



SPONSOR: Sen. Vaughn & Rep. Spence

DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 238

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO HOMICIDE OFFENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §635(2), Title 11 of the Delaware Code by striking the language of that subsection in its entirety and by substituting in lieu thereof the following:

"While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person, with criminal negligence, causes the death of another person."

Section 2. Amend §636(a)(2), Title 11 of the Delaware Code by striking the language of that paragraph in its entirety and by substituting in lieu thereof the following:

"While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person."

Section 3. Amend §636(a)(6), Title 11 of the Delaware Code by striking the language of that paragraph in its entirety and by redesignating the remaining paragraphs of §636(a), Title 11 of the Delaware Code accordingly.

#### SYNOPSIS

This Act updates the language used to define the crimes of felony murder in the Delaware criminal code. This Act eliminates the phrase "in the course of and in furtherance of" a felony that currently appears in Delaware's felony murder statutes. This language is used in the felony murder statutes of only a few other states. The Act will instead adopt language defining felony murder which is similar to the language used by thirty-eight other states, and which is already used in the felony murder provisions of Delaware's death penalty statute.

The phrase "in furtherance of" as it appears in Delaware's existing felony murder law seems to require proof that a defendant specifically committed the homicide so as to complete his or her underlying felonious objective which is a showing more consistent with intentional murder as it is defined elsewhere in the criminal code. *See, e.g., Williams v. State*, 818 A.2d 906 (Del. 2003). Recently, the Delaware Supreme Court has held that the wording of the felony murder statute means that there must be evidence that a killing was "intended to help the [underlying] felony progress." *Williams v. State*, 818 A.2d at 912. Consequently, the wording of our existing felony murder statute requires an interpretation that is inconsistent with the common law rule, and with the definition of felony murder in almost every other state, which does not require evidence of specific intent in a felony murder prosecution. Given the wording of the existing felony murder statute, certain particularly heinous murders that occur during the commission of another felony will not be prosecutable as felony murders.

By adopting a definition of felony murder identical to the felony murder definition in Delaware's death penalty statute and similar to that used by a majority of other states, the application of the felony murder law will be more readily

understood and consistent. As defined under this Act, “while” engaged in felonious conduct will mean only that the killing must be directly associated with the predicate felony as one continuous occurrence. *See, e.g., State v. McNeill*, 700 N.E.2d 696 (Ohio 1998). The Delaware felony murder rule will continue to require proof of a defendant’s criminal *mens rea* in causing the death of another as a result of his or her crime, which thus ensures that a causative relationship exists between the defendant’s (or his or her criminal associate’s) perpetration or attempted perpetration of or flight from the predicate felony and the homicide.

This Act will further the goal of ensuring that the most serious homicides are classified as Murder in the First Degree by maintaining the existing components of our felony murder laws which provide that intentional or reckless killings committed during the course of the commission of another felony will be classified as Murder in the First Degree, while re-classifying criminally negligent killings during the commission of another felony as Murder in the Second Degree.

This Act will also ensure compliance with even the strictest interpretation of the United States Supreme Court decision in *Ring v. Arizona*, 536 U.S. 584 (2002). Other aspects of the present judicial interpretation of Delaware’s felony murder rule would remain unaffected by this Act, including but not limited to: (1) co-defendant liability under felony murder statute (*E.g., Claudio v. State*, 585 A.2d 1278, 1282 (Del. 1991)); (2) the use of evidence of the underlying felony to establish guilt of murder and applicable sentencing aggravator (*E.g., Riley v. State*, 496 A.2d 997 (1985), *cert. denied*, 478 U.S. 1022 (1986); *see also Deputy v. Taylor*, 19 F.3d 1485 (3d Cir.), *cert. denied*, 512 U.S. 1230 (1994)); (3) separate convictions and sentences possible for felony murder and intentional murder and the fact that, under Delaware law, such convictions do not merge (*E.g., Liu v. State*, 628 A.2d 1376 (Del. 1993); *Steckel v. State*, 711 A.2d 5 (Del. 1998)); (4) separate convictions and sentences possible for felony murder and underlying felony (*E.g., Martin v. State*, 433 A.2d 1025 (1981), *cert. denied*, 454 U.S. 1151 (1982)); (5) separate felony murder charges possible based on each predicate felony (*E.g., Johnson v. State*, 709 A.2d 1158 (1998)); and (6) the lesser included offense doctrine of felony murder cases (*E.g., Whalen v. State*, 434 A.2d 1346 (1980), *cert. denied*, 455 U.S. 910 (1982)).

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