

The Legal Definition of a Crime

犯罪的法律概念

There is no single universally accepted legal definition of a crime.人们对于犯罪尚没有一个统一的定义。 Because the determination of what constitutes a crime rests with the individual jurisdiction, the federal government and each of the states have their own body of criminal law.因为是否构成犯罪取决于具体案情、联邦政府以及各州政府均有自己具体的法律规定。 Most general legal definitions of a crime are basically similar in nature, however. A crime can be defined as follows:然而,关于犯罪的定义大部分都比较相似。犯罪可以被定义为如下几种:

A crime is (1) a legal wrong (2) prohibited by the criminal law (3) prosecuted by the state (4) in a formal court proceeding (5) in which a criminal sanction or sentence may be imposed.犯罪是(1)一种违法行为;(2)被刑法所禁止的行为;(3)被国家控诉的行为;(4)需要通过正式审判程序确定的行为;(5)要被处以刑罚的行为。

As determined by most legal systems, crime can result from the commission of an act in violation of the law or from the omission of a required legal act. 大部分司法体系都规定,犯罪源于一些违反法律的行为,或者是不履行一些法律要求的行为。 For example, a crime can be an intentional act of striking another person or of stealing someone else's property. A crime can also involve the failure to care for a child, the failure to report a crime, or the failure to report an automobile accident. 例如,蓄意殴打伤害他人或盗窃他人财产可视为犯罪;同样,不抚养子女、隐瞒犯罪、不报告交通事故亦可视为犯罪。

The legal definition of a crime involves the elements of the criminal acts that must be proven in a court of law if the defendant is to be found guilty. 法律定义的犯罪必须包含犯罪行为的几个因素,即使被告人认罪,这些因素也必须经过法庭证实。 For the most part, common criminal acts have both mental and physical elements, both of which must be present if the act is to be considered a legal crime. 在很大程度上,通常意义的刑事犯罪行为必须具备主客观两方面要素。如果要判定是否构成犯罪,这两个要素缺一不可。

The following definition of the crime of burglary in the nighttime, as stated in the Massachusetts General Laws, is an example of the mental and physical elements of the substantive criminal law: 正如《马萨诸塞州通法》一样，以下对夜间盗窃这一犯罪行为的定义正是体现了实体刑法中的主客观要素：

Whoever breaks and enters a dwelling house in the nighttime, with intent to commit a felony, or whoever, after having entered with such intent, breaks such dwelling house in the nighttime, any person being lawfully therein, and the offender being armed with a dangerous weapon at the time of such break or entry, or so arming himself in such house or making an actual assault on a person lawfully therein, (commits the crime of burglary). 夜晚闯入一户住宅行窃，意图犯罪，或者有人带着这样的意图在夜晚进入到一户住宅内，室内还有人在，这个入侵者在侵入的时候手持危险武器，或者在房间里找到了武器，或者使用武器袭击屋内的人，这就构成了盗窃罪。

The elements of the crime are:

这个犯罪的因素有：

1. Nighttime 夜间
2. Breaking and entering, or breaking or entering 破门/窗而入
3. A dwelling house 一个住宅
4. Being armed, or arming the self after entering, or committing an actual assault on a person lawfully therein 携带武器，或者入室后携带武器，或者袭击屋内的人
5. Intent to commit a felony 意图犯罪

Notice how certain basic elements are required in order for an act to be considered a crime. 请注意，要认定一个行为构成犯罪必须满足几个基本要素。For the crime of burglary, the state must prove that the defendant actually entered a home by force and was not invited in, that the defendant carried an identified weapon, that the crime occurred after sundown, and that the act was intentional. 就盗窃罪而言，国家必须证明被告在没有受到邀请的情况下，靠武力进入一户住宅，还要证明被告携带了易识别的武器，还要证明犯罪发生在日落后，并且被告的行为属于故意。These elements form what is known as the *corpus delicti*, or “body of the crime.” 这些因素就是所谓的犯罪事实。The term *corpus delicti* is often misunderstood. 犯罪事实这

个术语经常被人误解。Some people, for instance, wrongly believe that it refers to the body of the deceased in a homicide. 比如, 有人错误地认为它是指杀人案件中死者的尸体。 *Corpus delicti* describes all the elements that together constitute a crime; it includes (1) the *actus reus*, (2) the *mens rea*, and (3) the combination of *actus reus* and *mens rea*. 犯罪事实是指所有的因素, 这些因素合起来就构成了犯罪。它包括 (1) 犯罪行为; (2) 犯罪意图; (3) 犯罪行为和犯罪意图的结合。

I. Actus Reus 犯罪行为

The term *actus reus*, which translates as “guilty act,” refers to the forbidden act itself. The criminal law uses it to describe the physical crime and/or the commission of the criminal act (or omission of the lawful act). In *Criminal Law*, Wayne LaFare and Austin Scott state: 术语 **actus reus** 被翻译成犯罪行为, 指被禁止的行为本身。刑法用它来指犯罪的具体行为。在刑法中, Wayne LaFare 和 Austin Scott 指出:

Bad thought alone cannot constitute a crime, there must be an act, or an omission to act where there is a legal duty to act. 单是恶劣的想法不能构成犯罪, 若具备犯罪行为, 或具备对其法定义务忽略之行为方可构成犯罪。Thus the criminal law crimes are defined in terms of act or omission to act and statutory crimes are unconstitutional unless so defined. 因此, 刑法的犯罪被定义为一种做或者不做某种行为, 除非有特别的规定, 否则法定罪行都是违宪的。A bodily movement, to qualify as an act forming the basis of criminal liability, must be voluntary. 要追究

一种行为的刑事责任, 必须确保这个行为是自愿的。

The physical act in violation of the criminal statute is usually clearly defined within each offense. 刑法中规定的每项违反犯罪的行为常常被明确的界定。 For example, in the crime of manslaughter, the unlawful killing of a human being is the physical act prohibited by a statute; in burglary, it is the actual breaking and entering into a dwelling house or other structure for the purpose of committing a felony. 比如, 在杀人案中, 非法剥夺他人生命是一种身被成文法明确禁止的行为。在盗窃罪中, 它实际上是指闯入他人住宅或者为了犯罪而事实的其他行为。

Regarding an omission to act, many jurisdictions hold a person accountable if a legal duty exists and the offender avoids it. 责任人的不作为方面, 多数法域规定, 若存在法律责任, 而责任人却有意回避, 其应承担相关的法律责任。 In most instances, the duty to act is based on a defined relationship such as parent-child or on

a contractual duty such as lifeguard-swimmer. 在大多数案件中，行为人的责任是基于一种特定的人身关系，诸如父母与子女的关系，或者是基于合同的责任，如救生员与游泳者之间的关系。The law, for example, recognizes that a parent has a legal duty to protect a child. When a parent refuses to obtain medical attention for the child and the child dies, the parent's actions constitute an omission to act, and that omission is a crime. 例如，法律认定父母有保护孩子的法律责任。当父母一方拒绝给孩子治病，导致孩子死亡，父母的行为就构成了不作为，而这种不作为就构成了犯罪。

Finally, the *actus reus* must be a measurable act; thought alone is not a crime. 最后，犯罪的想法自身并不能构成犯罪，它必须是可以预测的行为。However, planning, conspiring, and soliciting for criminal purposes are considered an *actus reus*, even if the actual crime is never carried out or completed. 但是，带有犯罪性质的策划、共谋、教唆等行为则被认为是犯罪行为，即使该行为从未实施或完成。

II. Mens Rea 犯罪意图

The second element basic to the commission of any crime is the establishment of the *mens rea*, translated as "guilty mind." 构成犯罪的第二个最基本的要素就是犯罪意图。Mens rea is the element of the crime that deals with the defendant's intent to commit a criminal act and also includes such states of mind as concealing criminal knowledge (scienter), recklessness, negligence, and criminal purpose. 犯罪意图是构成犯罪的要件，是指被告想要实施犯罪行为的企图。它还包括隐藏犯罪意识、疏忽、过失和犯罪目的等心理状态。A person ordinarily cannot be convicted of a crime unless it is proven that he or she intentionally, knowingly, or willingly committed the criminal act. 通常若能证明某人蓄意、明知、主动实施犯罪行为方可判定此人犯罪。

The following case illustrates the absence of *mens rea*. 下面的案例就缺乏犯罪意图。A student at a university took home some books, believing them to be her own, and subsequently found that the books belonged to her classmate. 一个大学生往家里拿了几本书，她以为这些书是属于她的，但是后来发现这些书是她舍友的。When she realized that the books did not belong to her, she returned them to their proper owner. 当她发现这些书不属于她的时候，她将这些书还给了书的所有者。The student could not be prosecuted for theft because she did not intend to steal the

books in the first place; she did not knowingly take the books and therefore lacked sufficient and knowledge that her act was unlawful.我们不能指控这个学生偷东西，因为一开始没有偷的意识，她不知道拿了别人的书，因为缺乏足够的证据证明她的行为违法。

Another case that illustrates a lack of criminal intent, though harm occurs, is that in which a pedestrian is accidentally killed in an automobile accident. 还有一个案例，尽管损害已经发生了，但是缺乏犯罪意识，即一个行人在一场交通事故中意外致死。At the time of the accident, the driver is operating the motor vehicle legally and with appropriate care, but the victim steps out in front of the car and is struck and killed. 在事故发生时，司机正在合法的驾驶一辆摩托车，并且尽到了应尽的注意义务，但是被害人突然从前面的车上下来，被撞倒在地，然后死亡。The driver cannot be convicted of manslaughter unless evidence can be found that some intent or gross criminal negligence existed at the time of the accident. 若无证据证明，司机在发生交通事故之时有蓄意制造事故或严重过失犯罪之倾向，否则不得将其定罪为故意杀人。This situation would be considered in a completely different legal light if it could be proved that the driver actually intended to hit the pedestrian or had been driving the car in a willful and reckless manner, indicating criminal negligence. 如果能证明这个司机蓄意撞伤该行人，或者他故意危险驾驶，隐藏着刑事过失行为，则他的行为就会被认定为不一样的法律结果。

Ordinary negligence is any conduct that falls below the normal standard established by law for the protection of others against unreasonable risk. 普通的过失犯罪是指任何不能达到法律规定的正常标准，不能保护他人并使他人避免不合理的危险的行为。 **Criminal negligence**, on the other hand, exists where actions show a significant degree of carelessness that results in a culpable disregard for the safety of others. 另一方面，过失犯罪行为存在于一定程度的不顾他们安危的过失的基础上。 Thus, in order for an individual to be found guilty of committing most crimes, it must be proved that he or she committed the physical act itself and that he or she intended to do so with full awareness of the consequences of the act. 因此，在大多数犯罪行为的认定中，首要判定的是疑犯存在客观行为并且能够充分意识到该行为所造成的后果。

Other variations on the concept of criminal intent exist. 犯罪意图的概念也存在

一些变数。 Different degrees of intent are used to determine the mental state necessary for an individual to commit a particular crime. 一个人是否构成某一特定的犯罪，最终还要取决于不同程度的意图。 Where a criminal homicide occurs, it may be necessary to prove that a mental state of premeditation and malice existed in the accused before a judgment of first-degree murder can be reached; for a judgment of second-degree murder, it may be necessary to prove malice; and for a judgment of third-degree murder, it may be necessary to prove guilty knowledge or criminal negligence. 一起杀人案发生时，在被告被确定为一级谋杀罪之前，证明他事先有预谋且存在恶意是很有必要的。

Mens rea conditions also differ among the types of crime when considering whether a **general or specific intent** to commit the crime exists. 当认定一个犯罪中是否存在一般故意还是特定故意时，犯罪意图在不同的犯罪汇总也是不一样的。 For most crimes, a general intent on the part of the accused to act purposefully or to accomplish a criminal result must be proved. 在大多数犯罪中，一般故意要求我们证明被告故意实施某项行为或者完成某件犯罪。 A specific intent requires that the actor intended to accomplish a specific purpose as an element of the crime. 特定故意要求行为者故意完成的这个特定目的是犯罪的一个必要条件。 Burglary, for example, involves more than the general intent of breaking and entering into a dwelling house; it usually also involves the specific intent of committing a felony, such as stealing money or jewels. 比如，盗窃罪不仅仅包含闯入住宅的一般故意，它还包括实施如偷钱或者偷珠宝这样行为的特定故意。 Many other crimes such as robbery, larceny, assault with intent to kill, false pretense, and even kidnapping may require a specific intent. 许多其他的犯罪，如抢劫，盗窃，故意谋杀，诈骗，甚至是拐卖都需要一个特定故意。

III. Relationship of *Mens Rea* and *Actus Reus*

3、犯罪行为与犯罪意图的关系

The third element needed to prove the *corpus delicti* of a crime is the relationship of the act to the criminal intent or result. 证明一个犯罪事实需要考虑的第三个因素是行为与犯罪意图或犯罪结果的关系。 The law requires that the offender's conduct must be the approximate cause of any injury resulting from the criminal act.

法律要求罪犯的行为必须与其犯罪行为所导致的伤害有“邻近原因”。If, for example, a man chases a victim into the street intending to assault him and the victim is struck and killed by a car, the accused could be convicted of murder if the court felt that his actions made him responsible for the victim's death. 例如，一个人将受害者骗入街道内，对其实施殴打，然后这个受害者被一辆车撞了，死了，如果法庭认为那个人的行为导致他要对被受害者的死承担责任，那么那个人可能被控谋杀。If, however, a victim dies from a completely unrelated illness after being assaulted, the court must determine whether the death was a probable consequence of the defendant's illegal conduct or whether it would have resulted even if the assault had not occurred. 然而，如果被害者在被殴打之后，死于与殴打毫无关系的疾病。那么法庭必须认定这个死亡到底是被告非法行为的结果，还是即使没有发生殴打行为，也会发生（死亡）。

In addition, to prove a crime, the state must show that the external physical act and the internal mental state were in some way connected to one another. 另外，要证明构成犯罪，国家必须表明外在的行为与内在的精神意图之间再某些方面存在一定得联系。For example, if a man breaks into another person's house to escape a violent storm and while in the home notices some jewels and steals them, he cannot be found guilty of the crime of burglary since he did not intend to commit a crime at the time he broke into the house. 比如，如果一个人为了躲避暴风雨而闯入另一个人的房屋内，在房间里看到了一些珠宝而偷了他们，他没有入室盗窃的故意，因为在他闯入房屋的时候并没有实施犯罪的意图。Nevertheless, he could be convicted of larceny and criminal trespass, since he had the necessary intent at the time he committed these crimes. 然而，他可能会被控告一般的盗窃罪和非法侵入他人房屋罪，因为他在实施犯罪的时候有这些意图。However, evil intent and the act it produces do not necessarily have to take place at the same time. If a terrorist plans a bomb in an airport, but it does not go off until three weeks later, that would still be considered murder – assuming people are killed. 但是，恶意和其行为并不一定总是同时发生。例如，一个恐怖份子计划在机场安放炸弹，但炸弹三周后才爆炸。如果有人爆炸中罹难，恐怖份子的行为仍被视为谋杀。

Criminal liability, as previously explained, cannot be imposed for simply having had bad thoughts about the victim at a previous time. 作为特别要解释的，仅仅只有

实施犯罪的意图是不承担刑事责任的。 Thus, a concurrence of act and intent - *mens rea and actus reus* - must be present if a crime is to occur. 因此，如果一个行为发生，它的行为和意图应该是一致的。 However, cases do exist where one person intends criminal action against another but harms a third party instead; for example, the accused intends to shoot one person but misses and shoots another. 然而，一个人意图对另一个人实施犯罪，但是却损害了第三方，这也构成犯罪。 比如，被告打算射杀一个人，却误杀了另一个人。 In this instance, the law transfers the original criminal intent to the innocent bystander. 在这种情况下，法律判定“初始犯罪意图”转移到了无辜的旁观者身上，即所谓的“转移犯意”。 Under the legal doctrine of transferred intent, the accused would be considered criminally responsible for transferring wrongful intent to the other person. 在转移犯意的法律原则下，我们认为被告的犯罪意图错误的转移给了其他人。