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SENATE BILL 21-124

BY SENATOR(S) Lee, Gonzales, Hansen, Jaquez Lewis, Moreno, Rodriguez, Story;
also REPRESENTATIVE(S) Weissman, Amabile, Bacon, Benavidez, Bennett, Gonzales-Gutierrez, Herod, Hooton, Jodeh, Kennedy, Kipp, Ricks, Sirota, Snyder, Tipper.

CONCERNING THE CREATION OF A CLASS 2 FELONY OFFENSE WHEN THE DEATH OF A PERSON IS CAUSED BY A PARTICIPANT WITHOUT DELIBERATION IN THE COURSE OF THE COMMISSION OF SPECIFIED FELONY OFFENSES.

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

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

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

(b) ~~Acting either alone or with one or more persons, he or she commits or attempts to commit arson, robbery, burglary, kidnapping, sexual assault as prohibited by section 18-3-402, sexual assault in the first or~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~second degree as prohibited by section 18-3-402 or 18-3-403 as those sections existed prior to July 1, 2000, or a class 3 felony for sexual assault on a child as provided in section 18-3-405 (2), or the crime of escape as provided in section 18-8-208, and, in the course of or in furtherance of the crime that he or she is committing or attempting to commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused by anyone; or~~

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

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

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

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

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

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

~~(f) Endeavored to disengage himself from the commission of the underlying crime or flight therefrom immediately upon having reasonable grounds to believe that another participant is armed with a deadly weapon, instrument, article, or substance, or intended to engage in conduct likely to result in death or serious bodily injury.~~

SECTION 2. In Colorado Revised Statutes, 18-3-103, **amend** (1); and **add** (1.5) as follows:

18-3-103. Murder in the second degree - definitions. (1) A person commits the crime of murder in the second degree if:

(a) The person knowingly causes the death of a person; OR

(b) ACTING EITHER ALONE OR WITH ONE OR MORE PERSONS, HE OR

SHE COMMITS OR ATTEMPTS TO COMMIT FELONY ARSON, ROBBERY, BURGLARY, KIDNAPPING, SEXUAL ASSAULT AS PROHIBITED BY SECTION 18-3-402, SEXUAL ASSAULT IN THE FIRST OR SECOND DEGREE AS PROHIBITED BY SECTION 18-3-402 OR 18-3-403 AS THOSE SECTIONS EXISTED PRIOR TO JULY 1, 2000, OR A CLASS 3 FELONY FOR SEXUAL ASSAULT ON A CHILD AS PROVIDED IN SECTION 18-3-405 (2), OR THE FELONY CRIME OF ESCAPE AS PROVIDED IN SECTION 18-8-208, AND, IN THE COURSE OF OR IN FURTHERANCE OF THE CRIME THAT HE OR SHE IS COMMITTING OR ATTEMPTING TO COMMIT, OR OF IMMEDIATE FLIGHT THEREFROM, THE DEATH OF A PERSON, OTHER THAN ONE OF THE PARTICIPANTS, IS CAUSED BY ANY PARTICIPANT.

(1.5) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING SUBSECTION (1)(b) OF THIS SECTION THAT THE DEFENDANT:

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

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

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

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

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

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

(1) (a) Notwithstanding any other provision of law, an offender serving a sentence in the department for a felony offense as a result of the filing of criminal charges by an information or indictment pursuant to section 19-2-517, or the transfer of proceedings to the district court pursuant to section 19-2-518, or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by House Bill 96-1005,

and who remains in the custody of the department for that felony offense may petition for placement in the specialized program described in section 17-34-102, referred to within this section as the "specialized program", as follows:

(II) If the felony of which the person was convicted was murder in the first degree, as described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(II), AS AMENDED, or (1)(d), ~~C.R.S.~~ OR MURDER IN THE SECOND DEGREE, AS DESCRIBED IN SECTION 18-3-103 (1)(b), then the offender may petition for placement in the specialized program after serving twenty years of his or her sentence if he or she satisfies the criteria described in ~~sub-subparagraphs (A), (B), (C), (D), (E), (F), and (G) of subparagraph (F) of this paragraph (a)~~ SUBSECTIONS (1)(a)(I)(A) TO (1)(a)(I)(G) OF THIS SECTION.

(III) If the felony of which the person was convicted was murder in the first degree, as described in section 18-3-102, ~~C.R.S.~~, but was not murder in the first degree, as described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(III), AS AMENDED, or (1)(d), ~~C.R.S.~~ OR MURDER IN THE SECOND DEGREE, AS DESCRIBED IN SECTION 18-3-103 (1)(b), then the offender may petition for placement in the specialized program after serving twenty-five years of his or her sentence if he or she satisfies the criteria described in ~~sub-subparagraphs (A), (B), (C), (D), (E), (F), and (G) of subparagraph (F) of this paragraph (a)~~ SUBSECTIONS (1)(a)(I)(A) TO (1)(a)(I)(G) OF THIS SECTION.

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

18-1.3-401. Felonies classified - presumptive penalties.
(4) (c) (I) Notwithstanding ~~the provisions of sub-subparagraph (A) of subparagraph (V) of paragraph (a) of subsection (1) of this section and notwithstanding the provisions of paragraphs (a) and (b) of this subsection~~ ~~(4)~~ SUBSECTIONS (1)(a)(V)(A), (4)(a), AND (4)(b) OF THIS SECTION, as to a person who is convicted as an adult of a class 1 felony following a direct filing of an information or indictment in the district court pursuant to section 19-2-517, ~~C.R.S.~~, or transfer of proceedings to the district court pursuant to section 19-2-518, ~~C.R.S.~~, or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by

House Bill 96-1005, which felony was committed on or after July 1, 1990, and before July 1, 2006, and who received a sentence to life imprisonment without the possibility of parole:

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

(B) If the felony for which the person was convicted is not murder in the first degree, as described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (4)(c)(I)(B), AS AMENDED, then the district court shall sentence the person to a term of life imprisonment with the possibility of parole after serving forty years, less any earned time granted pursuant to section 17-22.5-405. ~~C.R.S.~~

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

18-1.3-407.5. Sentences - young adult offenders - youthful offender system - definitions. (2) (b) Notwithstanding ~~the provisions of paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, a young adult offender who is charged with first degree murder as described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (2)(b), AS AMENDED, OR MURDER IN THE SECOND DEGREE AS DESCRIBED IN SECTION 18-3-103 (1)(b) and pleads guilty to a class 2 felony as a result of a plea agreement is eligible for sentencing to the youthful offender system if the young adult offender would be eligible for sentencing to the youthful offender system for a conviction of the felony underlying the charge of first degree murder as described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (2)(b), AS AMENDED, OR MURDER IN THE SECOND DEGREE AS

DESCRIBED IN SECTION 18-3-103 (1)(b).

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect September 15, 2021; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to offenses committed on or after the applicable effective date of this act.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO