

**Depraved Indifference Murder and  
Reckless Manslaughter Explained <sup>1</sup>**  
**(Revised December 12, 2006)**

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*The trial court may be well advised to give the following instruction immediately after defining the crimes of depraved indifference murder and reckless manslaughter.*

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Now, I will explain the difference between Murder in the Second Degree and Manslaughter in the Second Degree.

Both crimes require that the defendant cause the death of another.

Both crimes require that the defendant do so recklessly.

Murder, however, requires a greater degree of recklessness than Manslaughter, and Murder has an additional element of “depraved indifference to human life,” not required for manslaughter.

I will briefly explain the different levels of recklessness:

Manslaughter requires that the defendant engage in conduct which creates or contributes to a *substantial* and unjustifiable risk that another person's death will occur.

Murder in the second degree requires that the defendant engage in conduct which creates a *grave* and unjustifiable risk that another person's death will occur.

Thus, Manslaughter speaks of a *substantial* risk of death, and Murder speaks of a *grave* risk of death. Murder, therefore, requires a heightened degree of recklessness.

Both definitions of "reckless" go on to require that the defendant be aware of and consciously disregard the risk, and that the risk be of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

Finally, Murder, but not Manslaughter, requires that, in addition to acting recklessly, the defendant act with a depraved indifference to human life, as I have explained that concept to you.

1. This charge has been twice revised to reflect Court of Appeals determinations on the meaning depraved indifference murder. The first revision on April 5, 2006 accounted for the Court's decision in *People v. Suarez*, 6 NY3d 202 (2006). The current revision accounts for the Court's decision in *People v Feingold*, 7 NY3d 288 (2006).