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Statutory Voluntary Manslaughter

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STATUTORY VOLUNTARY MANSLAUGHTER*

The purpose of this note is to examine the existing statutory law on the subject of voluntary manslaughter and to submit a model statute. An examination of the statutes of voluntary manslaughter at common law will provide a helpful background.

Manslaughter is that group of homicides which lies between murder, on the one hand, and excusable or justifiable homicide, on the other. The absence of malice is the chief difference between murder and voluntary manslaughter. Voluntary manslaughter, at common law, was said to be the unlawful, intentional killing of a human being without malice aforethought.¹

In describing voluntary manslaughter, the courts have developed the idea that intentional murder is "reduced" to manslaughter. This is not exactly accurate for there is only one crime involved *i.e.*, manslaughter. It seems that this idea is used to rationalize and distinguish this crime from the more serious one of murder. This so-called "reduction" is accomplished by what is denoted as a provocation or a heat of passion.

The common law recognized four legal provocations: (1) seeing one's spouse in the act of adultery, (2) an illegal arrest, (3) assault and battery, and (4) a sudden, mutual affray.² In each of these provocations, the law recognized that this was an occasion where a person might be extremely provoked; that he would be in such "hot blood" that he might possibly kill. Although the law feels that a reasonable man should not kill in such circumstances, it compromises with this idea by establishing these legal provocations. It will be noted that in each of the four situations, a heat of passion may be aroused in the person perpetrating the homicide. If the person kills while under the influence of this heat of passion, he is thus guilty of voluntary manslaughter because he is temporarily deprived of his rationality and cool reflection.

The homicide must have been committed while under the influence of this provocation causing heat of passion. The defendant must have *actually* been provoked to the point of heat of passion by one of the legal provocations, or the crime will be murder.⁴ However great the provocation may have been, if sufficient time has elapsed whereby the defendant could reasonably have cooled off, and the homicide is then committed, it will also be murder. It is usually a question of fact whether the person has cooled off or not.

Although the law recognizes only four legal provocations giving rise to a heat of passion, it is reasonable to assume that a person could, in fact, be provoked into hot blood by other situations. For example, words alone, *might* cause a defendant to act irrationally and kill, although the law has not taken this step. However, it seems as though it is not logical to categorically limit a heat of passion to the four legal passions.

Heat of passion and provocation are not the only situations where the law has found a person guilty of voluntary manslaughter. Some cases of imperfect self-defense and partial insanity have been used to reduce the crime to voluntary manslaughter. Such situations might well be thought to be a type of extenuating

* This is a companion note to the one by Mr. Gromley on p. 113.

¹ State v. Trusty, 1 Penn. (Del.) 319, 40 Atl. 766 (1898).

Allison v. State, 74 Ark. 444, 86 S.W. 409 (1904); Chambers v. Conn. 6 Ky. L. Rep. 448 (1884); Com. v. Webster, 5 Cush. (Mass.) 295, 304, 307 (1850).

² 4 BL. COM. 191.

⁴ State v. McCan, 1 Spears (S. C.) 384 (1842).

circumstances which the law considers sufficient to mitigate the seriousness of the crime.⁵

In considering the various statutory provisions in the United States concerning voluntary manslaughter, the writer has noted five main classes, each of which will be considered separately and then summarized.

I. Those which divide manslaughter into two kinds, voluntary and involuntary, but which do not attempt any definition.

In this category there are six states; Kentucky, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia. Typical of these statutes is that of Kentucky:

"Any person who commits voluntary manslaughter shall be confined"⁶

The others are worded along similar lines.

Statutes in this category provide absolutely no guide as to what constitutes the crime of voluntary manslaughter. Except for the punishment they provide, such statutes are practically worthless. The result of such a statute is that the common law definition is followed.

II. Those which divide manslaughter into two types and give a short definition of each.

An examination reveals that there are eleven statutes of this type. California is a good example:

"Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

- (1) Voluntary—upon a sudden quarrel or a heat of passion,
- (2) Involuntary—"⁸

The other states having similar statutes are Alabama, Arkansas, Arizona, Idaho, Indiana, Montana, New Mexico, Tennessee, Utah, and Wyoming.⁹

Most of these statutes use the phrase "upon a sudden quarrel or a heat of passion." It should be noted that this is somewhat inconsistent with the idea of the common law. At common law a sudden quarrel is just one of the four legal provocations.¹⁰ Heat of passion is a general term describing that state of mind resulting from each of these four provocations. It is confusing to attempt to distinguish them, without providing at the same time, for the other provocations.

⁵ Note, 36 Ky. L. J. 443 (1948).

⁶ Ky. R. S. 435.020 (1948).

⁷ 1 N. C. GEN. STAT. ANN. sec. 18 (1943); 10 OHIO GEN. CODE ANN. sec. 12404 (Page, 1939); PA. STAT. tit. 18, sec. 2225 (Purdon, 1936); VA. CODE ANN. sec. 4396 (1943).

⁸ CAL. PENAL CODE sec. 192 (Deering, 1941).

⁹ ALA. CODE ANN. tit. 14, sec. 320 (1940); 3 ARIZ. CODE ANN. sec. 43-2904 (1943); 4 ARK. STAT. ANN. sec. 41-2207 (1947); 1 IDAHO CODE ANN. sec. 17-1106 (1932); 4 IND. STAT. ANN. sec. 10-3405 (Burns, 1942); 4 MONT. REV. CODES sec. 10959 (1935); 3 N. M. STAT. ANN. sec. 41-2407 (1941); 7 TENN. CODE ANN. sec. 10774 (Williams, 1934); 5 UTAH CODE ANN. sec. 28-5 (1943); 1 WYO. COMP. STAT. ANN. c. 9, sec. 205 (1945).

¹⁰ CLARK AND MARSHALL, CRIMES sec. 256 (1940).

The statute provides for only one of the provocations by classing it with heat of passion.

It is felt that heat of passion is the basic element which "reduces" murder to manslaughter. Thus, this type of statute at least goes a long way toward continuing the common law concept. However, the statute is much too indefinite to set up any standard by which the courts can act. Here, also, the result has been that the cases have been decided largely on the basis of the common law.

III. *Those statutes which go into greater detail in attempting to codify the common law.*

There is so much diversity in the statutes in this group that it is questionable whether all the states included are properly in this category. However, it is felt that the ultimate purpose of the legislature was the same in each statute.

The typical statute is similar to that of Georgia:

"Sec. 64. Manslaughter is the unlawful killing of a human creature, without malice, either express or implied, and without any mixture of deliberation whatever, which may be voluntary, upon a sudden heat of passion, or involuntary

"Sec. 65. In all cases of voluntary manslaughter, there must be some actual assault upon the person killing, or an attempt by the person killed to commit a serious personal injury on the person killing, or other equivalent circumstances to justify the excitement of passion, and to exclude all idea of deliberation or malice, either express or implied. Provocation by words, threats, menaces, or contemptuous gestures shall in no case be sufficient to free the person killing from the guilt and crime of murder. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for if there should have been an interval between the assault or provocation given and the homicide sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and be punished as murder."¹¹

The twelve other states included in this category are Colorado, Illinois, Louisiana, Minnesota, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon; South Dakota, and Wisconsin.¹²

These statutes are a step in the right direction. The common law should be codified, however, in a concise, but complete manner. Generally, the statutes in this group are too long and unwieldy. In the Georgia statute quoted above, there is a great amount of detail as to the "cooling off" period. The writer feels that this is the type of thing that should be left up to the courts. Furthermore, although the statute recognizes one of the four provocations, specifically, assault and battery, it neglects to list the others. Thus, the result of this type of statute is essentially the same as that of the others discussed, *i.e.*, most of the law in such jurisdictions is determined by common law principles.

¹¹ 6 GA. CODE ANN. SECS. 64, 65 (Park, 1914).

¹² COLO. STAT. ANN. c. 48, SECS. 34, 35 (1935); ILL. REV. STAT. c. 38, SECS. 361, 362 (1947); LA. CODE CRIM. LAW & PRO. sec. 740-31 (Dart, 1943); 2 MINN. STAT. sec. 619.15 (1945); 5 NEV. COMP. LAWS SECS. 10069-10071 (Hillier, 1929); II N. H. REV. LAWS c. 455, sec. 8 (1942); N. Y. CRIM. CODE sec. 1050 (Thompson, 1939); N. D. REV. CODE SECS. 12-2715, 12-2717 (1943); OKLA. STAT. tit. 21, sec. 711 (1941); 3 ORE. COMP. LAWS ANN. sec. 23-406 (1940); S. D. CODE sec. 2013 (1939); WIS. STAT. sec. 340.10 (1947).

IV *Those which give no definition or division of manslaughter, but merely provide for a punishment.*

Connecticut offers a good example of this type of statute:

"Any person who shall commit manslaughter shall be fined not more than one thousand dollars or imprisoned not more than fifteen years or both."¹³

In this group, very similar to the first category, there are nine other states: Delaware, Iowa, Maryland, Massachusetts, Michigan, New Jersey, Rhode Island, Vermont, and Washington.¹⁴

This is the poorest type of statute existing today. It provides no definition for the courts to work with and, as opposed to the first category, it does not even make a distinction between voluntary and involuntary manslaughter so as to provide a reason for a difference in the punishment.

V *Those statutes, which in addition to giving a brief definition of manslaughter, list several specific acts which constitute voluntary manslaughter.*

Florida is one of these:

"The killing of a human being by the act, procurement or culpable negligence of another, in cases where such killing shall not be justifiable or excusable homicide or murder shall be deemed manslaughter."¹⁵

In the following sections, the statute provides that the following acts shall be manslaughter: assisting self-murder; willful killing of an unborn child by injury to the mother; abortion; unnecessary killing to prevent an unlawful act; killing by a mischievous animal; drowning in an overloaded vessel; death from an exploding boiler in a racing steamboat; and killing by an intoxicated physician. Other states in this group are Kansas, Maine, Mississippi, and Missouri.¹⁶

It is sufficient to say that this type of statute reflects the peculiar attitude of these states toward certain types of homicides.

Texas abolished its manslaughter statute in 1927 and has not re-enacted another.¹⁷ The statutes in Nebraska¹⁸ and South Carolina¹⁹ do not fit exactly into any of the above categories, but their general effect is to enact the common law.

Considering the statutes in group I and group IV as being essentially the same, it may be seen that sixteen of the states merely provide for a punishment for the crime of voluntary manslaughter, and offer no guide as to what constitutes the crime. Groups II and III, which differ only in the degree in which they codify

¹³ 2 CONN. GEN. STAT. sec. 6046 (1930).

¹⁴ DEL. REV. CODE c. 149, sec. 5 (1935); II IOWA CODE sec. 690.10 (1946); 1 MD. ANN. CODE GEN. LAWS art. 27, sec. 436 (Flack, 1939); GEN. LAWS MASS. c. 265, sec. 17 (1932); 2 MICH. COMP. LAWS sec. 17115-321 (1940); I N. J. REV. STAT. sec. 138-5 (1937); R. I. GEN. LAWS c. 606, sec. 3 (1938); VT. PUB. LAWS sec. 8377 (1933); 4 WASH. REV. STAT. ANN. sec. 2390 (Remington, 1932).

¹⁵ FLA. STAT. ANN. sec. 782.07 *et seq.* (1941).

¹⁶ KAN. GEN. STAT. ANN. c. 21, secs. 407-413 (1935); ME. REV. STAT. c. 129, sec. 2 (1930); 2 MISS. CODE ANN. secs. 2220-2231 (1942); 1 MO. REV. STAT. ANN. sec. 4382 *et seq.* (1939).

¹⁷ TEX. STAT. PEN. CODE, art. 1244 (1936).

¹⁸ REV. STAT. NEB. c. 28-403 (1943).

¹⁹ 1 S. C. CODE ANN. sec. 1107 (1942).

the common law, include twenty-four states. This is by far the majority view and seems to represent the better statute.

Model Statute:

The purpose of drafting a model statute on voluntary manslaughter is to achieve uniformity and to establish a guide for the court in adjudicating such cases. A desirable statute should take a middle ground between under-codification and over-codification of the common law. It should not contain all the many ramifications of the law of voluntary manslaughter for it would be unwieldy. Latitude must be left for judicial interpretation by the courts in cases of unusual circumstances.

It is submitted that a good statute for voluntary manslaughter should contain the following elements: (1) a definition of the term voluntary manslaughter, (2) some explanation about the relation of the crime to that of murder, (3) a direct codification of the four legal provocations, and, (4) an explanation of the term heat of passion.

The following might be such a statute:

A. Voluntary Manslaughter:

- (1) Voluntary manslaughter is the unlawful, intentional killing of a human being without malice.
- (2) The homicide involved here would be murder were it not for the fact that it was done in a heat of passion:
 - (a) Heat of passion is a state of mind where a reasonable man is temporarily deprived of his powers of reason and cool reflection.
- (3) Four situations where a reasonable man could be provoked into a heat of passion are:
 - (a) Seeing one's spouse in the act of adultery,
 - (b) Assault and battery,
 - (c) A sudden, mutual affray, and
 - (d) An illegal arrest.
- (4) If the jury finds that the defendant, in fact, acted under a heat of passion, but not caused by one of the four situations in (3), they may, in their discretion, hold him guilty of voluntary manslaughter.
- (5) The defendant shall be judged according to standards of a reasonable man under similar circumstances.

It will be noted that the model statute, in its first section, uses the common law definition of voluntary manslaughter and then in the second section, the crime is distinguished from murder. This, it is hoped, will provide a guide to the courts and juries.

Although the statute specifically codifies the four legal provocations in section three, provision is made in section four for other situations of heat of passion. This is a necessary element following from the writer's firm belief that heat of passion is the basic element of the crime of voluntary manslaughter and that the crime should not be necessarily limited to the four commonly accepted legal provocations.