strict liability crimes) have two basic "**elements**" (things the prosecutor has to prove to convict the defendant) - a **guilty mind** and a **guilty act**.

A crime is committed when a person commits a guilty act accompanied by a guilty mind.

The Model Penal Code uses the following terms to describe the actor's state of mind:

- Purpose
- Knowledge

- Recklessness
- Negligence

Specific Elements

Crimes also have specific elements that are contained in the definition of a crime. For example, a murder is an intentional killing of a human being. The elements are that the accused must have (1) purposely or knowingly (2) caused a death (3) of a human being. To obtain a conviction, the State must prove all of the elements of a crime "**beyond a reasonable doubt**".

Questions for Your Attorney

- Do criminal laws differ much from state to state?
- Could a person be prosecuted under both state and federal laws for the same crime?
- What is criminal negligence?

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