

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0255.01 Michael Dohr x4347

SENATE BILL 21-124

SENATE SPONSORSHIP

Lee, Gonzales, Hansen, Jaquez Lewis, Moreno, Rodriguez, Story

HOUSE SPONSORSHIP

Weissman,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

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

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, it is a class 1 felony if a person commits or attempts to commit certain specified felonies and the death of a person, other than one of the participants, is caused by anyone during the crime.

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

SENATE
3rd Reading Unamended
March 31, 2021

SENATE
Amended 2nd Reading
March 30, 2021

The bill changes the current law by:

- Requiring the death be caused by a participant;
- Repealing certain elements of the affirmative defense;
- Changing the penalty from a class 1 felony to a class 2 felony;
- Clarifying that a court shall sentence a defendant to a definite sentence within the aggravated range when the court finds certain aggravating circumstances; and
- Requiring the fact finder to make specific findings of fact in order for the defendant to be subject to a mandatory sentence as a crime of violence.

The bill makes conforming changes to sentencing provisions for felony murder committed by a juvenile who was convicted as an adult.

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

- 1 ~~(b) Did not commit the homicidal act or in any way solicit,~~
2 ~~request, command, importune, cause, or aid the commission thereof; and~~
3 ~~(c) Was not armed with a deadly weapon; and~~
4 ~~(d) Had no reasonable ground to believe that any other participant~~
5 ~~was armed with such a weapon, instrument, article, or substance; and~~
6 ~~(e) Did not engage himself in or intend to engage in and had no~~
7 ~~reasonable ground to believe that any other participant intended to engage~~
8 ~~in conduct likely to result in death or serious bodily injury; and~~
9 ~~(f) Endeavored to disengage himself from the commission of the~~
10 ~~underlying crime or flight therefrom immediately upon having reasonable~~
11 ~~grounds to believe that another participant is armed with a deadly~~
12 ~~weapon, instrument, article, or substance, or intended to engage in~~
13 ~~conduct likely to result in death or serious bodily injury.~~

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

16 ~~**18-3-103. Murder in the second degree - definitions.**~~ (1) ~~**A**~~
17 ~~**person commits the crime of murder in the second degree if:**~~

- 18 ~~**(a) The person knowingly causes the death of a person; OR**~~
19 ~~**(b) ACTING EITHER ALONE OR WITH ONE OR MORE PERSONS, HE OR**~~
20 ~~**SHE COMMITS OR ATTEMPTS TO COMMIT FELONY ARSON, ROBBERY,**~~
21 ~~**BURGLARY, KIDNAPPING, SEXUAL ASSAULT AS PROHIBITED BY SECTION**~~
22 ~~**18-3-402, SEXUAL ASSAULT IN THE FIRST OR SECOND DEGREE AS**~~
23 ~~**PROHIBITED BY SECTION 18-3-402 OR 18-3-403 AS THOSE SECTIONS**~~
24 ~~**EXISTED PRIOR TO JULY 1, 2000, OR A CLASS 3 FELONY FOR SEXUAL**~~
25 ~~**ASSAULT ON A CHILD AS PROVIDED IN SECTION 18-3-405 (2), OR THE**~~
26 ~~**FELONY CRIME OF ESCAPE AS PROVIDED IN SECTION 18-8-208, AND, IN THE**~~
27 ~~**COURSE OF OR IN FURTHERANCE OF THE CRIME THAT HE OR SHE IS**~~

1 COMMITTING OR ATTEMPTING TO COMMIT, OR OF IMMEDIATE FLIGHT
2 THEREFROM, THE DEATH OF A PERSON, OTHER THAN ONE OF THE
3 PARTICIPANTS, IS CAUSED BY ANY PARTICIPANT;

4 (1.5) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING
5 SUBSECTION (1)(b) OF THIS SECTION THAT THE DEFENDANT:

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

7 AND

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

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

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

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

18 **17-34-101. Juveniles who are convicted as adults in district**
19 **court - eligibility for specialized program placement - petitions.**

20 (1) (a) Notwithstanding any other provision of law, an offender serving
21 a sentence in the department for a felony offense as a result of the filing
22 of criminal charges by an information or indictment pursuant to section
23 19-2-517, or the transfer of proceedings to the district court pursuant to
24 section 19-2-518, or pursuant to either of these sections as they existed
25 prior to their repeal and reenactment, with amendments, by House Bill
26 96-1005, and who remains in the custody of the department for that
27 felony offense may petition for placement in the specialized program

1 described in section 17-34-102, referred to within this section as the
2 "specialized program", as follows:

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

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

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

26 **18-1.3-401. Felonies classified - presumptive penalties.**
27 **(4) (c) (I) Notwithstanding the provisions of sub-subparagraph (A) of**

1 subparagraph (V) of paragraph (a) of subsection (1) of this section and
2 notwithstanding the provisions of paragraphs (a) and (b) of this
3 subsection (4) SUBSECTIONS (1)(a)(V)(A), (4)(a), AND (4)(b) OF THIS
4 SECTION, as to a person who is convicted as an adult of a class 1 felony
5 following a direct filing of an information or indictment in the district
6 court pursuant to section 19-2-517, C.R.S., or transfer of proceedings to
7 the district court pursuant to section 19-2-518, C.R.S., or pursuant to
8 either of these sections as they existed prior to their repeal and
9 reenactment, with amendments, by House Bill 96-1005, which felony was
10 committed on or after July 1, 1990, and before July 1, 2006, and who
11 received a sentence to life imprisonment without the possibility of parole:

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

24 (B) If the felony for which the person was convicted is not murder
25 in the first degree, as described in section 18-3-102 (1)(b), AS IT EXISTED
26 PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (4)(c)(I)(B) AS
27 AMENDED, then the district court shall sentence the person to a term of life

1 imprisonment with the possibility of parole after serving forty years, less
2 any earned time granted pursuant to section 17-22.5-405. C.R.S.

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

5 **18-1.3-407.5. Sentences - young adult offenders - youthful**
6 **offender system - definitions. (2) (b) Notwithstanding the provisions of**
7 **paragraph (a) of this subsection (2) SUBSECTION (2)(a) OF THIS SECTION,**
8 **a young adult offender who is charged with first degree murder as**
9 **described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE**
10 **EFFECTIVE DATE OF THIS SUBSECTION (2)(b) AS AMENDED, OR MURDER IN**
11 **THE SECOND DEGREE AS DESCRIBED IN SECTION 18-3-103 (1)(b) and pleads**
12 **guilty to a class 2 felony as a result of a plea agreement is eligible for**
13 **sentencing to the youthful offender system if the young adult offender**
14 **would be eligible for sentencing to the youthful offender system for a**
15 **conviction of the felony underlying the charge of first degree murder as**
16 **described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE**
17 **EFFECTIVE DATE OF THIS SUBSECTION (2)(b) AS AMENDED, OR MURDER IN**
18 **THE SECOND DEGREE AS DESCRIBED IN SECTION 18-3-103 (1)(b).**

19 **SECTION 6. Act subject to petition - effective date -**
20 **applicability. (1) This act takes effect September 15, 2021; except that,**
21 **if a referendum petition is filed pursuant to section 1 (3) of article V of**
22 **the state constitution against this act or an item, section, or part of this act**
23 **within the ninety-day period after final adjournment of the general**
24 **assembly, then the act, item, section, or part will not take effect unless**
25 **approved by the people at the general election to be held in November**
26 **2022 and, in such case, will take effect on the date of the official**
27 **declaration of the vote thereon by the governor.**

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