



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Final Fiscal Note

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<b>Drafting Number:</b>	LLS 21-0255	<b>Date:</b>	June 17, 2021
<b>Prime Sponsors:</b>	Sen. Lee Rep. Weissman	<b>Bill Status:</b>	Signed into Law
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**Bill Topic:** CHANGES TO FELONY MURDER

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<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill reclassifies certain first-degree murder offenses subject to a class 1 felony as second-degree murder offenses subject to a class 2 felony and makes related changes. Beginning in FY 2021-22, the bill may increase state revenue and state and local workload. Beginning in FY 2037-38, it will reduce state expenditures.

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**Appropriation Summary:** No appropriation is required.

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**Fiscal Note Status:** The fiscal note reflects the enacted bill.

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## Summary of Legislation

Under current law, a person who acts alone or with one or more persons to commit or attempt to commit felony arson, robbery, burglary, kidnapping, specific crimes of sexual assault, or escape that results in the death of a person, other than a participant, caused by any participant in the crime can be convicted of first degree murder and subject to sentencing as a class 1 felony. The bill changes the penalty for this crime to second degree murder subject to sentencing as a class 2 felony.

Under the bill, a defendant has an affirmative defense to this second degree murder offense if they:

- were not the only participant in the underlying crime;
- did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission of the homicidal act;
- were not armed with a deadly weapon; and
- did not engage in or intent 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.

## **Comparable Crime Analysis**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of an existing crime. This section outlines data on the existing crime affected by this bill.

**Prior conviction data.** This bill changes the classification of an existing class 1 felony for first degree murder related to felony arson, robbery, burglary, kidnapping, specific crimes of sexual assault, and escape to a class 2 felony. From FY 2017-18 to FY 2019-20, 42 individuals have been convicted and sentenced for this existing offense. Of the persons convicted, 40 were male, 1 was female, and 1 did not have a gender identified. Demographically, 22 were White, 11 were Black/African American, 5 were Hispanic, 0 were Asian, 1 was American Indian, and 3 did not have a race identified.

**Penalties and average length of stay.** Under current law, the penalty for a class 1 felony is a sentence of life imprisonment with no fine penalty and no parole, while the penalty for a class 2 felony crime of violence is a sentence of 16 to 48 years of imprisonment, a fine between \$5,000 and \$1 million, and a mandatory parole period of five years. The current average length of stay in prison for a class 1 felony is 40 years, while the current average length of stay in prison for a class 2 felony crime of violence is 16.8 years.

## **State Revenue**

Beginning in FY 2021-22, this bill may increase state cash fund revenue in the Judicial Department. By changing the penalty for a specific first-degree felony murder charge from a class 1 felony with no fines to a class 2 felony, some offenders could be assessed a fine of up to \$1 million. Because the courts have the discretion of imposing a fine, the precise impact to state revenue cannot be determined. However, because fines are rarely imposed for a class 2 felony, the fiscal note assumes that any revenue generated is likely to be minimal. The fiscal note similarly assumes a minimal change for any court and administrative fees. This revenue is subject to TABOR.

## **State Expenditures**

Beginning in FY 2021-22, the bill may increase workload in the Judicial Department and in agencies representing indigent persons. Beginning in FY 2037-38, the bill will reduce costs in the Department of Correction (DOC).

**Judicial Department.** The bill is not expected to impact trial court caseload, but may impact the amount of time it takes to prosecute a case. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. Because the number of overall cases impacted by the bill is expected to be minimal, it is assumed that this workload can be accomplished within existing appropriations.

**Department of Corrections.** Beginning no earlier than FY 2037-38, this bill will reduce state General Fund costs in the Department of Corrections. As discussed in the Comparable Crime Analysis section above, offenders convicted of the specific felony murder in the bill after September 1, 2021, will serve the current average length of stay for a class 2 felony crime of violence, which is 16.8 years in prison, rather than the current average sentence of 40 years for a class 1 felony. As of this writing, it is not known what the annual cost for a prison bed will be or if the current rate of convictions will continue. For informational purposes, the current annual cost for incarceration in a state prison is about \$46,738 per offender. Offenders leaving prison will be required to participate in parole for at least five years. The current annual cost for parole is about \$5,179 per offender. The fiscal note assumes the reduction in appropriations resulting from the bill will be addressed through the annual budget process.

**TABOR refunds.** Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

## **Local Government**

Similar to the state, district attorney workload may be minimally impacted. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

## **Effective Date**

The bill was signed into law by the Governor on April 26, 2021. It takes effect September 15, 2021, assuming no referendum petition is filed, and applies to offenses committed on or after this date.

## **State and Local Government Contacts**

Corrections  
Judicial

District Attorneys  
Public Defender

Information Technology