

Homicide and manslaughter: what do they have in common?

[Sociology](#), [Violence](#)



Homicide v. Manslaughter

The interesting thing when debating these two crimes are the minute differences between them. These differences are what are used to break down the unlawful killings into four categories, 1st and 2nd degree murder, and voluntary and involuntary manslaughter. Even with differences that are seemingly so small, it can make the difference between a 2 ½ year sentence in prison to life in prison and even the death penalty.

The first example of homicide that we are going to explore is 1st degree murder. The following elements must all be present in order for a murder to be ranked in the 1st degree; The suspect committed an unlawful killing, with malice aforethought, and with the aggravating factor of either deliberate premeditation, extreme atrocity/cruelty, or in the commission of a crime punishable by life imprisonment. Just in the elements of first degree murder we have quite a bit of important terminology.

An unlawful killing is one that wasn't committed in the line of duty of a soldier or police officer. Justifiable self defense also does not constitute as an unlawful killing. The standard of what an unlawful killing is can be seen and utilized throughout both 1st and 2nd degree murder. It is also seen in manslaughter, but in those instances it is broken down into intentional and unintentional, which we will discuss later.

Malice is broken down into three "prongs", and is used to evaluate the mental state of the suspect. Malice is required to be established in both 1st and 2nd degree murders. The 1st prong usually involves the intentional use

of a deadly weapon, which is typically a handgun, but can be almost any item used in a manner to cause harm. The 2nd prong requires an intent to do grievous bodily injury, not just an intent to inflict injury. This was shown in the case of *Comm. v. Nadworny* where the suspect intentionally swerved his vehicle into the victim, then backed up over the victim, and drove away. The 3rd prong requires a plain and strong likelihood of death. This is described in the text in the case of *Comm. v. Horne*. In this case the suspect, Horne, fired eight bullets into a darkened home because he believed someone inside had stolen his TV. In his actions, he hit a girl who was standing in the window and killed her. Even though he did not intentionally kill her because he did not know she was there, his actions presented a “ plain and strong likelihood of death”.

The last aspect of murder is the aggravating factor, and this is what decides if a murder will be ruled in the 1st or 2nd degree. Deliberate premeditation is the first of the aggravating factors, and basically means that the suspect thought before he acted. What I found most interesting when it came to deliberate premeditation is that there is no time limit for it, the text stated that “ there is no mandated time span between the first thought of murder and the act of killing.”

An example of deliberate premeditation would be the case of *Comm. v. Jackson* where the suspect strangled the victim with his hands, the act of strangling an individual takes both a large amount of effort as well as quite a bit of time. The second aggravating factor is extreme atrocity or cruelty, and this generally means how twisted the murder was as far as instruments

used, the suspects pleasure in the victims suffering, and the number and force of blows. A good example of atrocity would be the case of *Comm v. Clifford* where the suspect doused the victim with gasoline and lit him on fire, causing the victim to leap to his death from a 5th floor window.

The last aggravating factor in 1st degree murder is what is known as Felony Murder. This is an umbrella factor that encompasses all unlawful killings that occur during the course of an inherently dangerous felony. These include: armed robbery, home invasions, aggravated rape, arson, armed AND unarmed burglary (since it takes place in the home, victims are more likely to resist or have less of an opportunity to escape, it is also more likely that family or friends will try to aid the victim and may be killed, thus making burglary inherently dangerous.) An example of this which shows very clearly how the felony murder rule works is that of *Comm. v. Scott*, in which the suspect gagged his victim during an aggravated rape, the victim died of suffocation, and although the suspect did not intend to kill her, the inherently dangerous act of aggravated rape caused him to be convicted of 1st degree murder.

While 1st and 2nd degree murders share the same elements, with the exception of the aggravating factors that constitute first degree murder, it is important to discuss what sets 2nd degree murders apart. The big factor of 2nd degree murder is “ a conscious disregard for human life”. The word conscious here is the key difference between 2nd degree murder and involuntary manslaughter, which can be tricky to differentiate. In the case of *Comm. v. Wojcik*, the suspect and his nephew attempted to defraud their

insurance company. They rented a truck and intentionally drove it into another driver, killing them. What we have here is a thought out decision to commit the act of insurance fraud at the risk of blatant disregard for human life. If they had simply been speeding, swerving, or “goofing off” in some other manner while driving and encountered the same outcome, it is more likely that the case would have been tried as a manslaughter charge. Which brings us to the final comparison of this essay, that of Manslaughter.

Involuntary and voluntary are the the two types of Manslaughter that are covered in the text. Manslaughter generally carries a lesser sentence than murder and is often sought in a plea bargain in such cases. The main distinction that differentiates manslaughter from murder is the fact that manslaughter is carried out without malice.

Voluntary Manslaughter is defined in the text as an unlawful, intentional killing resulting from reasonable provocation. The elements present in voluntary manslaughter are; the suspect unlawfully and intentionally, used force in circumstances where the suspect experienced adequate and reasonable provocation, which caused the death of another person. The text lists examples of things that are NOT sufficient provocation, these are; insults, threats of retaliation, homosexual advances, crying baby, child's misbehavior, and minor force. There are only two examples that are adequate, they are; a sudden revelation of infidelity and excessive self defense.

In order for a revelation of infidelity to count as sudden there has to be no prior knowledge. This basically equates to catching your partner in the act, or your partner revealing the information to you out of the blue, perhaps in the heat of an argument for example. In the case of *Comm. v. Leclair* the suspect strangled his girlfriend because of her infidelity, however the suspect revealed on his own accord that he had prior knowledge and was aware that she had been “ seeing someone else” for several weeks, thus the charge would be murder instead of manslaughter.

The other instance of voluntary manslaughter is excessive self defense. What this boils down to in its’ basic form is that the suspect was faced with reasonable provocation, but went overboard in their defense, as in the case of *Comm. v. Walden*. Basically, in an act of self defense an individual is required to resist only to the point of stopping the assault and is also required to withdraw when/if possible (with the exception of certain “ castle laws” in some states).

The last aspect covered by the text was that of Involuntary Manslaughter. The two elements that define a charge of Involuntary Manslaughter are that the suspect unlawfully and unintentionally; caused the death of another person. This occurs by committing an A&B that the suspect knew, or reasonably should have known endangered human life; or by recklessly engaging in an act, or failing to act, in a manner that disregarded the clear risk of substantial harm.

While the technical wording of what Involuntary Manslaughter is can be difficult to follow or understand, it becomes clear when cases are broken down and analyzed. For example; in the case of *Comm. v. Sheppard*, the defendant was much larger than the person he engaged in a fist fight with. While the assault and battery was certainly intentional, during the course of the fight the victim fell backwards after being struck and fell to the ground, his head hitting the curb on the way down. Several days later the victim had died from the blow. In this instance the elements are all there; the suspect unlawfully and unintentionally caused the death of the victim by committing an assault and battery that the suspect should have known endangered human life.

Recklessly engaging in an act, or failing to act, is explained very well in the text through case examples. In one instance *Comm. v. Power* the defendant was charged with providing an overcrowded and unlicensed day care in their home. The fact that the daycare was overcrowded made it reckless, and as a result of being too busy, a 3 month old died. Another example that is given in the text is that of *Comm. v. Welansky*, the defendant failed to install sufficient fire exits in his night-club, as a result, numerous people were killed when they could not exit the building during a fire.