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DEGREES OF MURDER AND MANSLAUGHTER

In order to define the degrees of murder under the West Virginia statute, it is necessary that the common law definition of murder be kept in mind. Murder at common law consists of two essential elements: First, the killing of a human being by another, without legal justification or excuse, or provocation reducing it to manslaughter; second, with malice aforethought.¹ The West Virginia Code provides:

“Murder by poison, lying in wait, imprisonment, starving, or any wilful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, rape, robbery or burglary, is murder of the first degree. All other murder is murder of the second degree.”²

¹ State v. Gravely, 66 W. Va. 375, 66 S. E. 502 (1909), dissenting opinion of Judge Poffenbarger; State v. Abbott, 64 W. Va. 411, 62 S. E. 693 (1908); State v. Abbott, 8 W. Va. 741 (1875). Some authorities add another element, *i. e.*, that the offender must be sane, but it is arguable that the element of malice presupposes sanity by implication. “Malice implies a mind under the sway of reason”, State v. Galford, 87 W. Va. 358, 105 S. E. 237 (1920).

² W. VA. REV. CODE (Michie, 1937) c. 61, art. 2, § 1.