



**Law  
Commission**  
Reforming the law

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# **Report on Murder, Manslaughter and Infanticide (Law Com No 304)**

## **Press Briefing Paper**

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29 November 2006

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## **Murder, Manslaughter and Infanticide: Main Points**

The publication of this report is the first stage in a review process that will now be taken forward by the Home Office. The Home Office will be consulting on, amongst other things, broad questions of public policy including sentencing.

### **1. Three-Tier Law of Homicide.**

The division between murder and manslaughter to be replaced by a three-tier division:

FIRST DEGREE MURDER (mandatory sentence of life imprisonment).

SECOND DEGREE MURDER (discretionary life sentence, with guidelines).

MANSLAUGHTER (discretionary life sentence).

### **2. Some Kinds of Manslaughter to Become Second Degree Murder**

THE WORST KINDS OF KILLING BY RECKLESSNESS TO BECOME SECOND DEGREE MURDER, NOT MANSLAUGHTER.

KILLING UNDER PROVOCATION OR DIMINISHED RESPONSIBILITY TO BECOME SECOND DEGREE MURDER, NOT MANSLAUGHTER.

### **3. Provocation Defence to be Made Fairer**

DEFENCE TO BE EXTENDED TO THOSE WHO HAVE OVERREACTED BUT ONLY – AS WITH MANY WOMEN DEFENDANTS - IN RESPONSE TO A FEAR OF SERIOUS VIOLENCE.

JUDGES TO BE GIVEN POWER TO WITHDRAW THE DEFENCE FROM THE JURY WHERE THE PROVOCATION WAS TRIVIAL, SUCH AS ADMITTING ADULTERY.

### **4. Tackling Gang Violence**

THOSE WHO HELP OR ENCOURAGE IN ATTACKS IN WHICH THE VICTIM IS MURDERED TO BE MADE GUILTY OF MANSLAUGHTER, IF IT WAS OBVIOUS THAT MURDER MIGHT BE COMMITTED BY THE PERPETRATOR.

THOSE WHO HELP OR ENCOURAGE IN ATTACKS IN WHICH THE VICTIM IS MURDERED TO BE GUILTY OF MURDER IF THEY ACTUALLY REALISED MURDER MIGHT BE COMMITTED BY THE PERPETRATOR.

### **5. Overall: More Options for the Jury**

JURY TO BE GIVEN GREATER SAY IN WHETHER THE KILLING WARRANTS CONVICTION FOR FIRST DEGREE, SECOND DEGREE MURDER, MANSLAUGHTER OR COMPLETE ACQUITTAL.

*"LETTING THE JURY DECIDE"*: HOMICIDE LAW FOR THE 21<sup>ST</sup> CENTURY

THE LAW COMMISSION'S MAIN RECOMMENDATIONS.

Nowhere can jury trial be more important than in homicide cases. *The Commission's proposals will give the jury in homicide trials greater power to reflect in their verdict the extent to which the offender was at fault in killing.* The main means by which the jury will be given this power is through the division of general offences of homicide into three tiers (at present there are only two general offences, murder and manslaughter). Under our recommendations, there will be:

**First Degree Murder** (mandatory life sentence)

**Second Degree Murder** (discretionary life sentence; guidelines on minimum terms)

**Manslaughter** (discretionary life sentence)

At present, the jury can decide only between murder, manslaughter, and complete acquittal. Under our recommendations, if the jury did not wish to convict of the highest category offence (first degree murder), they could convict of second degree murder, instead of manslaughter. *This would entitle the judge to give a more substantial sentence than might be given for manslaughter under the current law.*

First degree murder will encompass:

**(a) intentional killing; or**

**(b) killing with an intention to cause serious injury, in the awareness that there is a serious risk of causing death.**

Second degree murder will encompass:

**(a) killing with intent to do serious injury; or**

**(b) killing with intent to cause some injury or fear or risk of injury, in the awareness that there is a serious risk of causing death; and**

**(c) killing with the intent for first degree murder, but where a defence of provocation, diminished responsibility, or suicide pact succeeds.**

Manslaughter will encompass:

**(a) killing through a criminal act intended to cause some injury, or in the awareness that the act posed a serious risk of causing some injury; or**

**(b) killing through gross negligence as to causing death; and**

**(c) participating in a criminal joint venture in which there was an obvious risk that someone might be killed (see (vii) on page 4 below).**

**A NEW DEFENCE:** We also recommend that it should be possible for the jury to acquit of homicide if the defendant proves that he took part in a killing only in response to an imminent threat of death or life-threatening injury ('duress').

**INFANTICIDE:** a new procedure will improve the operation of this offence.

## HOW DIFFERENT ARE THESE RECOMMENDATIONS FROM CURRENT LAW?

**(i)** The element of fault or culpability in *first degree murder* is not very different from the current definition of murder. It reflects the intentions of Parliament in reforming the law in 1957.

**(ii)** The element of fault or culpability in *second degree murder* is meant to ensure that the worst cases of reckless killing are treated as second degree murder, rather than as manslaughter (as at present).

**(iii)** The partial defences of provocation, diminished responsibility, and failed suicide pact will only reduce *first degree murder* to *second degree murder*. They will not reduce second degree murder to manslaughter. The 'murder' label is appropriate because in such cases the killer acted with the fault element for first degree murder.

**(iv)** Provocation will, however, be extended to those who overreacted by killing, when confronted by a *threat of serious violence*. By way of contrast, the judge's power to withdraw cases of trivial provocation from the jury will be restored.

**(v)** The definition of diminished responsibility will be clarified, and linked only to '*medically recognised conditions*'. However, it will be extended to cover children whose responsibility was seriously impaired by developmental immaturity.

**(vi)** The element of fault or culpability of *manslaughter* are very similar to the current law (but see (vii) below).

**(vii)** There is a new application of manslaughter to those who participate in *joint criminal ventures where someone is killed* by one of those participating.

Everyone participating should be guilty of at least manslaughter, if it should have been obvious to them that murder might be committed in the course of the joint venture. At present they are not guilty of any homicide offence at all in such instances. Further, if those participating did realise that one of their number might commit murder, then they should be guilty of murder, not just manslaughter.

**(viii)** Duress (threats of death or of life-threatening injury to oneself or others) should be an available *defence to murder (first and second degree) and attempted murder*. The present law denies the defence in murder or attempted murder cases whatever the circumstances. It will be for the defendant to prove that the threat was made, and it will then be a matter for the jury whether the defence should succeed.

**(ix)** A *new procedure* is to be made available in infanticide cases. Mothers who kill infant children due to very severe post-natal depression may deny the offence took place at all. They may consequently refuse to undergo a medical examination even though they were mentally ill. A murder conviction is the wrong result in such cases.

We will make it possible for the Court of Appeal to reconsider their case, and substitute a verdict of infanticide, if a medical examination conducted post-trial shows that the mother was suffering from severe post-natal depression. Infanticide will retain a discretionary life sentence maximum penalty.

## EXAMPLES: HOW PARTICULAR CASES MAY BE AFFECTED BY THE CHANGES

1. **First Degree Murder:** we do not anticipate that our recommendations will have a significant impact on the scope of what is currently regarded as murder.

### 2. **Second Degree Murder. Fault Elements:**

Smith has a grudge against Jones. In the middle of the night, Smith stuffs petrol and lighted newspaper through Jones' front door when Jones is asleep upstairs. Jones is killed in the fire. Smith says he only intended to frighten Jones, although he realised Jones' life was in danger.

*Current law says: manslaughter*

*We recommend: second degree murder.*

Smith decides to rob Jones, an elderly and frail-looking man. Smith punches Jones in the face as he is going down some stairs, and steals his wallet. Jones dies of head injuries sustained in the fall down the stairs. Smith says he did not intend to do serious injury to Jones, although he was aware of the possible dangers if Jones were to fall and hit his head.

*Current law says: manslaughter*

*We recommend: second degree murder.*

### 3. **Second Degree Murder. Provocation:**

Smith lives with Jones. Jones is a violent man who frequently beats Smith when he comes home from the pub, threatening Smith with death if she reports this to anyone. One night, having come home from the pub, Jones says he will beat Smith 'to within an inch of her life', when he has had a rest to recover his strength. Smith fetches a knife from the kitchen and stabs Jones through the heart while he is asleep.

*Current law says: murder*

*We recommend: second degree murder.*

Smith lives with Jones. Jones is an extremely jealous man who has threatened Smith that he will become violent if she shows interest in another man. Jones sees Smith in a restaurant with a male work colleague, sharing a joke. Losing his temper, he rushes into the restaurant, and stabs both Smith and the work colleague to death.

*Current law: defence of provocation must be put to the jury.*

*We recommend: defence should not be put to the jury. Jones is guilty of first degree murder.*

### 4. **Manslaughter. Criminal Gangs:**

Jones, Smith and Brown decide to rob someone. They kick a passer-by to the ground, and start punching him until he agrees to reveal the pin number for his credit card. Suddenly, Brown produces a knife and stabs the passer-by to death. Jones and Smith say that, although they knew Brown sometimes carried a knife, they did not at any point consider whether he would use it in the robbery. Brown is obviously guilty of murder. What about Jones and Smith?

*Current law: Jones/Smith guilty only of robbery*

*We recommend: also guilty of manslaughter.*

### 5. **Duress as a Defence in Homicide Cases.**

(a) Smith is the 10-year-old son of Jones. Jones is a psychopath who frequently beats Smith. Jones tells Smith he must help Jones to kill someone. He says that if Smith does not comply, he will cut Smith up into 100 pieces. Terrified, Smith joins in a fatal attack on someone with Jones.

(b) Brown is a bank manager. He opens his door at home to find himself confronted by a gunman. The gunman forces Brown inside and says he will kill all Brown's children unless Brown reveals bank access codes. Brown gives the gunman the codes even though he realises that the gunman's accomplices may kill during the robbery, which they do.

*Current law says: Smith (a) and Brown (b) are guilty of murder*

*We recommend: Jury to consider if Smith or Brown should be acquitted.*

1. DO THESE PROPOSALS SIGNAL THE BEGINNING OF THE END FOR THE LIFE SENTENCE?

**Far from it.** The mandatory nature of the life sentence for murder was not within the Commission's terms of reference. If our recommendations are accepted, it will apply to first degree murder. As we have said, there is little difference between the current scope of murder and the proposed scope of first degree murder.

2. IF THESE RECOMMENDATIONS ARE ENACTED, WILL THERE BE A REDUCTION IN THE NUMBER OF MANDATORY LIFE SENTENCES?

**Not necessarily; their number could even increase.** We were not asked to do work on the sentencing implications of adopting our recommendations. Prediction is difficult, in part because we cannot know what charging patterns will emerge following a change in the law. However, the restrictions we propose on the scope of the provocation defence, a popular defence, could mean proportionately more defendants charged with first degree murder are convicted of that crime.

3. WHAT ABOUT SENTENCING IN SECOND DEGREE MURDER CASES?

**This will probably mirror existing sentencing principles for murder.** We say 'probably' because we were not asked to devise sentencing guidelines for second degree murder. That task is a matter for the Home Secretary and the Sentencing Advisory Panel. However, we believe that the guidance that Parliament set down in 2003 for sentencing in murder cases is likely to be applied to second degree as well as to first degree murder.

If that is right, then the minimum terms in custody for committing certain types of murder (for example a sexually motivated murder of a child) will apply to first *and* to second degree murder. Further, in practice, many of those convicted of second degree murder would automatically receive a life sentence. This will happen in any case where the offender represents a danger to the public of further serious offending.

4. DO THESE RECOMMENDATIONS 'TOUGHEN UP' ON HOMICIDE?

We do not favour the use of such crude judgements about a wide-ranging set of recommendations. Our recommendations are meant to make the law clearer, and fairer, and to make it possible to introduce a rational structure for punishing offenders.

We *have* identified a number of areas where the law is, in a broad sense, too generous to those who have committed homicide: reckless killings, killings under trivial provocation, killings in the course of gang attacks. However, we also, for example, believe that the jury should be able to find duress to be a defence to murder.

5. ARE YOU MAKING ANY RECOMMENDATIONS ABOUT MERCY KILLING?

**We are recommending that a specific review of 'mercy' killing should be undertaken.** The review would be focused on discovering how much support there is for making the fact that a killing was meant to be an act of mercy a basis for reducing first degree to second degree murder. In the time available to us for consultation, it was not possible to investigate this very difficult and emotive question with the necessary thoroughness.