

# **Maternal Mental Health and the Law - What can happen when women kill their children?**

May 2013

A short legal primer prepared by Lisa B. Strongin, Deputy Public Defender, Tulare County

**Homicide** is the unlawful killing of a human being, or a fetus. The specific intent (mental state) of the perpetrator determines whether or not it is a crime of murder or manslaughter, which, in turn, determines the sentencing options.

**Murder** is the unlawful killing of a human being, or a fetus, with malice aforethought. Malice may be express or implied.

Express malice = an unlawful deliberate intention to take away the life of a fellow creature.

Implied malice = no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

- Willful, deliberate, and premeditated killing = first degree (LWOP)
- Murder by torture = death penalty

**Manslaughter** is the unlawful killing of a human being without malice.

(a) Voluntary--upon a sudden quarrel or heat of passion = 3, 6, or 11 years in prison

(b) Involuntary--in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection = 2, 3, or 4 years in prison

**Penal Code Section 273AB** - effective November 1994, no specific intent is required, if the jury finds as follows:

- ✓ **Defendant = parent or caretaker**
- ✓ **Victim = child under 8**
- ✓ **assault by means of force likely to produce great bodily injury**
- ✓ **results in the child's death**

= 25 years to life in prison.

- Nothing in this section shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 189.

**Not Guilty By Reason of Insanity** - When the defendant committed the crime, she had a mental disease or defect AND because of that disease or defect, the defendant was incapable of knowing or understanding the nature and quality of her act or that her act was morally or legally wrong.

- Defendant must personally enter ngi plea
- Court must appoint experts to examine defendant and render opinion on issue of sanity
- Sanity trial follows guilty verdict
- Defendant has burden of proof