

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

March 18, 2021

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB21-124 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

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

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

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

23 ~~(d) Had no reasonable ground to believe that any other participant~~

1 ~~was armed with such a weapon, instrument, article, or substance, and~~
2 (e) ~~Did not engage himself in or intend to engage in and had no~~
3 ~~reasonable ground to believe that any other participant intended to engage~~
4 ~~in conduct likely to result in death or serious bodily injury, and~~
5 (f) ~~Endeavored to disengage himself from the commission of the~~
6 ~~underlying crime or flight therefrom immediately upon having reasonable~~
7 ~~grounds to believe that another participant is armed with a deadly~~
8 ~~weapon, instrument, article, or substance, or intended to engage in~~
9 ~~conduct likely to result in death or serious bodily injury.~~

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

12 **18-3-103. Murder in the second degree - definitions.** (1) A
13 person commits the crime of murder in the second degree if:

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

27 (1.5) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING
28 SUBSECTION (1)(b) OF THIS SECTION THAT THE DEFENDANT:

- 29 (a) WAS NOT THE ONLY PARTICIPANT IN THE UNDERLYING CRIME;
30 AND
31 (b) DID NOT COMMIT THE HOMICIDAL ACT OR IN ANY WAY SOLICIT,
32 REQUEST, COMMAND, IMPORTUNE, CAUSE, OR AID THE COMMISSION
33 THEREOF; AND
34 (c) WAS NOT ARMED WITH A DEADLY WEAPON; AND
35 (d) DID NOT ENGAGE HIMSELF OR HERSELF IN OR INTEND TO
36 ENGAGE IN AND HAD NO REASONABLE GROUND TO BELIEVE THAT ANY
37 OTHER PARTICIPANT INTENDED TO ENGAGE IN CONDUCT LIKELY TO RESULT
38 IN DEATH OR SERIOUS BODILY INJURY.

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

41 **17-34-101. Juveniles who are convicted as adults in district**



1 **court - eligibility for specialized program placement - petitions.**
2 (1) (a) Notwithstanding any other provision of law, an offender serving
3 a sentence in the department for a felony offense as a result of the filing
4 of criminal charges by an information or indictment pursuant to section
5 19-2-517, or the transfer of proceedings to the district court pursuant to
6 section 19-2-518, or pursuant to either of these sections as they existed
7 prior to their repeal and reenactment, with amendments, by House Bill
8 96-1005, and who remains in the custody of the department for that
9 felony offense may petition for placement in the specialized program
10 described in section 17-34-102, referred to within this section as the
11 "specialized program", as follows:

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

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

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

35 **18-1.3-401. Felonies classified - presumptive penalties.**
36 (4) (c) (I) Notwithstanding ~~the provisions of sub-subparagraph (A) of~~
37 ~~subparagraph (V) of paragraph (a) of subsection (1) of this section and~~
38 ~~notwithstanding the provisions of paragraphs (a) and (b) of this~~
39 ~~subsection (4)~~ SUBSECTIONS (1)(a)(V)(A), (4)(a), AND (4)(b) OF THIS
40 SECTION, as to a person who is convicted as an adult of a class 1 felony
41 following a direct filing of an information or indictment in the district



1 court pursuant to section 19-2-517, ~~C.R.S.~~, or transfer of proceedings to
2 the district court pursuant to section 19-2-518, ~~C.R.S.~~, or pursuant to
3 either of these sections as they existed prior to their repeal and
4 reenactment, with amendments, by House Bill 96-1005, which felony was
5 committed on or after July 1, 1990, and before July 1, 2006, and who
6 received a sentence to life imprisonment without the possibility of parole:

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

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

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

27 **18-1.3-407.5. Sentences - young adult offenders - youthful**
28 **offender system - definitions.** (2) (b) Notwithstanding ~~the provisions of~~
29 ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION,
30 a young adult offender who is charged with first degree murder as
31 described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE
32 EFFECTIVE DATE OF THIS SUBSECTION (2)(b) AS AMENDED, OR MURDER IN
33 THE SECOND DEGREE AS DESCRIBED IN SECTION 18-3-103 (1)(b) and pleads
34 guilty to a class 2 felony as a result of a plea agreement is eligible for
35 sentencing to the youthful offender system if the young adult offender
36 would be eligible for sentencing to the youthful offender system for a
37 conviction of the felony underlying the charge of first degree murder as
38 described in section 18-3-102 (1)(b), AS IT EXISTED PRIOR TO THE
39 EFFECTIVE DATE OF THIS SUBSECTION (2)(b) AS AMENDED, OR MURDER IN
40 THE SECOND DEGREE AS DESCRIBED IN SECTION 18-3-103 (1)(b).

41 **SECTION 6. Act subject to petition - effective date -**



1 **applicability.** (1) This act takes effect September 15, 2021; except that,
2 if a referendum petition is filed pursuant to section 1 (3) of article V of
3 the state constitution against this act or an item, section, or part of this act
4 within the ninety-day period after final adjournment of the general
5 assembly, then the act, item, section, or part will not take effect unless
6 approved by the people at the general election to be held in November
7 2022 and, in such case, will take effect on the date of the official
8 declaration of the vote thereon by the governor.
9 (2) This act applies to offenses committed on or after the
10 applicable effective date of this act."

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