

Felony Murder Fact Sheet

Felony murder laws cause extreme harm—particularly along race, gender, and class lines—without making us safer. It's time to repeal them.

What is Felony Murder?

The State can convict a person of murder even though they did not kill anyone. This is because of something called the **felony murder rule**. Felony murder convictions carry the most extreme sentences available in our criminal punishment system, including death-by-execution and death-by-incarceration (also known as life without parole).

If a person participates in a felony and a death occurs, the felony murder rule allows the person to be charged with murder even if they did not kill or intend to kill anyone.¹ Oftentimes, this includes people who did not foresee the possibility of death and may not have even been present when the death took place. This means that people can be sentenced to death or death in prison simply for agreeing to participate in certain felonies. In some states, a person can be convicted of felony murder even if the death was caused by someone other than a participant in the felony, such as a police officer.

We don't need felony murder laws to keep us safe. **In fact, these laws do not have any proven deterrent effect,**² meaning that there's no evidence that felony murder laws prevent or reduce violence. Instead, the felony murder rule adds a layer of punishment on top of already harsh laws that cover the same circumstances. Neither Hawaii nor Kentucky has a felony murder law, and the United Kingdom got rid of theirs in 1957. It's time to repeal felony murder laws.

Felony Murder Laws Are Selectively Applied and Susceptible to Bias

Generally, to convict someone of an offense carrying a sentence of death or death-in-prison, the State must prove that a person killed or seriously injured someone, and did so with intent or reckless disregard for the harm that could occur. This is the state's "burden of proof." Felony murder laws absolve the State of this responsibility, **allowing the State to convict a person of murder without any proof that the person killed or intended to kill anyone.** The result is that the State has an extremely

¹ NAZGOL GHANDNOOSH ET AL, THE SENTENCING PROJECT, FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING (March 31, 2022), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/>.

² See Ian P. Farrell, *Moral Judgments and Knowledge about Felony Murder in Colorado: An Empirical Study* (September 5, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562486 (analyzing poll results showing that only a small fraction of respondents were aware of felony murder liability and thus could be deterred by it); Anup Malani, *Does the Felony-Murder Rule Deter? Evidence from FBI Crime Data*, Working Paper 2 (2002), <https://tinyurl.com/3wv252bc> (describing analysis finding that "the felony-murder rule has a relatively small effect on criminal behavior: it does not substantially affect either the overall felony or felony-murder rate"); Felony-Murder Rule: A Doctrine at Constitutional Crossroads, 70 CORNELL L. REV. 446, 452 (1985) ("[T]he felony-murder rule can have no deterrent effect if the felon either does not know how the rule works or does not believe a killing will actually result.").

low burden of proof in cases that carry the most punitive sentences in the criminal legal system.

The felony murder rule's low burden of proof has several harmful effects:

- First, this low burden encourages prosecutors to bring felony murder charges even where other charges could be used that would carry less extreme sentences.
- Second, the low burden makes it very hard to challenge a felony murder charge at trial, meaning that people are pressured to accept plea deals involving long sentences, sometimes for offenses they did not commit.³
- Third, the felony murder rule's low burden of proof also means that charging and sentencing determinations are guided by fewer formal legal factors, and more likely to be based on subjective judgments that are influenced by **racial bias** and racial stereotypes.⁴

The felony murder rule also amplifies the effect of racial stereotypes by allowing for inferences of guilt by association. Research has shown that **Black and Latinx** defendants are more likely to be perceived as members of a group—and thus accountable for each other's actions—while White defendants are more likely to be perceived as individuals with their own legal and moral culpability.⁵ In other words, decision-makers may be more likely to find people of color responsible for the behavior of others, but White people responsible only for their own conduct.

Finally, because the felony murder rule punishes people for the acts of another, it has resulted in extreme punishments of young people, who are especially susceptible to peer pressure and impulsivity.⁶ It has also resulted in punishment of survivors of abuse, human trafficking, or other circumstances where a person may be present during—or coerced to participate in—their abuser's violence, frequently under the risk of facing lethal violence themselves if they do not comply.⁷

³ NAZGOL GHANDNOOSH ET AL., THE SENTENCING PROJECT, FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING (March 31, 2022), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/>.

⁴ Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 Fordham Urb. L.J. 675, 729, 737 (2024).

⁵ G. Ben Cohen, Justin D. Levinson & Koichi Hioki, *Racial Bias, Accomplice Liability, and The Felony Murder Rule: a National Empirical Study* DENVER LAW REVIEW (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4411658

⁶ NAZGOL GHANDNOOSH ET AL., THE SENTENCING PROJECT, FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING (March 31, 2022), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/>; Brief for Boston University Center for Antiracist Research, et al. as Amici Curiae Supporting Appellant, Commonwealth v. Fisher, 492 Mass. 823 (2023) https://www.ma-appellatecourts.org/pdf/SJC-13340/SJC-13340_08_Amicus_Boston_University_Brief.pdf; Daniel Trautfield, Special Circumstances Conviction Project, UCLA Center for the Study of Women Streisand Center, LIFE WITHOUT PAROLE AND FELONY MURDER SENTENCING IN CALIFORNIA (2023).

⁷ SURVIVED & PUNISHED, DEFENDING SELF DEFENSE: A CALL TO ACTION 25 (2022),

The selective use of the felony murder rule against some people but not others shows that it is a tool of harm, not justice.

Felony Murder Laws Do Not Make Us Safer, and Should Be Repealed

Felony murder laws do not reduce violence.⁸ Nor do they serve people seeking meaningful accountability. There are many other laws that cover the same circumstances yet carry less extreme sentences. And overall, carceral systems perpetuate further harm through the violence of incarceration, the separation of families, and the destabilization of communities targeted by policies of criminalization.

States must repeal their felony murder laws, and provide a path for resentencing people who were convicted under the old laws. This resentencing process should include mitigating evidence that may not have been introduced at the time the original sentence was imposed, or that has occurred since the time of that sentence during their incarceration.

For a model bill illustrating how a state can repeal the felony murder rule, visit <https://felonymurderlaws.com/take-action/>

<https://survivedandpunished.org/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf>; Kellie C. Murphy, *Beyond Cyntoia Brown: How Women End Up Incarcerated for Self Defense*, ROLLING STONE, January 28, 2019, <https://www.rollingstone.com/culture/culture-features/cyntoia-brown-beyond-other-cases-775874/>.

⁸ See *supra* note ii.