

**Depraved Indifference Murder (PL § 125.25[4])and
Reckless Manslaughter (PL § 125.20[4]) Explained ¹
(Death of Child)**

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

Now, I will explain the difference between Murder (of a child) in the Second Degree and Manslaughter (of a child) in the First Degree.

Both crimes require that the defendant, being 18 years old or more, recklessly engaged in conduct which created a grave risk of serious physical injury to a person less than eleven years old and thereby caused the death of such person.

Murder (of a child) in the Second Degree, however, also requires that the defendant acted under circumstances evincing a depraved indifference to human life.²

Manslaughter (of a child) in the First Degree, on the other hand, does not require that the defendant also acted under circumstances evincing a depraved indifference to human life, but instead, requires that the defendant also acted with an intent to cause physical injury.

1. This charge applies to cases in which the court's charge to the jury includes the offenses involving the death of a child , Penal Law § 125.25(4) and Penal Law § 125.20(4). A separate charge for cases involving depraved indifference murder in the second degree under Penal Law § 125.25(2) and reckless manslaughter in the second degree under Penal Law § 125.15(1) is located in the Additional Charges section.

2. *People v. Feingold*, 7 N.Y.3d 288 (2006); *People v. Suarez*, 6 N.Y.3d 202 (2006).