

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 17-0604.01 Michael Dohr x4347

**SENATE BILL 17-094**

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**SENATE SPONSORSHIP**

**Kagan, Aguilar**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING REMOVING FELONY MURDER FROM THE PROVISIONS OF**  
102      **MURDER IN THE FIRST DEGREE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

Under current law, felony murder, a death resulting during the commission of a specifically listed felony, is a class 1 felony. The bill makes felony murder a class 2 felony subject to crime of violence sentencing and modifies the affirmative defense.

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Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-3-102, **repeal**  
3 (1)(b) and (2) as follows:

4 **18-3-102. Murder in the first degree.** (1) A person commits the  
5 crime of murder in the first degree if:

6 (b) ~~Acting either alone or with one or more persons, he or she~~  
7 ~~commits or attempts to commit arson, robbery, burglary, kidnapping,~~  
8 ~~sexual assault as prohibited by section 18-3-402, sexual assault in the first~~  
9 ~~or second degree as prohibited by section 18-3-402 or 18-3-403 as those~~  
10 ~~sections existed prior to July 1, 2000, or a class 3 felony for sexual assault~~  
11 ~~on a child as provided in section 18-3-405 (2), or the crime of escape as~~  
12 ~~provided in section 18-8-208, and, in the course of or in furtherance of the~~  
13 ~~crime that he or she is committing or attempting to commit, or of~~  
14 ~~immediate flight therefrom, the death of a person, other than one of the~~  
15 ~~participants, is caused by anyone; or~~

16 (2) ~~It is an affirmative defense to a charge of violating subsection~~  
17 ~~(1)(b) of this section that the defendant:~~

18 (a) ~~Was not the only participant in the underlying crime; and~~

19 (b) ~~Did not commit the homicidal act or in any way solicit,~~  
20 ~~request, command, importune, cause, or aid the commission thereof; and~~

21 (c) ~~Was not armed with a deadly weapon; and~~

22 (d) ~~Had no reasonable ground to believe that any other participant~~  
23 ~~was armed with such a weapon, instrument, article, or substance; and~~

24 (e) ~~Did not engage himself in or intend to engage in and had no~~  
25 ~~reasonable ground to believe that any other participant intended to engage~~  
26 ~~in conduct likely to result in death or serious bodily injury; and~~

27 (f) ~~Endeavored to disengage himself from the commission of the~~

1 ~~underlying crime or flight therefrom immediately upon having reasonable~~  
2 ~~grounds to believe that another participant is armed with a deadly~~  
3 ~~weapon, instrument, article, or substance, or intended to engage in~~  
4 ~~conduct likely to result in death or serious bodily injury.~~

5           **SECTION 2.** In Colorado Revised Statutes, **add** 18-3-102.5 as  
6 follows:

7           **18-3-102.5. Felony murder.** (1) A PERSON COMMITS THE CRIME  
8 OF FELONY MURDER, IF ACTING EITHER ALONE OR WITH ONE OR MORE  
9 PERSONS, HE OR SHE COMMITS OR ATTEMPTS TO COMMIT ARSON, ROBBERY,  
10 BURGLARY, KIDNAPPING, SEXUAL ASSAULT AS PROHIBITED BY SECTION  
11 18-3-402, SEXUAL ASSAULT IN THE FIRST OR SECOND DEGREE AS  
12 PROHIBITED BY SECTION 18-3-402 OR 18-3-403 AS THOSE SECTIONS  
13 EXISTED PRIOR TO JULY 1, 2000, OR A CLASS 3 FELONY FOR SEXUAL  
14 ASSAULT ON A CHILD AS PROVIDED IN SECTION 18-3-405 (2), OR THE CRIME  
15 OF ESCAPE AS PROVIDED IN SECTION 18-8-208, AND, IN THE COURSE OF OR  
16 IN FURTHERANCE OF THE CRIME THAT HE OR SHE IS COMMITTING OR  
17 ATTEMPTING TO COMMIT, OR OF IMMEDIATE FLIGHT THEREFROM, THE  
18 DEATH OF A PERSON, OTHER THAN ONE OF THE PARTICIPANTS, IS CAUSED  
19 BY ANYONE.

20           (2) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING  
21 THIS SECTION IF THE DEFENDANT:

22           (a) WAS NOT THE ONLY PARTICIPANT IN THE UNDERLYING CRIME;  
23 AND

24           (b) DID NOT COMMIT THE HOMICIDAL ACT OR IN ANY WAY SOLICIT,  
25 REQUEST, COMMAND, IMPORTUNE, CAUSE, OR AID THE COMMISSION  
26 THEREOF; AND

27           (c) WAS NOT ARMED WITH A DEADLY WEAPON; AND

1 (d) HAD NO REASONABLE GROUND TO BELIEVE THAT ANY OTHER  
2 PARTICIPANT WAS ARMED WITH SUCH A WEAPON, INSTRUMENT, ARTICLE,  
3 OR SUBSTANCE; AND

4 (e) DID NOT ENGAGE HIMSELF OR HERSELF IN OR INTEND TO  
5 ENGAGE IN AND HAD NO REASONABLE GROUND TO BELIEVE THAT ANY  
6 OTHER PARTICIPANT INTENDED TO ENGAGE IN CONDUCT LIKELY TO RESULT  
7 IN DEATH OR SERIOUS BODILY INJURY.

8 (3) FELONY MURDER IS A CLASS 2 FELONY. A DEFENDANT  
9 CONVICTED PURSUANT TO THIS SECTION SHALL BE SENTENCED BY THE  
10 COURT IN ACCORDANCE WITH SECTION 18-1.3-406.

11 **SECTION 3.** In Colorado Revised Statutes, 17-34-101, **amend**  
12 (1)(a) introductory portion, (1)(a)(II), and (1)(a)(III) as follows:

13 **17-34-101. Juveniles who are convicted as adults in district**  
14 **court - eligibility for specialized program placement - petitions.**

15 (1) (a) Notwithstanding any other provision of law, an offender serving  
16 a sentence in the department for a felony offense as a result of the filing  
17 of criminal charges by an information or indictment pursuant to section  
18 19-2-517 ~~C.R.S.~~, or the transfer of proceedings to the district court  
19 pursuant to section 19-2-518, ~~C.R.S.~~, or pursuant to either of these  
20 sections as they existed prior to their repeal and reenactment, with  
21 amendments, by House Bill 96-1005, and who remains in the custody of  
22 the department for that felony offense may petition for placement in the  
23 specialized program described in section 17-34-102, referred to within  
24 this section as the "specialized program", as follows:

25 (II) If the felony of which the person was convicted was murder  
26 in the first degree, as described in section 18-3-102 (1)(b) AS IT EXISTED  
27 PRIOR TO JULY 1, 2017, or SECTION 18-3-102 (1)(d), ~~C.R.S.~~, then the

1 offender may petition for placement in the specialized program after  
2 serving twenty years of his or her sentence if he or she satisfies the  
3 criteria described in ~~sub-subparagraphs (A), (B), (C), (D), (E), (F), and~~  
4 ~~(G) of subparagraph (I) of this paragraph (a)~~ SUBSECTIONS (1)(a)(I)(A),  
5 (1)(a)(I)(B), (1)(a)(I)(C), (1)(a)(I)(D), (1)(a)(I)(E), (1)(a)(I)(F), AND  
6 (1)(a)(I)(G) OF THIS SECTION.

7 (III) If the felony of which the person was convicted was murder  
8 in the first degree, as described in section 18-3-102, ~~C.R.S.~~, but was not  
9 murder in the first degree, as described in section 18-3-102 (1)(b) AS IT  
10 EXISTED PRIOR TO JULY 1, 2017, or SECTION 18-3-102 (1)(d), ~~C.R.S.~~, then  
11 the offender may petition for placement in the specialized program after  
12 serving twenty-five years of his or her sentence if he or she satisfies the  
13 criteria described in ~~sub-subparagraphs (A), (B), (C), (D), (E), (F), and~~  
14 ~~(G) of subparagraph (I) of this paragraph (a)~~ SUBSECTIONS (1)(a)(I)(A),  
15 (1)(a)(I)(B), (1)(a)(I)(C), (1)(a)(I)(D), (1)(a)(I)(E), (1)(a)(I)(F), AND  
16 (1)(a)(I)(G) OF THIS SECTION.

17 **SECTION 4.** In Colorado Revised Statutes, 18-1.3-401, **amend**  
18 (4)(c)(I) as follows:

19 **18-1.3-401. Felonies classified - presumptive penalties.**

20 (4) (c) (I) Notwithstanding the provisions of ~~sub-subparagraph (A) of~~  
21 ~~subparagraph (V) of paragraph (a) of subsection (I)~~ SUBSECTION  
22 (1)(a)(V)(A) of this section and notwithstanding the provisions of  
23 ~~paragraphs (a) and (b) of this subsection (4)~~ SUBSECTIONS (4)(a) AND  
24 (4)(b) OF THIS SECTION, as to a person who is convicted as an adult of a  
25 class 1 felony following a direct filing of an information or indictment in  
26 the district court pursuant to section 19-2-517 ~~C.R.S.~~, or transfer of  
27 proceedings to the district court pursuant to section 19-2-518, ~~C.R.S.~~, or

1 pursuant to either of these sections as they existed prior to their repeal and  
2 reenactment, with amendments, by House Bill 96-1005, which felony was  
3 committed on or after July 1, 1990, and before July 1, 2006, and who  
4 received a sentence to life imprisonment without the possibility of parole:

5 (A) If the felony for which the person was convicted is murder in  
6 the first degree, as described in section 18-3-102 (1)(b) AS IT EXISTED  
7 PRIOR TO JULY 1, 2017, then the district court, after holding a hearing,  
8 may sentence the person to a determinate sentence within the range of  
9 thirty to fifty years in prison, less any earned time granted pursuant to  
10 section 17-22.5-405, ~~C.R.S.~~, if, after considering the factors described in  
11 ~~subparagraph (H) of this paragraph (c)~~ SUBSECTION (4)(c)(II) OF THIS  
12 SECTION, the district court finds extraordinary mitigating circumstances.  
13 Alternatively, the court may sentence the person to a term of life  
14 imprisonment with the possibility of parole after serving forty years, less  
15 any earned time granted pursuant to section 17-22.5-405. ~~C.R.S.~~

16 (B) If the felony for which the person was convicted is not murder  
17 in the first degree, as described in section 18-3-102 (1)(b) AS IT EXISTED  
18 PRIOR TO JULY 1, 2017, then the district court shall sentence the person to  
19 a term of life imprisonment with the possibility of parole after serving  
20 forty years, less any earned time granted pursuant to section 17-22.5-405.  
21 ~~C.R.S.~~

22 **SECTION 5.** In Colorado Revised Statutes, 18-1.3-407.5, **amend**  
23 (2)(b) as follows:

24 **18-1.3-407.5. Sentences - young adult offenders - youthful**  
25 **offender system - definitions.** (2) (b) Notwithstanding the provisions of  
26 ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION,  
27 a young adult offender who is charged with first degree murder as

1 described in section 18-3-102 (1)(b) AS IT EXISTED PRIOR TO JULY 1, 2017,  
2 OR SECTION 18-3-102.5, and pleads guilty to a class 2 felony as a result of  
3 a plea agreement is eligible for sentencing to the youthful offender system  
4 if the young adult offender would be eligible for sentencing to the  
5 youthful offender system for a conviction of the felony underlying the  
6 charge of first degree murder as described in section 18-3-102 (1)(b) AS  
7 IT EXISTED PRIOR TO JULY 1, 2017, OR SECTION 18-3-102.5.

8 **SECTION 6. Effective date - applicability.** This act takes effect  
9 July 1, 2017, and applies to offenses committed on or after said date.

10 **SECTION 7. Safety clause.** The general assembly hereby finds,  
11 determines, and declares that this act is necessary for the immediate  
12 preservation of the public peace, health, and safety.