



## Crimes

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### Background

Criminal offenses are classified according to their seriousness. For crimes against property, the gravity of a crime is generally commensurate with the value of the property taken or damaged: the greater the property value, the more serious the crime. For crimes against persons, the same proportionality principle applies to bodily injury inflicted upon individuals: the greater the injury, the more serious the crime. However, a host of other factors can influence the seriousness of a criminal offense. These factors include whether the [DEFENDANT](#) had a prior criminal record; whether the defendant committed the crime with cruelty, [MALICE](#), intent, or in reckless disregard of another person's safety; and whether the victim was a member of a protected class (i.e., minors, minorities, senior citizens, the handicapped, etc.). Thus, a less serious crime can be made more serious by the presence of these additional factors, and a more serious crime can be made less serious by their absence.

Three categories of criminal offenses were known at [COMMON LAW](#), [TREASON](#), [FELONY](#), and [MISDEMEANOR](#), with treason being the most serious type of crime and misdemeanor being the least serious. The common law distinction between treason and felony was particularly important in England because a traitor's lands were forfeited to the Crown. Under a doctrine known as "corruption of the blood," the traitor also lost the right to [INHERIT](#) property from relatives, while the relatives lost the right to inherit from the traitor. U. S. law has never endorsed corruption of the blood as a criminal [PENALTY](#), and so treason was dropped as a separate classification of crime in the colonies.

Today every U. S. [JURISDICTION](#) retains the distinction between felony level criminal offenses and misdemeanor level offenses. However, most jurisdictions have added a third-tier of criminal offense, typically called an [INFRACTION](#) or a petty offense. Although the definitions of all three classes differ from one jurisdiction to the next, they do share some common characteristics.

### Felonies, Misdemeanors, and Infractions

The power to define a crime and classify it as a felony, misdemeanor, or infraction rests solely with the legislature at the federal level (see *U. S. v. Hudson*, 7 Cranch 32, 11 U.S. 32, 3 L.Ed. 259 [U. S. 1812]). Federal courts do not have the power to punish any act that is not forbidden by federal [STATUTE](#). Most crimes made punishable by federal law are set forth in Title 18 U.S.C. sections 1 et seq.

In the eighteenth century U. S. courts possessed the power to define crimes and establish classifications for criminal offenses. These judicially-created offenses were known as common law crimes. By the early

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nineteenth century, federal common law crimes were under increasing attack as violating the mandate of the separation of powers established by the U. S. Constitution. Article I of the Constitution gives Congress the power to make law, while Article III gives the judiciary the power to interpret and apply it. Thus, the constitutionally limited role of federal courts precludes them from defining crimes or creating classifications for criminal offenses.

Most states have also abolished common law crimes. In these states the legislature is given the primary and often sole responsibility for defining illegal behavior (the [EXECUTIVE BRANCH](#) in a few states plays a limited lawmaking function via EXECUTIVE ORDERS and administrative agency rules and regulations). In the minority of states that still recognize common law crimes, judges generally are not permitted to create new common law crimes from the bench. Instead, all 50 states and the District of Columbia rely on their penal code to shape the nature and scope of their jurisdiction's criminal laws, and when a penal code designates an offense as a felony, misdemeanor, or infraction, that designation is normally deemed conclusive by the courts.

### ***Felonies***

Felonies are deemed the most serious class of offense throughout the United States. Many jurisdictions separate felonies into their own distinct classes so that a repeat offender convicted of committing a felony in a heinous fashion receives a more severe punishment than a first-time offender convicted of committing a felony in a comparatively less hateful, cruel, or injurious fashion. Depending on the circumstances surrounding the crime, felonies are generally punishable by a fine, [IMPRISONMENT](#) for more than a year, or both. At common law felonies were crimes that typically involved moral turpitude, or offenses that violated the moral standards of the community. Today many crimes classified as felonies are still considered offensive to the moral standards in most American communities. They include [TERRORISM](#), treason, [ARSON](#), murder, rape, robbery, [BURGLARY](#), and [KIDNAPPING](#), among others.

In many state penal codes a felony is defined not only by the length of [INCARCERATION](#) but also by the place of incarceration. For example, crimes that are punishable by incarceration in a state prison are deemed felonies in a number of states, while crimes that are punishable only by incarceration in a local jail are deemed misdemeanors. For crimes that may be punishable by incarceration in either a local jail or a state prison, the crime will normally be classified according to where the defendant actually serves the sentence.

### ***Misdemeanors***

A misdemeanor, a criminal offense that is less serious than a felony and more serious than an infraction, is generally punishable by a fine or incarceration in a local jail, or both. Many jurisdictions separate misdemeanors into three classes, high or gross misdemeanors, ordinary misdemeanors, and petty misdemeanors. Petty misdemeanors usually contemplate a jail sentence of less than six months and a fine of \$500 or less. The punishment prescribed for gross misdemeanors is greater than that prescribed for ordinary misdemeanors and less than that prescribed for felonies, and some states even define a gross misdemeanor as "any crime that is not a felony or a misdemeanor" (see MN ST § 609.02). Legislatures sometimes use such broad definitions to provide prosecutors and judges with flexibility in charging and sentencing for criminal conduct that calls for a punishment combining a fine normally assessed for a misdemeanor and an incarceration period normally given for a felony.

### ***Infractions***

An infraction, sometimes called a petty offense, is the violation of an administrative regulation, an [ORDINANCE](#), a municipal code, and, in some jurisdictions, a state or local traffic rule. In many states an infraction is not considered a criminal offense and thus not punishable by incarceration. Instead, such jurisdictions treat infractions as civil offenses. Even in jurisdictions that treat infractions as criminal offenses,

incarceration is not usually contemplated as punishment, and when it is, confinement is limited to serving time in a local jail. Like misdemeanors, infractions are often defined in very broad language. For example, one state provides that any offense that is defined "without either designation as a felony or a misdemeanor or specification of the class or penalty is a petty offense" (see AZ ST § 13-602).

### ***Substantive and Procedural Implications of a Crime's Classification***

The category under which a crime is classified can make a difference in both substantive and procedural criminal law. Substantive criminal law defines the elements of many crimes in reference to whether they were committed in furtherance of a felony. Burglary, for example, requires proof that the defendant broke into another person's dwelling with the intent to commit a felony. If a defendant convinces a jury that he only had the intent to steal a misdemeanor's worth of property after breaking into the victim's home, the jury cannot return a [CONVICTION](#) for burglary.

The substantive consequences for being convicted of a felony are also more far reaching than the consequences for other types of crimes. One convicted of a felony is disqualified from holding public office in many jurisdictions. Felons may also lose their right to vote or serve on a jury. In several states attorneys convicted of a felony lose their right to practice law. Misdemeanants with no felony record rarely face such serious consequences.

CRIMINAL PROCEDURE sets forth different rules that govern courts, defendants, and law enforcement agents depending on the level of offense charged. The Fourth Amendment to the U. S Constitution allows police officers to make warrantless arrests of suspected felons in public areas so long as the arresting officer possesses [PROBABLE CAUSE](#) that the suspect committed the crime. Officers may make warrantless arrests of suspected misdemeanants only if the crime is committed in the officer's presence. Police officers do not have the authority to shoot an alleged misdemeanant while attempting to make an arrest, unless the shots are fired in self-defense. Officers generally have more authority to use deadly force when effectuating the arrest of a [FELON](#).

Most criminal courts have limited jurisdiction over the kinds of cases they can hear. A court with jurisdiction over only misdemeanors has no power to try a defendant charged with a felony. Defendants may be charged by information (i.e., a formal written instrument setting forth the criminal accusations against a defendant) when they are [ACCUSED](#) of a misdemeanor, whereas many jurisdictions require that defendants be charged by a [GRAND JURY](#) when they are accused of a felony.

Defendants charged with capital felony offenses (i.e., offenses for which the death penalty might be imposed as a sentence) are entitled to have their cases heard by a jury of twelve persons who must unanimously agree as to the issue of guilt before returning a conviction. Defendants charged with non-capital felonies and misdemeanors may have their cases heard by as few as six jurors who, depending on the jurisdiction and the size of the jury actually impaneled, may return a conviction on a less than unanimous vote. The right to trial by jury is generally not afforded to defendants charged only with infractions or petty offenses. Defendants charged with felonies or misdemeanors that actually result in confinement to a jail or prison are entitled to the advice and representation of a court appointed [COUNSEL](#)(see USCA.Const.Amend.6). Defendants charged with infractions or misdemeanors that do not result in incarceration are not entitled to court appointed counsel.

Accused felons must generally be present during their trials, while accused misdemeanants may agree to waive their right to be present. The [TESTIMONY](#) of defendants and witnesses may be impeached on the ground of a former felony conviction. But a misdemeanor is not considered sufficiently serious to be grounds for [IMPEACHMENT](#) in most jurisdictions. Because of all the additional procedural safeguards afforded to defendants charged with more serious criminal offenses, defendants must usually consent to any prosecution effort to downgrade a criminal offense to a lower level at which fewer safeguards are offered.

## State Laws Governing the Classification of Crimes

**ALABAMA:** The state criminal code defines the term, crime, as either a felony or a misdemeanor, providing that a misdemeanor is an offense for which the term of imprisonment does not exceed one year, while a felony is an offense for which the term of imprisonment is in excess of one year (see AL ST § 13A-1-2).

**ARKANSAS:** The state criminal procedure code permits police officers to make warrantless arrests for any crime committed in their presence, for situations where the officer possesses probable cause to believe the suspect committed a felony, and for misdemeanors that the officer has probable cause to believe that the suspect committed battery upon another person, so long as there is [EVIDENCE](#) of bodily harm and the officer reasonably believes that there is danger of further violence unless the suspect is arrested without delay (see AR ST § 16-81-106).

**ALASKA:** Any person prosecuted for an infraction of the state's Motor Vehicle Code is not entitled to a court-appointed person or the right to a jury trial (see AK ST § 28.40.050).

**ARIZONA:** State law governing the city of Tucson defines "civil parking infraction" as "any violation of the city code or city ordinances that regulate the time, place, or method of parking." (see AZ ST TUCSON CITY CT Rule 2).

**CALIFORNIA:** State law makes it an infraction punishable by a fine of up to \$200.00 for any person to violate the Election Code provisions governing voter registration cards (see CA ELEC § 18107).

**FLORIDA:** Where a defendant commits only a misdemeanor in the presence of a police officer prior to a collision of the squad car with the defendant's bicycle, the officer has no authority to use deadly force except in [SELF-DEFENSE](#) or if the defendant committed a new felony (see F.S.A. § 776.05[1, 3]).

**GEORGIA:** While the value of stolen property is not an element of the offense of theft by receiving stolen property, it is relevant for the purpose of distinguishing between a misdemeanor and a felony for sentencing (see O.C.G.A. § 16-8-12[a]).

**HAWAII:** A court may sentence a person who has been convicted of certain felonies to life imprisonment without [PAROLE](#) if the court finds that the felony was committed in an especially "heinous," "atrocious," or "cruel" manner that manifests "exceptional depravity" (see HI ST § 706-6570).

**ILLINOIS:** A motorist's minor traffic offenses, including speeding and improper lane usage, are petty offenses, and thus are not subject to the expungement procedures set forth in the state statute allowing expungement of convictions for municipal ordinance violations, misdemeanors, and felonies (see S.H.A. 20 ILCS 2630/5[a]).

**INDIANA:** A sentencing court may enhance a sentence for felony murder by declaring the crime "heinous" and articulating specific facts that suggest heinousness (see A.I.C. 35-42-1-1[2]).

**MASSACHUSETTS:** For crimes against property, the value of the property destroyed is what distinguishes a felony that is punishable by a prison sentence of up to ten years from a misdemeanor that is punishable by a prison sentence of not more than two and one-half months (see MA ST 266 § 127).

**MICHIGAN:** A misdemeanor that results in two years' imprisonment may be deemed a felony for purposes of the [HABITUAL](#) offender provisions in the state Code of Criminal Procedure (see M.C.L.A. §§ 750.7, 750.8, 750.9, 760.1 et seq).

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MINNESOTA: The Rule of Criminal Procedure allowing the state to appeal a felony sentence does not give the state the right to appeal from a trial court's order involving a gross-misdemeanor sentence (see MN ST RCRP Rule 28.04; *State v. Loyd*, 627 N.W.2d 653 [Minn.App. 2001]).

MISSOURI: The state Court of Appeals ruled that private citizens may arrest a suspected felon upon a showing of reasonable grounds to do so or to prevent an affray or breach of the peace, while they may only arrest a suspected misdemeanant if authorized by statute (see *State v. Cross*, 34 S.W.3d 175 [Mo.App. 2000]).

NEW JERSEY: The state insurance statute denies coverage for [PERSONAL INJURY](#) protection (PIP) benefits if the insured suffers personal injuries while committing a high misdemeanor or felony (see NJ ST 39:6A-7).

NEW YORK: Any violation of the Vehicle and Traffic Code must be charged by way of a formal information, unlike mere traffic infractions that may be charged via a simplified traffic information (see *People v. Smith*, 163 Misc.2d 353, 621 N.Y.S.2d 449 (N.Y.Just.Ct. 1994); NY CRIM PRO § 100.10).

NORTH DAKOTA: Because punishment is irrelevant to a jury's consideration of guilt or innocence, a jury instruction should not inform the jurors about the penalty to be imposed, and thus jury instructions should not disclose whether the defendant stands to be convicted of a felony or misdemeanor (see *State v. Mounts*, 484 N.W.2d 843 [N.D. 1992]).

TEXAS: The state Court of Criminal Appeals ruled that an act authorizing a jury of 6 in a trial for misdemeanors is contrary to the constitutional requirement that the jury in a district court shall be composed of 12 men. *Rochelle v. State*, 89 Tex.Crim. 592, 232 S.W. 838 (Tex.Crim.App. 1921); TX CONST Art. 5, § 13.

UTAH: The state supreme court held that law enforcement officers may not use lethal force to stop one who has committed a misdemeanor. *Day v. State ex rel. Utah Dept. of Public Safety*, 980 P.2d 1171 (Utah 1999).

VIRGINIA: The State Court of Appeals ruled that defendants have a duty as well as the right to be present at their trials. Even when there is a statute authorizing trial of misdemeanor cases in the absence of the accused, the defendant has no right to be absent at trial and to appear only by counsel (see *Durant v. Commissioner*, 35 Va.App. 459, 546 S.E.2d 216 [Va.App. 2001]).

## Additional Resources

*American Jurisprudence*. Lawyers Co-operative Publishing Company, 2001.

*Black's Law Dictionary* 6th ed. West Group, 2000.

*Criminal Procedure*. Wayne R. LaFave, Jerold H. Israel, and Nancy J.King, West Group, 2001.

*Oxford Companion to the Supreme Court*. Kermit Hall, ed., Oxford University Press, 1992.

*West's Encyclopedia of American Law*. West Group, 1998.

## Organizations

### *American Civil Liberties Union (ACLU)*

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### *Center for Human Rights and Constitutional Law*

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### *National District Attorneys Association (NDAA)*

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