

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0255.01 Michael Dohr x4347

SENATE BILL 21-124

SENATE SPONSORSHIP

Lee,

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.

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, **amend**
3 (1)(b), (2)(e), and (3); **repeal** (2)(d) and (2)(f); and **add** (5) 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 FELONY arson, robbery, burglary,
8 kidnapping, sexual assault as prohibited by section 18-3-402, sexual
9 assault in the first or second degree as prohibited by section 18-3-402 or
10 18-3-403 as those sections existed prior to July 1, 2000, or a class 3
11 felony for sexual assault on a child as provided in section 18-3-405 (2),
12 or the FELONY crime of escape as provided in section 18-8-208, and, in
13 the course of or in furtherance of the crime that he or she is committing
14 or attempting to commit, or of immediate flight therefrom, the death of
15 a person, other than one of the participants, is caused by ~~anyone~~ ANY
16 PARTICIPANT; or

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

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

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

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

11 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (3)(b) OF THIS
12 SECTION, murder in the first degree is a class 1 felony.

13 (b) MURDER IN THE FIRST DEGREE IS A CLASS 2 FELONY IF
14 COMMITTED IN VIOLATION OF SUBSECTION (1)(b) OF THIS SECTION.

15 (5) IF A PERSON IS CONVICTED OF FIRST DEGREE MURDER
16 PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION:

17 (a) THE DEFENDANT SHALL BE SENTENCED PURSUANT TO SECTION
18 18-1.3-401 (6); AND

19 (b) THE MANDATORY PROVISIONS OF SECTION 18-1.3-406 APPLY
20 IF, AND ONLY IF, THE FACT FINDER MAKES A SPECIFIC FINDING THAT THE
21 PERSON:

22 (I) USED OR POSSESSED AND THREATENED TO USE A DEADLY
23 WEAPON; OR

24 (II) CAUSED SERIOUS BODILY INJURY OR DEATH TO ANOTHER
25 PERSON, OTHER THAN ONE OF THE PARTICIPANTS, DURING THE
26 COMMISSION OF THE FELONY OFFENSE.

27 **SECTION 2.** In Colorado Revised Statutes, 17-22.5-403, **amend**

1 (2)(c)(I) as follows:

2 **17-22.5-403. Parole eligibility.** (2) (c) (I) A person who is
3 convicted as an adult of a class 1 felony following a direct filing of an
4 information or indictment in the district court pursuant to section
5 19-2-517, ~~C.R.S.~~, or transfer of proceedings to the district court pursuant
6 to section 19-2-518, ~~C.R.S.~~, or pursuant to either of these sections as they
7 existed prior to their repeal and reenactment, with amendments, by House
8 Bill 96-1005, which felony was committed on or after July 1, 1990, and
9 before July 1, 2006, and who is resentenced TO LIFE IMPRISONMENT WITH
10 THE POSSIBILITY OF PAROLE AFTER SERVING FORTY YEARS, pursuant to
11 section 18-1.3-401 (4)(c), ~~C.R.S.~~, LESS ANY EARNED TIME GRANTED
12 PURSUANT TO SECTION 17-22.5-405, is not entitled to receive any
13 reduction of his or her sentence pursuant to this section.

14 **SECTION 3.** In Colorado Revised Statutes, 17-22.5-405, **amend**
15 (4)(a); and **repeal** (4)(b) as follows:

16 **17-22.5-405. Earned time - earned release time - achievement**
17 **earned time - definition.** (4) (a) Except as described in subsection (6)
18 or (9) of this section, ~~or in paragraph (b) of this subsection (4)~~, and
19 notwithstanding any other provision of this section, earned time may not
20 reduce the sentence of an inmate as defined in section 17-22.5-402 (1) by
21 a period of time that is more than thirty percent of the sentence.

22 ~~(b) Earned time may not reduce the sentence of an inmate~~
23 ~~described in subsection (1.2) of this section by a period of time that is~~
24 ~~more than twenty-five percent of the sentence.~~

25 **SECTION 4.** In Colorado Revised Statutes, 18-1.3-401, **amend**
26 (4)(c)(I) introductory portion, (4)(c)(I)(A), and (4)(c)(III) as follows:

27 **18-1.3-401. Felonies classified - presumptive penalties.**

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

13 (A) If the felony for which the person was convicted is murder in
14 the first degree, as described in section 18-3-102 (1)(b), then the district
15 court, after holding a hearing, ~~may~~ SHALL sentence the person to a
16 determinate sentence within the range of ~~thirty to fifty years in prison,~~
17 FOR A CLASS 2 FELONY 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 (II) of this paragraph (c), the district court finds~~
20 ~~extraordinary mitigating circumstances. Alternatively, the court may~~
21 ~~sentence the person to a term of life imprisonment with the possibility of~~
22 ~~parole after serving forty years, less any earned time granted pursuant to~~
23 ~~section 17-22.5-405, C.R.S.~~

24 (III) If a person is sentenced to a determinate range of ~~thirty to~~
25 ~~fifty years~~ FOR A CLASS 2 FELONY in prison pursuant to this ~~paragraph (c)~~
26 SUBSECTION (4)(c), the court shall impose a mandatory period of ~~ten~~ FIVE
27 years parole.

1 **SECTION 5.** In Colorado Revised Statutes, 18-1.3-406, **amend**
2 (2)(a)(II) introductory portion and (2)(a)(II)(B) as follows:

3 **18-1.3-406. Mandatory sentences for violent crimes -**
4 **definitions.** (2) (a) (II) ~~Subparagraph (I) of this paragraph (a)~~
5 SUBSECTION (2)(a)(I) OF THIS SECTION applies to the following crimes:

6 (B) Murder, EXCEPT AS PROVIDED IN SECTION 18-3-102 (5);

7 **SECTION 6. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect September 1, 2021; except that,
9 if a referendum petition is filed pursuant to section 1 (3) of article V of
10 the state constitution against this act or an item, section, or part of this act
11 within the ninety-day period after final adjournment of the general
12 assembly, then the act, item, section, or part will not take effect unless
13 approved by the people at the general election to be held in November
14 2022 and, in such case, will take effect on the date of the official
15 declaration of the vote thereon by the governor.

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