Felony Murder Repeal Act:
A policy brief and model bill

Table of Contents

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What is Felony Murder?

Felony murder laws allow a person to be convicted of murder even if they did not commit murder, aid in a murder, intend to commit murder, or have any idea that a person could be killed. In most states, the only requirement is that the person participated in a felony during which a death occurred. It doesn't matter if the person's role in the felony was small, or if the death was accidental. All participants in the felony can still be convicted of murder. 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.

In general, to convict a person of an offense, the State is required to prove (1) that the person committed the offense (actus reus) ***and*** (2) that the person either intended to commit the offense or had some other state of mind related to their responsibility for the outcome (mens rea). These two elements generally make up what is called the State's "burden of proof." **But the felony murder rule allows the State to convict a person of murder without any proof that the person killed or intended to kill anyone.**

The choice to bring a felony murder charge (instead of a charge for the underlying felony or for an unintended death, like manslaughter) dramatically increases the sentence a person will face. Frequently, prosecutors offer a plea deal to the person with the most information about an offense to entice testimony against co-defendants. This often results in a longer sentence for those more peripherally involved in the offense than the individual who received the plea deal. This means that individuals who

played no direct role in the death can be sentenced to death or death in prison simply for agreeing to participate in certain felonies.

The Scope of the Problem[1]

Overall, felony murder convictions carry the most extreme sentences available in our criminal punishment system. Many of these sentences are mandatory ones. Twenty-four states and the federal government mandate a life-without-parole (LWOP) sentence for at least some felony murder convictions.[2]

Ten states impose mandatory sentences of LWOP/death-by-incarceration for all felony murder convictions without requiring any mental state related to the killing, meaning that a person may be automatically condemned to die in prison even if they did not kill anyone, intend to kill anyone, or foresee the possibility that a death could occur.[3] An additional fourteen states impose mandatory LWOP sentences for felony murder where there is a finding of either aggravating circumstances or that the defendant had some level of *mens rea* pertaining to the death, such as recklessness or extreme indifference.[4] Twenty-one states allow for a person to be executed for a felony murder conviction if the person was found to be a major participant in the felony who acted with reckless indifference—far less than the deliberate premeditation generally required for a capital or first-degree murder conviction.[5]

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[1] The authors are profoundly grateful to Nazgol Ghandnoosh from The Sentencing Project, who participated in many conversations about how to evaluate and categorize felony murder statutes. Her advice and counsel have been invaluable to this project and informed the analysis in this section in particular.

[2] Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 Fordham Urb. L.J. 675, 692 (2024).

[3] Arizona Rev. Stat. Ann. § 13-1105; Iowa Code Ann. § 902.1; Fl. Stat. 782.04(1), 775.082(1); La. Stat. Ann. § 14:30(C); Miss. Code. Ann. § 97-3-21; Neb. Rev. Stat. Ann. § 28-105; N.C. Gen. Stat. Ann. § 14-17; 18 Pa. Stat. and Cons. Stat. Ann. § 1102; SDCL § 22-6-1; Wyo. Stat. Ann. § 6-2-101.

[4] AR Code § 5-10-101 (requiring a finding of "extreme indifference to the value of human life"); Cal. Penal Code §§ 189; 190.2 (for accomplices, requiring a finding that defendant was a "major participant" who acted with "reckless indifference"); Conn. Gen. Stat. §§ 53a-54c; 53a-35a(2) (mandating LWOP only for arson murder); Del. Code. Ann. §§ 636; 4209(a) (requiring finding of recklessness); Idaho Code §§ 18-4003(d); 18-4004 § 19-2515(9)(g) (mandating LWOP only where the death penalty is sought but not imposed and where the jury finds an aggravating circumstance); 730 ILCS 5/5-8-1(a)(1)(c) (requiring aggravating circumstances); *Commonwealth v. Brown*, 477 Mass. 805 (2017) (requiring a finding of malice); *People v. Aaron,* 409 Mich. 672, 728 (1980) (requiring a finding of "wanton and willful disregard"); N.H. Rev. Stat. Ann. §§ 630:1-a; 630:1-b (requiring that the defendant acted knowingly); N.J. Stat. Ann. § 2C:11-3(a)(3), (b)(3) (requiring aggravating circumstances); N.M. Stat. Ann. §§ 30-2-1(A)(2); 31-18-14; 31-20A-5 (requiring intent to kill and aggravating circumstances); N.Y. Penal Law §§ 125.25(5) (requiring intent to cause death and limiting to specified sexual felonies); Ohio Rev. Code Ann. § 2903.01(B) (requiring finding that defendant purposefully caused death); S.C. Code Ann. §§ 16-3-10; 16-3-20(A) (requiring aggravating circumstances).

[5] 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/. States that allow the death penalty for felony murder are Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, Nebraska, Nevada, North Carolina, Oklahoma,

Meaningfully responding to harm requires listening to people directly impacted by violence—who are not a monolith and who may have varying views about what justice looks like—and taking proactive steps to mitigate future violence. But the felony murder rule does the opposite. But there is no evidence to suggest that the felony murder doctrine has any significant deterrent effect,[6] and study after study has shown that long sentences do not make us safer.[7] Instead, carceral systems perpetuate further harm through the violence of incarceration, the separation of families, and the destabilization of communities targeted by policies of criminalization.

Neither Hawaii nor Kentucky has a felony murder law, and the United Kingdom–where the felony murder rule originated–got rid of it in 1957.[8] The felony murder doctrine adds a layer of punishment on top of already harsh laws and sentences that cover the same circumstances.

The Influence of Racism and other Structures of Inequality

Felony murder laws, like criminalization more broadly, reflect a choice about what kind of conduct to punish and how severely. Such choices are "guided by existing structures of economic and social inequality," including racism, sexism, ableism, and classism.[9] Prosecutors have wide discretion to decide when—and when not—to bring a felony murder charge, leaving room for biases to influence charging and plea-bargaining determinations.

The combination of the felony murder rule's low burden of proof and the broad discretion it affords prosecutors "directly disadvantages people of color."[10] Social psychology research shows that biases are especially likely to influence decision-making under the precise circumstances presented by the felony murder doctrine—that is, when "decisional criteria are uncertain," and when "decisions . . .

South Carolina, South Dakota, Tennessee, Texas, and Wyoming. *Id*. The "major participant" and "reckless indifference" requirements for a death-by-execution sentence for felony murder were collectively established by two U.S. Supreme Court cases: *Enmund v. Florida*, 458 U.S. 782 (1982), and *Tison v. Arizona,* 481 U.S. 137 (1987).

[6] On the contrary, since the felony murder doctrine punishes unintended conduct and is not well understood by the general public, it is difficult to see how it could have a deterrent effect. *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, suggesting that only a small fraction could be deterred by felony murder liability).

[7] Nicholas Turner, Vera Institute of Justice, *Research Shows That Long Prison Sentences Don't Actually Improve Safety* (2023), https://www.vera.org/news/research-shows-that-long-prison-sentences-dont-actually-improve-safety.

[8] Guyora Binder & Ekow Yankah, *Police Killings as Felony Murder*, 17 Harv. L. & Pol'y Rev. 157, 206; Ky. Rev. Stat. Ann. § 507.020 (1984); Haw. Rev. Stat. § 707-701 (1972).

[9] Beth Richie & Andrea J. Ritchie, The Crisis of Criminalization: A Call for a Comprehensive Philanthropic Response (2017), https://bcrw.barnard.edu/wp-content/nfs/reports/NFS9-Challenging-Criminalization-Funding-Perspectives.pdf.

[10] Ghandnoosh et al., *supra* note 5 at 6.

involve high levels of discretion or subjectivity."[11] By eliminating the State's burden of proving the most clearly defined indicators of culpability—actions and intent—the felony murder rule invites prosecutors and decision-makers to draw inferences based on stereotypes and biases.[12]

Felony murder cases involving accomplices can also trigger an additional form of racial bias, as illustrated by a recent empirical study suggesting that decision-makers are more likely to infer group liability in cases involving defendants of color, yet more likely to treat white defendants as individuals.[13] The degree to which a person is seen as an individual impacts their liability in a felony murder case because defendants "who are perceived more as members of groups, and less as individuals, would likely be held more responsible for the crimes of accomplices, whereas defendants who are perceived more as individuals would be likely to be held less responsible for the crimes of accomplices."[14] This suggests that 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.

Given these conditions, it is no surprise that stark racial disproportionality among felony murder convictions have been demonstrated in California,[15] Colorado,[16] Illinois,[17] Massachusetts,[18] Minnesota,[19] Missouri,[20] and Pennsylvania.[21] Felony murder laws also

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[11] Moriearty et al., *supra* note 2 at 737; *see also* G. Ben Cohen, et al., *Racial Bias, Accomplice Liability, and The Felony Murder Rule: a National Empirical Study*, 101 Denver L. Rev. 65, 75 (2024) ("Unlike the majority of elements in a criminal prosecution, the felony murder rule and accomplice liability doctrine invite jurors to engage in an imaginative inquiry whereby both intent and action are inferred").

[12] *See, e.g.*, Moriearty et al., *supra* note 2 at 729 ("By reducing the legal elements that prosecutors must prove while allowing them to charge a wide range of defendants with murder, we claim that charging decisions in imputed liability murder cases are necessarily less dependent on the law and the evidence, and more apt to be driven by extra-legal factors, than their direct liability murder counterparts.").

[13] Cohen, et al., *supra* note 11 at 108 (noting that study "[p]articipants were significantly more likely to quickly group together Black and Latino names with words associated with groups, such as 'group, pack, crew, them, crowd, folks, bunch,' and white faces with individuality, such as 'individual, self, one, solo, single, somebody, character'").

[14] *Id*. at 104.

[15] Committee on Revision of the Penal Code, Annual Report and Recommendations, 51 (2021); Catherine Grosso, et al., *Death by Stereotype: Race, Ethnicity, and California's Failure to Implement Furman's Narrowing Requirement*, 66 UCLA L. Rev. 1394, 1442 (2019).

[16] David Pyrooz, *Demographics, Trends, and Disparities in Colorado Felony Murder Cases: A Statistical Portrait* (August 1, 2023), https://ssrn.com/abstract=4527501.

[17] Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 Miss. L.J. 481, 504 & 510 (2023).

[18] Amicus Brief of the BU Center for Antiracist Research et al, Commonwealth v. Shepherd, No. SJC-12405, (Mass. October 16, 2023).

[19] *See* Greg Egan, *George Floyd's Legacy: Reforming, Relating, and Rethinking Through Chauvin's Conviction and Appeal Under a Felony-Murder Doctrine Long-Weaponized Against People of Color,* 39 Law & Ineq. 543, 547-56 (2021); Lindsay Turner, *Task Force on Aiding and Abetting Felony Murder, Report to the Minnesota Legislature* (2022), https://mn.gov/doc/assets/AAFM-LegislativeReport_2-1-22_tcm1089-517039.pdf.

[20] Ghandnoosh et al., *supra* note 5 at 5.

[21] Andrea Lindsay & Clara Rawlings, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment of Race*, Philadelphia Lawyers for Social Equity

target people within and at the intersection of multiple interlocking systems of oppression[22]—including young people, people with disabilities, women, and survivors of domestic and sexual violence. Due to structural racism, these targeted aspects of the felony murder rule also contribute to its racially disparate impact.

- Felony murder prosecutions target **young people**, frequently imposing lifetime punishments for outcomes that a young person had little capacity to anticipate.[23] Data from Pennsylvania and Minnesota show that most people convicted of felony murder are under 25[24] and in California the average age of a felony murder conviction is 18.[25] The felony murder rule's impact on youth is also racialized: since Black and brown youth are perceived as older[26] and disproportionately policed, prosecuted, and punished, [27] they are also disproportionately exposed to felony-murder convictions.[28]

- Community organizers have highlighted the impact of felony murder laws on people who have experienced bullying, abuse, or exclusion, and therefore may be influenced by peer pressure dynamics. This may include people with **histories of trauma**, and **people with disabilities**, including developmental disabilities, among others.

- Felony murder laws criminalize and punish **survivors of domestic violence, sexual violence, trafficking, and other forms of exploitation**.[29] Survivors of

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(2021),https://plsephilly.org/wp-content/uploads/2021/04/PLSE_SecondDegreeMurder_and_Race_Apr2021.pdf.

[22] Combahee River Collective, The Combahee River Collective Statement, https://americanstudies.yale.edu/sites/default/files/files/Keyword%20Coalition_Readings.pdf

[23] Stuti S. Kokkalera, et al., *Too Young for the Crime, Yet Old Enough to do Life: A Critical Review of How State Felony Murder Laws Apply to Juvenile Defendants*, 4 J. Crim. Just. & L. 90, 103 (2021) (concluding the "felony murder rule facilitates the sentencing of adolescents who did not commit nor intend the actual act of murder"); Beth Caldwell, *The Twice Diminished Culpability of Juvenile Accomplices to Felony Murder*, 11 U.C. Irvine L. Rev. 905, 907 (2021) (noting "felony murder laws are a driving force behind the high numbers of young offenders in the United States who have been sentenced to spend the rest of their lives in prison").

[24] Ghandnoosh et al., *supra* note 5 at 2.

[25] Daniel Trautfield, UCLA Center for the Study of Women/Streisand Center Special Circumstances Conviction Project, Life Without Parole and Felony Murder Sentencing in California 9 (2023), https://csw.ucla.edu/wp-content/uploads/2023/07/SCCP_Life_Without_Parole_Sentencing.pdf

[26] The Equal Justice Initiative, *The Superpredator Myth*, 25 Years Later (2014) https://eji.org/news/superpredator-myth-20-years-later/.

[27] *See* Mass. Juv. Just. Pol'y & Data Bd., *Racial and Ethnic Disparities at the Front Door of Massachusetts' Juvenile Justice System: Understanding the Factors Leading to Overrepresentation of Black and Latino Youth Entering the System* 3-4 (2022), https://www.mass.gov/doc/racial-ethnic-disparities-at-the-front-door-of-massachusetts-juvenile-justice-system-understanding-the-factors-leading-to-overrepresentation-of-black-and-latino-youth-entering-the-system/download (finding, in Massachusetts, Black and Latino youth are more likely to be referred to Juvenile Court than White youth and are far more likely to experience custodial arrest versus summons).

[28] *See id.* at 4 & n.6 (citing studies demonstrating negative long-term impacts of arresting young people).

[29] Kellie C. Murphy, *Beyond Cyntoia Brown: How Women End Up Incarcerated for Self Defense* Rolling Stone, Jan. 28, 2019, https://www.rollingstone.com/culture/culture-features/cyntoia-brown-beyond-other-cases-775874/.

abuse can be exposed to felony murder charges because they are present during–or coerced to participate in– their abusive partner's violence, frequently under the risk of facing lethal violence themselves if they do not comply. Because survivors are frequently not believed about their experiences—or not seen as victims of violence because they did not leave their abusers—they end up further victimized by the state when charged and convicted of felony murder. A survey study conducted by the California Coalition for Women Prisoners found "the majority of their members convicted of felony murder were accomplices navigating intimate partner violence at the time of the offense and were criminalized for acts of survival."[30] Due to racism, Black and brown people face systemic and structural barriers to leaving abusive situations, putting them at higher risk for felony-murder charges.[31] Research shows that Black and brown survivors of domestic violence have experienced mistreatment and neglect by the very institutional providers that are supposed to assist them.[32] Many survivors report that their ability to leave an abusive situation is impacted "by other forms of violence and abandonment," including police violence and lack of adequate resources.[33] These racialized structural barriers to leaving abusive situations can contribute to racial disparities in felony-murder prosecutions.

The felony murder rule's uneven application along race, class, and gender lines illustrates that it is a tool of harm, not of safety or repair.

Felony Murder Laws Do Not Promote Healing or Restitution for Survivors of Violence

Felony murder laws and the extreme sentences they carry do not prevent violence or promote repair. While felony murder convictions often involve high restitution fees, these debts fall on incarcerated people who generally cannot get jobs in their prison facilities due to restrictions and priority ranking systems that exclude people with murder convictions. Felony murder laws also separate families and disrupt communities, which contribute to structural violence rather than reducing it.

We can do more for the safety and wellbeing of our communities by following the leadership of the people and organizations already building responses to harm that are not part of the criminal legal system. This can look like:

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[30]Ghandnoosh et al., *supra* note 5 at 6; *see also* Savanna Jones, *Ending Extreme Sentencing Is a Women's Rights Issue*, 23 Geo. J. Gender & L. 1, 3-4 (2022) (describing how women may engage in felony conduct to defend themselves from abuse); Melissa Dichter & Sue Osthoff, Nat'l Online Resource Ctr. on Violence Against Women, Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update (2015) (describing paths from abuse to incarceration, including use of violence in response to abuse).

[31] Bernadine Y. Waller, et al., *Caught in the Crossroad: An Intersectional Examination of African American Women Intimate Partner Violence Survivors' Help Seeking*, 23 Trauma Violence Abuse 1235, 1244 (2022).

[32] *Id*.

[33] Survived & Punished, Defending Self-Defense (2022) https://survivedandpunished.org/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf.

1) **Building accountable communities and supporting practices like transformative justice and restorative justice**. Creating communities focused on addressing issues together in ways that interrupt racism and other forms of systemic and interpersonal violence can reduce the amount of harm that happens in the first place. Through methods like transformative justice, we can also build ways to address the needs of people that are harmed and create accountability without focusing on punishment. Learn more about these concepts and organizers engaged in this work at https://transformharm.org/.
2) **Returning incarcerated people—including those on felony murder charges—back to their communities**. The prison system is a racist tool that breaks apart families and communities. The pain and hardship caused by the prison system continues cycles of harm and we can interrupt it by reducing the number of incarcerated people immediately. Ending felony murder means ensuring that people incarcerated for felony murder charges can return to their communities.
3) **Creating a society that meets the needs of everyone**. We can prevent harm at the source by ensuring that everyone has what they need such as healthcare and housing. Such support is especially important for people who have been incarcerated. If everyone has what they need we can focus instead on building accountable communities.[34]

These are just some examples of work happening across the country. It will take collective work to build systems of accountability that are not focused on punishment and long sentences. Fortunately, many people have started the work already and we can continue to grow new ways to interrupt and respond to harm that are not focused on incarceration.

The Felony Murder Rule is Just One Part of a Vast Web of Criminalization and Incarceration

Felony murder laws are just one part of a vast web of criminalization and punishment that hurts all of us. No one is disposable, and banishment is not a solution to social problems.

There is a growing recognition of the need to confront mass criminalization and punishment in the United States, which has been called "the world's leader in incarceration."[35] Reducing the size and scope of the carceral state requires intervening in the legal doctrines that feed it, and transforming the way we respond to violence.[36]

[34] National Council for Incarcerated and Formerly Incarcerated Women and Girls, https://www.nationalcouncil.us/reimagining-communities.
[35] The Sentencing Project, Growth in Mass Incarceration, https://www.sentencingproject.org/research/
[36] Michelle Alexander, *Reckoning with Violence*, N.Y. Times, Mar. 3, 2019, https://www.nytimes.com/2019/03/03/opinion/violence-criminal-justice.html

Repealing felony murder laws represent one step towards untangling a web of punishment that exerts extreme harm without promoting meaningful healing or accountability for survivors of violence.

FELONY MURDER REPEAL ACT
A Model Bill

Below is an outline of key provisions that we recommend state policymakers consider if they aim to produce a bill repealing a state's felony murder law. The main aim of a bill like this would be to (1) remove felony murder provisions from a state's homicide laws, so that the prosecution would have to meet the same burden of proof as in cases where there was no felony participation; and (2) make that statutory change retroactive.

We recognize that legislative processes are very different in each state. Throughout this bill, we have included footnotes addressing ways that these bill provisions may need to be amended based on local rules or context. Additionally, we have highlighted areas that would need to be filled in with state-specific information.

However, we hope that this model may provide a useful starting place for people seeking to end the use of felony murder laws in their state.

I. Legislative Intent[37]
   A. The power to define crimes and fix penalties is vested exclusively in the Legislative branch, subject to the state constitution and United States Constitution.
   B. There is a need for statutory changes to end murder convictions in which proof of intent to commit an independent felony substitutes for the mental state otherwise required for murder.
   C. It is necessary to amend [insert applicable statutes for the state's the felony murder law and any related doctrines[38]] to effectuate this bill.
   D. Pursuant to this bill, proof of a person's intent to commit a felony cannot be substituted for proof that a person acted with the culpable mental state for murder, defined by law as follows.
      1. [insert culpable mental state for first degree murder]

[37] Proponents of this bill should verify whether a section on legislative intent is necessary in their state, and should amend the language in this section as necessary to reflect state requirements or strategic considerations.

[38] Some jurisdictions may refer to the doctrines of "transferred intent" or "constructive malice" to describe the process of substituting intent to commit a felony for the mental state otherwise required for murder. Proponents of this bill should determine whether these doctrines are used in your state, and whether they should be named in a model bill on this subject. Similarly, proponents of this bill should address related doctrines that may have a similar effect as felony murder laws, such as the natural and probable consequences doctrine.

2. [insert culpable mental state for second degree murder]
3. [insert culpable mental state for third degree murder]

E. This bill would provide a means of vacating a person's conviction and resentencing them where a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of felony murder, and the defendant was sentenced—after a trial or plea—for murder or attempted murder based on a theory of felony murder.[39]

II. This is a bill to repeal felony murder

A. [language to amend the state penal code and get rid of felony murder liability. Process will differ depending on what category the state falls in]:

1. Felony murder in more than one statutory degree of murder
2. Felony murder in first degree murder statute
3. Felony murder in second degree murder statute
4. Felony murder in stand-alone statute
5. Felony murder in general murder statute

III. Retroactivity[40]

A. Eligibility[41]

1. A person convicted of felony murder or attempted murder under a theory of felony murder may file a petition for resentencing pursuant to this bill when the following conditions apply:
    a) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder [or related doctrine];

[39] Proponents of this bill should explore possible avenues of relief for people who were charged with felony murder but ultimately pleaded to manslaughter. It is well-established that felony murder charges serve a coercive function in plea negotiations, compelling people to accept pleas to more severe offenses and sentences than they would otherwise. Moreover, this process is frequently racialized, disproportionately harming people of color. Proponents of a bill repealing felony murder should work with public defense offices in their states to consider how bills may afford an avenue of resentencing for people who were charged with felony murder but ultimately convicted of manslaughter.

[40] We have included features of retroactivity that we consider to be important for the reasons noted throughout. However, proponents of this bill should develop a retroactivity process in partnership with defense attorneys in their state and should take into consideration whether there are any existing legal mechanisms that should or could be used for resentencing.

[41] Proponents of this bill should review these eligibility requirements and tailor them as needed to comport with their state's felony murder laws.

b) the defendant was sentenced—after a trial or plea—for [insert applicable degree] murder or attempted [insert applicable degree] murder.

B. A petitioner who is eligible for relief pursuant to this bill may have their conviction vacated and be resentenced on:
   1. the underlying felony;
   2. a lesser-included offense;
   3. any other offense charged in the complaint, information, or indictment; or
   4. any offense agreed upon by the parties.

C. Petition for relief
   1. A standardized petition form will be developed by [insert applicable administrative court agency].[42]
   2. The petition shall include all of the following:
      a) A declaration by the petitioner that they are eligible for relief under this section;
      b) The petitioner's case number and year of conviction;
      c) Whether the petitioner requests appointment of counsel.[43]
   3. Distribution of Petition Form
      a) The [insert name of state's department of corrections] will make the petition form available to all incarcerated people free of cost;
      b) The petition form will be available for download on a publicly available court website and [insert name of state's department of corrections] website;
      c) The petition form will be available by phone or in-person request to a designated clerk at each state trial and appellate court with criminal jurisdiction.
   4. Filing of Petition Form and Assignment of Three-Judge Panel
      a) The petition shall be filed in the county court where the petitioner was convicted and sentenced.
      b) The county court shall send the petition to the district attorney and the attorney who represented the petitioner or the public defender of the county where the petitioner was convicted.

[42] Proponents of this bill should determine the appropriate administrative agency or committee to be tasked with developing this form.

[43] Proponents of this bill should work with the public defense offices in their state to address any appropriations needs related to the appointment of counsel for petitioners.

c) The county court will transfer the petition to a designated panel of three judges assigned to hear all petitions arising from this Act.[44]
d) Any judge on the panel who presided over the trial or sentencing of the petitioner shall be recused from the panel and replaced with an alternate judge;

5. Appointment of counsel
    a) Petitioners who request the appointment of counsel shall be appointed counsel within 30 days.
6. Response and Reply
    a) The prosecution shall file and serve a response to the petition within 60 days of receiving the petition.
    b) The petitioner may file and serve a reply within 30 days after the prosecution response is served, or within 30 days of the appointment of counsel.

D. Hearing
1. If the petitioner has shown that they were charged under a felony-murder theory of liability and convicted—after a trial or plea—of [insert applicable degree] murder or attempted [insert applicable degree] murder, the court shall issue an order to show cause.
2. Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the petitioner's murder conviction, and resentence the petitioner on: the underlying felony; a lesser-included offense; an offense charged in the information, complaint or indictment; or any other offense

[44] Proponents of this bill should work with relevant court administration offices to determine the necessary number of three judge panels to be created for the purpose of hearing petitions arising out from this Act. The creation of a three-judge panel to hear all petitions arising from this Act is the preferred method of judicial review because the panel will gain expertise regarding this Act and the retroactive relief it provides. By creating an expert panel of judges rather than distributing cases to individual judges across the state, this Act will promote the efficient, consistent, and cost-effective administration of justice. If a proponent of this bill finds that a judicial panel is not possible in their state, an alternative option includes the random assignment of petitions, as follows: "Petitions for relief shall be randomly assigned by the administrative judge designated by the office of court administration with jurisdiction over the county where the application is filed to any trial court judge with criminal jurisdiction other than the judge who first sentenced the applicant unless the judge who first sentenced the applicant is the only judge in that county."

agreed-upon by the parties. The new sentence imposed may not exceed the initial sentence.

3. The petitioner shall receive at least one 60-day extension of time for the hearing upon request. Additional extensions may be granted at the discretion of the court.
4. The hearing shall be recorded or transcribed. The petitioner has the right to be present at any such hearing unless the petitioner waives the right to be present in writing.
5. If the prosecution contests the petitioner's eligibility, the burden shall be on the prosecution to prove beyond a reasonable doubt that the petitioner was convicted of an offense other than felony murder.
6. The prosecution and petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.
7. Petitioner may also offer new mitigating evidence, including evidence of post-incarceration activities;
8. If the prosecution meets its burden, the conviction remains the same.
9. If the prosecution does not meet its burden, the conviction will be vacated and an alternative conviction and sentence will be imposed by the court.
10. Any applicable statute of limitations shall not be a bar to the court's/commission's redesignation of the offense for this purpose.

E. Stipulations
   1. At any time after the filing of a petition, the parties may stipulate that the petitioner is eligible to have their conviction vacated and be resentenced.
   2. In such cases, the court shall vacate the petitioner's conviction and resentence them, or state the reason for rejecting the stipulated agreement.
   3. A judge's decision to reject the stipulated agreement will not be afforded deference on appeal.

F. Alignment with Victim's Bill of Rights[45]
   1. This bill should conform with the Victim's Bill of Rights

G. Right to Appeal

[45] Anyone seeking to propose this bill should amend this section to cross-cite and conform to the Victim's Bill of Rights in their state or, if there is no such bill, any other notice requirements regarding survivors of violence.

1. An appeal may be taken as of right, in accordance with applicable provisions of this chapter,
    a) from an order denying the petition for a vacatur; or
    b) from a new sentence imposed under this section and may be based on the grounds that:
        (1) the term of the new sentence is harsh or excessive; or
        (2) the term of the new sentence is unauthorized as a matter of law.

H. This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner

I. A person who is resentenced pursuant to this section shall be given credit for time served.

J. Data Collection and Transparency
    1. The [insert applicable court administrative agency] shall be responsible for developing a data collection and reporting plan pursuant to this section.
    2. The court shall collect the following data regarding petitioners who come before the court for resentencing pursuant to this bill:
        a) Race
        b) Ethnicity/National Origin
        c) Gender
        d) Age at time of conviction
        e) Age at time of petition
        f) Outcome of petition
            (1) Any change in offense of conviction
            (2) Any change in sentence
    3. The court shall make de-identified data available to the public.