

**9 GCA CRIMES AND CORRECTIONS
CH. 16 CRIMINAL HOMICIDE**

**CHAPTER 16
CRIMINAL HOMICIDE**

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NOTE: References to "Director of Public Safety" changed to "*Chief of Police*", and references to "Department of Public Safety" changed to *Guam Police Department* pursuant to P.L. 17-78:1, which repealed § 5102 GC providing for the Department of Public Safety and reenacted § 5102 establishing the Guam Police Department.

§ 16.10. Definitions Applicable to Chapter.

As used in this Chapter:

- (a) *Human Being* means a person who has been born and is alive;
- (b) *Bodily Injury* means physical pain, illness, unconsciousness or any impairment of physical condition;
- (c) *Serious Bodily Injury* means bodily injury which creates: serious permanent disfigurement; a substantial risk or death or serious, permanent disfigurement, severe or intense physical pain or protracted loss or impairment of consciousness or of the function of any bodily member or organ;
- (d) *Deadly Weapon* means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to the defendant to be capable of producing death or serious bodily injury.

SOURCE: M.P.C. § 210.0; *Cal. § 1400 (T.D.2 1968); Mass. ch. 265, § 1; N.J. § 2C:11-1.

CROSS-REFERENCES: § 19.20; § 31.20 of this Title.

COMMENT: Unconsciousness has been expressly set forth in Subsections (b) and (c) as a form of bodily injury and the scope of serious bodily injury has been expanded to include bodily injury which creates a substantial risk of serious, permanent disfigurement or severe, or intense physical pain. Subsection (a) excludes the killing of a fetus from homicide. But see § 19.20 (aggravated assault; Section would be applicable to viable fetus); § 31.20 (abortion).

§ 16.20. Criminal Homicide Defined.

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(a) A person is guilty of criminal homicide if he causes the death of another human being:

- (1) intentionally and with premeditation; or
- (2) intentionally; or
- (3) knowingly; or
- (4) recklessly; or
- (5) by criminal negligence.

(b) *Criminal homicide* is aggravated murder, murder, manslaughter or negligent homicide.

SOURCE: *M.P.C. § 210.1; Cal. § 1410 (T.D.2 1968); N.J. § 2C:11-2; R/R by P.L. 16-126.

COURT DECISIONS: C.A.9 1981 Where officers' testimony show that the testimony of a witness was secured by a promise that the witness would not be charged in exchanged for his cooperation, the trial court erred when it failed to give an instruction on immunity warning the jury of the witnesses' motivation. And instruction on accomplice testimony was unnecessary when the witness was an accessory after the fact, but did not participate in the actual murder. *People v. Dela Rosa*, 644 F.2d 1257.

§ 16.30. Aggravated Murder Defined.

(a) Criminal homicide constitutes aggravated murder when:

- (1) it is committed intentionally with premeditation; or
- (2) it is committed during the commission or attempt to commit any felony defined in Chapters 22, 25, 31, 34, 37, 40 or 58 of this Title; or
- (3) death is directly caused by the illegal use of a Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old (Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a minor child under the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substances directly causes the death of such minor child, is guilty of aggravated murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.); or
- (4) it is committed upon the orders of another person. Such person giving the order is also guilty of aggravated murder.

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(b) Aggravated murder is a felony of the first degree, but a person convicted of aggravated murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, further, that any person convicted of aggravated murder shall *not* be eligible for parole, work release, educational programs outside the confines of prison nor shall his sentence be suspended.

SOURCE: Amended by P.L. 14-125; R/R by P.L. 16-120; amended by P.L. 16-126; R/R by P.L. 19-6:4. Amended by P.L. 24-282:2.

COURT DECISIONS: SUPER.CT. 1983 There is no inherent defect in the "Miranda rights waiver" read to defendant McGravey by officers of the Guam Police Department. The court finds that the language is sufficiently clear so as to advise McGravey of his rights as required by the U.S. Constitution. *People v. McGravey*, Cr. #100F-82.

C.A.9 1982 In the prosecution for murder under the law of Guam, evidence, including that police officer whom defendant was accused of shooting had fired first at defendant, was sufficient to entitle defendant to instruction on manslaughter. *People v. Fejeran*, 687 F.2d 302 (1982); reversing Appellate Division.

§ 16.40. Murder Defined.

(a) Criminal homicide constitutes murder when:

(1) it is committed intentionally or knowingly; or

(2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or

(3) death is directly caused by the illegal use of a Schedule I Controlled Substance, defined by Chapter 67 of this Title, to any person. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance directly causes the death of such person, is guilty of murder. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.

(b) Murder is a felony of the first degree, but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder shall be eligible for parole after serving fifteen (15) years as provided in § 80.72 of this Title and no part of said sentence shall be suspended; provided, further, that any person convicted of murder shall also *not* be eligible for work release or educational programs outside the confines of prison.

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SOURCE: Enacted 1977 as 16.30; amended by P.L. 14-125; R/R by P.L. 16-120; amended by P.L. 16-126; R/R by P.L. 19-6:5. Amended by P.L. 24-282:3.

COURT DECISIONS: C.A.9 1982 Guam statute requiring defendant to carry burden of proving extreme mental or emotional disturbance by preponderance of the evidence in order to mitigate murder to manslaughter did not unconstitutionally shift the burden of proof to the defendant. *People v. Fejeran*, 687 F.2d 302.

§ 16.50. Manslaughter Defined and Classified.

(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse (The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.); or

(3) death is indirectly or proximately caused, such as an accident, by the illegal use of a Schedule I Controlled Substance, as defined by Chapter 67 of this Title, to a person under the influence of such controlled substance. Any person who knowingly or willingly transfers or sells any Schedule I Controlled Substance to a person over the age of eighteen (18) years old in violation of the provisions of Chapter 67 of this Title, and such controlled substance indirectly or proximately causes the death of such person, is guilty of manslaughter. This Section shall *not* apply to health care professionals and pharmacists in the legitimate practice of the healing arts.

(b) Manslaughter is a felony of the first degree.

SOURCE: G.P.C. §§ 192(1), 193(1), see also §§ 368, 380; *M.P.C. § 210.3; Cal. § 1420 (T.D.2 1968); Cal. § 804 (1971); Mass. ch. 265, § 3; N.J. § 2C:11-3; R/R by P.L. 16-126. Amended by P.L. 24-282:4.

§ 16.60. Negligent Homicide Defined and Classified.

(a) Criminal homicide constitutes negligent homicide when it is committed by criminal negligence.

(b) Negligent homicide is a felony of the third degree.

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SOURCE: Guam § 192(2), (3); §§ 368, 380, 399; *M.P.C. § 210.4; Cal. § 1425 (T.D.2 1968); Cal. §§ 806, 808 (1971); Mass. ch. § 265, § 5; N.J. § 2C:11-5; added by P.L. 16-126.
