

Restore Justice Foundation

Criminal Justice Issues and Prisoners' Rights

<https://restorejusticeillinois.org/faq-final-felony-murder-language-in-hb3653sa2-as-passed-january-2021/>

Policy Issue Resources

Illinois felony-murder rule (A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death, he or she is attempting or committing a forcible felony other than second degree murder) as written and interpreted by Illinois courts is among the most expansive definitions in the country, encompassing intended and unintended consequences by perpetrators and non-perpetrators all swept into a category of our most serious felony and subject to the same punishment (up to life without parole) as someone who intentionally kills someone else. Under current law, a person can be found guilty of felony-murder if you commit an underlying felony, such as burglary, and that sets in motion a direct chain of events that leads to a death. It doesn't matter if the death was intentional or accidental, done by yourself or one of your co-defendants, or if the killing was actually done by a police officer responding to the burglary. This is called the proximate cause theory of felony murder; it can be like strict liability without requiring any culpable mental state around the actions that caused the death.

Illinois felony-murder law is also often bound up with Illinois law of accountability, which holds parties responsible for the actions of others even where Party A (Alan) did not know or intend the specific action done by Party B (Brian). For example, if Alan and Brian agree to commit a felony together, and Alan did not know what Brian planned to do (either before or during the commission of the accompanying offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid the other person in the planning or commission of the accompanying offense. When two or more persons engage in a common criminal design or agreement, any acts in furtherance of that common design committed by one party are considered to be the acts of all the parties to the common design or agreement and all are responsible for the consequences of those further acts). Because of the interrelationship of accountability and felony-murder, Alan can be charged with felony-murder if he agreed to be a lookout as Brian robs a jewelry store with a toy gun and the jeweler shoots at Brian and kills a Customer. Or, if Alan and Brian plan to rob a jewelry store and Brian tells Alan he will use a toy gun and Alan will be the lookout, but Brian uses a real gun and accidentally shoots the jeweler, Alan is accountable for the actions of Brian and could be charged with felony-murder.

The original draft of the felony-murder reform aimed to both (1) move Illinois away from a proximate cause theory of liability to an agency theory of liability and (2) limit the reach of accountability within the context of felony murder.

A version of (1) passed and (2) did not. The final language of the reform eliminated the language requiring knowledge. So the felony-murder reform largely leaves untouched Illinois existing law of accountability. The reform package did move Illinois to an agency theory of liability, which brings Illinois into alignment with the majority of states that still have felony murder on the books.

Here is the new language (underlined):

With an asterisk, Illinois has moved to an agency theory for felony-murder, which means the death has to be actually caused by the defendant or another participant in the underlying felony. This eliminates scenarios where the death is caused by anyone else like the jeweler shooting Brian or a police officer chasing a defendant and accidentally striking and killing a pedestrian. It eliminates most scenarios where the death is one of the participants in the underlying offense, such as the Lake County 5 situation. So if you and your friends try to rob an off-duty police officer, and the officer hoots and kills one of your friends, you can no longer be charged with felony-murder for your friend's death.

As described above, it is missing a reform to Illinois law of accountability. This reform still permits a person to be found guilty of felony-murder even if a participant did not know or could not have foreseen that another participant would cause a death during the underlying felony.

Also, as will be discussed below, it would be better to add the word actually between participant and causes to make it clear that the death has to be tied to the direct actions of a participant.

Unlikely, but possible. Here comes our asterisk conversation. In the absence of floor debate providing legislative intent to move Illinois from a proximate cause jurisdiction to an agency jurisdiction and in the absence of the word actually, this reform may have kept the law as it currently stands and further clarified that deaths during the flight from the underlying felony also qualify for felony-murder prosecution.

Why? The new language criminalizes where he or she or another participant causes the death. The Illinois Supreme Court has clarified causation (i.e. cause) in felony-murder cases where the defendant themselves did not perform the acts which caused the death. Borrowing from tort law, the Court has defined causation where a death results as a direct and foreseeable consequence of a chain of events set in motion by his commission of the underlying felony. It is immaterial whether the killing 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. So, if the word causes in the new language does not depart from Illinois previous definition of cause, then deaths caused by police responding to the underlying felony or by people resisting the felony or where a co-participant is killed could still be swept into this new version of the felony-murder law.

As Senator Elgie Sims stated, and other key sponsors of the omnibus package emphasized, We are fundamentally changing the way we do criminal justice in this state. Given the overall intent of this reform effort, it seems completely incongruous to believe that a felony-murder reform measure was included that only cemented the existing law.

No.

Sometimes, yes. If that ridiculous scenario ultimately includes the death being caused by a participant in the underlying felony, yes, that would still be chargeable as felony murder. But if that ridiculous scenario involves a situation where the death was caused by anyone else, then no, that would no longer be felony murder.

Yes. Where the death is caused by someone resisting the underlying felony and a participant is killed, other participants in the underlying felony cannot be charged with felony-murder. [Read more about the case.](#)

No. Marshan (i.e., the lookout or getaway driver that may not know what is happening inside or what the real objective was of those going inside) could still be charged with felony-murder following this reform. [Read more about Marshans case.](#)

In a nutshell, will this help people that have gotten life without parole for murder ?

This felony-murder language is only perspective. It is not retroactive and wont lead to sentence changes for people previously convicted of felony-murder. Restore Justice believes in retroactive reforms and will keep pushing for them!

Whats going on with the ones doing time for murder but were just the drivers sentenced under truth in sentencing who have served more than half their time already any changes or hope for them? Any bills going to change that or any new bills out?

I just wanted to say thank you for your in depth analysis of what is occurring and what the new law states. I could not figure it out to save my soul. Ha! Thank you again.

We are very glad it helped!

Since this Bill 3653 was passed Jan 2021 when will the felony murder come into effect? For people with pending murder charges, who has come back on an appeal.

Most of the bill takes effect on July 1. We do not know how it will affect people with pending charges. It is not retroactive so it will not help people who have already been convicted.

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This article helps me a lot. Thanks for sharing valuable information. As I was looking for such information, I have found an article useful like this; you can check it out here. [Difference Between First and Second Degree Murders](#) I hope you get more information.

Thank you for your feedback. Could you share more about where you see the incorrect use of prospective or perspective? I dont see either word in this fact sheet.

Can I get my old charges dropped I couldnt post bail and force to take plea deal or stay in jail for two or three years fighting the case with a public defender who looks at you like a number and doesnt care I felt I didnt have the resources to properly defend my case behind bars.

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