

# Criminal Charges in Virginia

## Homicide

In Virginia whenever a person is criminally charged with killing another person the courts in Virginia will presume it is second degree murder.

Why?

Second degree murder is punishable by 5-20 years in prison and a \$100,000.00 fine.

This means that state must only prove you committed the homicide to make the case for second degree murder. To increase the charge the prosecutor must prove: 'BEYOND A REASONABLE DOUBT' that the special conditions (willful, deliberate, premeditated or other actions) of first degree murder were committed. It is up to the defendant (Person who pulled the trigger) to prove that the lesser homicide was committed. The lesser charges are manslaughter which is still a crime, punishable by 1-10 years in prison and a \$2,500 dollar fine, or justifiable or excusable homicide, which are not crimes. This may seem like "guilty until proven innocent" but is a long established standard in Virginia.

Examples:

1. When the commonwealth has provided the commissions of a homicide and has pointed out the accused as the criminal agent, then it may rest its case, and unless the accused shows circumstances of justification, alleviation or excuse a verdict of murder in the Second Degree will be warranted.

(Bonne V. Commonwealth, 1954)

2. ....the burden is upon the accused, if he/she would reduce the offense below murder in the second degree, to show the absence of malice and the other mitigating circumstances necessary for the purpose.

(McDaniel's V. Commonwealth, 1883)

Just remember that in claiming "self defense" you are admitting that you committed the homicide. Your claim that your actions were necessary in protecting yourself include that admission that you committed what the courts will view as second degree murder charge until shown otherwise. "I shot in self defense" begins with "I shot".....

Example

Self defense is an affirmative defense...and In making such a plea a defendant implicitly admits that the killing was intentional and assumes the burden of introducing evidence of justification or excuse that raises a reasonable doubt in the minds of the jurors.

(Johnson V. Commonwealth, 1949)