

Restore Justice Foundation

Criminal Justice Issues and Prisoners' Rights

<https://restorejustice.org/about-us/resources/know-more/know-more-felony-murder/>

Policy Issue Resources

The criminal legal and prison systems in Illinois can often feel like a jigsaw puzzle, full of interlocking laws, policies, and eccentricities that can be overwhelming even to experienced advocates. Restore Justice publishes a series of [Know More](#) posts. Each post will provide a straightforward overview of a different aspect of the Illinois criminal legal system.

In Illinois, a person can be charged and convicted of first-degree murder a conviction that carries a minimum sentence of twenty years and, under certain circumstances, a maximum sentence of natural life even if they did not actually kill the victim or intend to commit the murder.

To charge someone with first-degree murder, an individual (1) intended to kill or do great bodily harm or knew that their actions would cause death; (2) knew that their actions created a strong probability of death or great bodily harm; or (3) *were attempting or committing another felony crime*.

Under this rule, people can be and often are convicted of first-degree murder in scenarios where a death is unintentional or is caused by another person, all in the commission of a different type of crime. That type of crime is defined as a **forcible felony**.

A conviction for felony-murder in Illinois carries a penalty of 20 to 60 years imprisonment and, under some circumstances, the maximum penalty can be extended to a term of natural life. This same maximum and minimum sentence is available to juveniles and young adults who are disproportionately impacted by the felony-murder rule, as they are more likely to act in groups (or co-offend) and are more susceptible to peer pressure.

Even though the US Supreme Court has established that youthful offenders lack maturity, have an underdeveloped sense of responsibility making them more reckless, impulsive, and risk-prone than adults, and are more susceptible to rehabilitation, when convicted of felony-murder, youthful offenders are branded violent offenders for life, and are subject to the same sentencing range as the person who pulled the trigger. This is true even if they personally did not inflict any harm or commit an act of violence. A conviction for felony-murder usually results in youthful offenders being sentenced to extreme periods of incarceration, including life without parole (LWOP) or de-facto LWOP.

Felony murder statutes assume that a person who participates in a felony understands the risk that someone may be killed, says Jody Kent Lavy, executive director of the Campaign for the Fair Sentencing of Youth. But well-established brain development science shows that children and teenagers are less able to perceive risk or anticipate consequences than adults. Given this, and children's unique capacity for positive change, it is harsh and inappropriate to subject any child to life in prison, especially under a felony murder theory of liability.

Illinois previously had one of the broadest felony-murder statutes in the country. The 2021 criminal law omnibus bill, House Bill 3653, Senate Amendment 2, moves Illinois to an agency theory of liability (from the proximate cause theory), bringing Illinois into alignment with the majority of states that still have felony-murder on the books.

Here are some examples:

Jack and Jill agree to rob a grocery store. Jack waits in the getaway car while Jill goes into the store and robs it at gunpoint. During the course of this robbery, ***Jill intentionally shoots and kills the store clerk***. Jack and Jill both will be charged with first-degree murder, even though the death of the store clerk was not a part of the original plan.

Jack and Jill agree to rob a grocery store. Jack waits in the getaway car while Jill goes into the store and robs it at gunpoint. During the course of this robbery, ***Jill unintentionally shoots and kills the store clerk***. Jack and Jill both will be charged with first-degree murder, even though the death of the store clerk was unintentional.

Jack and Jill agree to rob a grocery store. Jack waits in the getaway car while Jill goes into the store and robs it at gunpoint. During the course of this robbery, ***the store clerk shoots and kills Jill***. Jack will be charged with first-degree murder, even though the death of Jill was caused by the store clerk.

Jack and Jill agree to rob a grocery store. Jack waits in the passenger seat of the getaway car while Jill, who is the driver, goes into the store and robs it at gunpoint. ***While fleeing the scene, the car Jill is driving t-bones another vehicle at an intersection and the other driver is killed***. Jack and Jill both will be charged with first-degree murder, even though the death of the other driver was unintentional.

Jack and Jill agree to rob a grocery store. Jack waits in the getaway car while Jill goes into the store and robs it at gunpoint. While fleeing the scene of this robbery, ***a police officer shoots at the fleeing vehicle and kills Jill***. Jack will be charged with first-degree murder, even though the death of Jill was caused by a police officer.

In all of these scenarios, Jack could be charged with and convicted of first-degree murder even though he (1) did not possess or fire a

weapon, (2) may not have known that Jill possessed a weapon, (3) was not physically present when the death occurred, (4) did not know that a death would occur, or (5) was a juvenile while Jill was an adult.

We have no way to know. Our criminal justice data systems do not differentiate between who was convicted of first-degree murder for actually committing murder and who was a co-defendant convicted under the felony-murder rule.

Illinois defines the following offenses as forcible felonies:

The [United States is the only country in the world](#) where the felony-murder rule still exists. The rule originated in England but was abolished there in 1957, and other common law countries soon followed. It has been a part of Illinois criminal laws since 1827. In 1961, the Illinois General Assembly considered whether the felony-murder rule should be eliminated, but instead of repealing the law, the legislature expanded the rule by adopting language from *People v. Payne*, a 1934 Illinois Supreme Court case. In *Payne*, the defendant informed his accomplices that there was a large sum of money at a particular house. Acting upon that information, two armed robbers broke into the home, eventually leading to a gun battle with two brothers who lived there. One of the brothers was killed in the exchange but officials were unable to determine who fired the fatal shot.

In affirming Paynes conviction, the Illinois Supreme Court stated:

It reasonably might be anticipated that an attempted robbery would meet with resistance, during which the victim might be shot either by himself or someone else in attempting to prevent the robbery, and those attempting to perpetuate the robbery would be guilty of murder A killing which happens in the prosecution of an unlawful act which in its consequences naturally tends to destroy the life of a human being is murder.

When the Illinois General Assembly re-codified the felony-murder rule, however, it decided to incorporate even broader language than *Payne* in the commentary: It is immaterial whether the killing in such a case is intentional or accidental, or is committed by a confederate without the connivance of the defendant., or even by a third person trying to prevent the commission of the felony.

Forty-four states, as well as Washington, D.C. and the federal government, have codified some form of the felony-murder rule. Only 18 of those states (including the federal government) use proximate cause theory (which is what Illinois used until 2021); while 26 (including Washington, D.C.) use agency theory. In two states Mississippi and South Carolina it is unclear whether agency theory or proximate cause theory is utilized. California has recently restricted its felony-murder statute. Finally, six states Arkansas, Hawaii, Kentucky, Michigan, New Hampshire, and New Mexico do not have felony-murder statutes at all.

Ask your state representative and state senator to support more comprehensive felony-murder and accountability reform measures. Accountability is a related criminal law. [Learn more.](#)

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