



## COLORADO CRIMINAL DEFENSE BAR

Creation of an F2 for Felony Murder

SB21-124, Sen Lee & Rep Weissman

### “Wrong Place at the Wrong Time” is the Wrong Approach

Almost without exception, Colorado’s criminal sentencing system is based on a person’s level of responsibility for the crime they’ve been convicted of committing. Felony Murder, a holdover from British common law, is an inconsistent and unjust outlier that flouts this system.

#### What is Felony Murder?

- Felony Murder is one of six ways a person can be convicted of first-degree murder in Colorado. However, it is the only way a person can be convicted of first-degree murder without the prosecution having to prove that the defendant had some level of intent to cause a death.
- Because Felony Murder is a class one felony, it carries a **mandatory sentence of life in prison without the possibility of parole—in every case, no matter what.**

#### The Problem

- Felony Murder is inconsistent with the rest of our criminal sentencing system because a person can be imprisoned for life **without ever having an intent for someone to die** during their crime.
- It is **unjust** to sentence a person who had no intent for murder as harshly as someone who specifically intended to kill another person.
- Unbelievably, a person can currently be convicted of Felony Murder if the death is caused by **anyone**, including someone who wasn’t even an original participant in the crime.
- The current affirmative defense is so difficult and complicated to qualify for that it is virtually impossible for anyone to use as a defense, including the least culpable defendants.
- The mandatory life sentence and ease of proof gives prosecutors unfair leverage and takes away judicial discretion in sentencing.

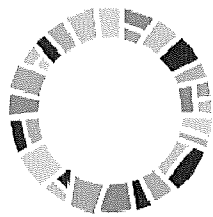
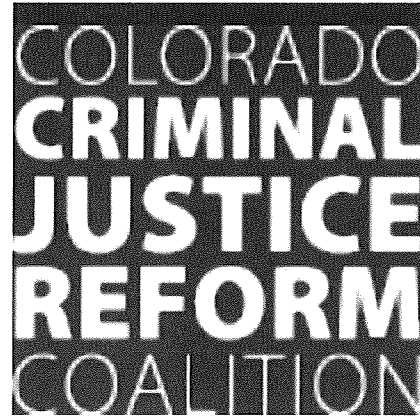
#### What the Bill Does

- Requires that one of the participants in the crime – not just anyone – cause the death.
- Makes Felony Murder a class two felony, which does not require a sentence of life without parole.
- Allows for a wide range of punishments, from 16 to 48 years, so judges can use their discretion to sentence defendants based on their true level of responsibility in each case.
- Amends the affirmative defense to make it more accessible to defendants who truly had no role in the circumstances that led to the death.
- Makes conforming amendments to relevant juvenile sentencing provisions.

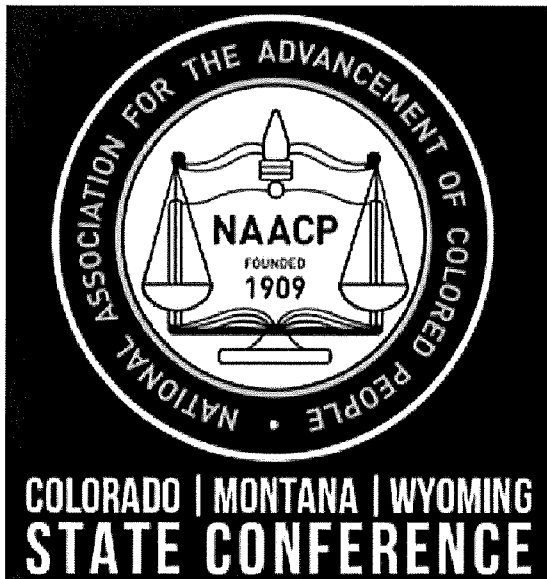
#### What the Bill Does Not Do

- The bill **does not** create a “get-out-of-jail-free card.” The maximum sentence is still a significant 48 years, and prison is mandatory in the range of 16-48.
- The bill **will not** result in unreasonably lenient sentences for those that don’t deserve one.
- The bill **does not** retroactively change sentences currently being served.

Please Support SB21-124: "Wrong Place at the Wrong Time" is the Wrong Approach  
Endorsements for SB21-124



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PROTECTING FAITH AND FREEDOM



CURRENT LAW	Original SB 21-124	Strikethrough Amend.
<i>Elements of the Offense</i>		
<p>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 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 <b>anyone</b>.</p>	<p>Acting either alone or with one or more persons, he or she commits or attempts to commit <b>[felony]</b> 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 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 <b>any participant</b>.</p>	<p>No change to language</p> <p>However, moves felony murder into the second-degree murder statute.</p> <p>Moving the offense into the second-degree murder statute makes felony murder an automatic crime of violence with an automatic prison sentence.</p>
<i>Penalty</i>		
<p>First Degree Murder (F1) (Life without parole)</p>	<p>First Degree Murder (F2) (probation up to 48 years) (not automatic Crime of Violence)</p>	<p>Second Degree Murder (F2) (mandatory prison 16-48 years) (automatic Crime of Violence)</p>
<i>Affirmative Defense</i>		
<p>(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.</p>	<p>(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 <del>(d) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article, or substance; and</del> (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 <del>(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.</del></p>	<p>No change</p>
	<p>Not Retroactive</p>	<p>No change</p>