



**House  
Legislative  
Analysis  
Section**

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## 1ST DEGREE FELONY MURDER: PAROLE

House Bill 6181 with committee amendments  
House Bill 6182 as introduced  
First Analysis (11-29-90)

Sponsor: Rep. Nelson Saunders  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

Roughly speaking, a "felony murder" is one which occurs in connection with the commission of a felony; under Section 316 of the Michigan Penal Code, a murder committed in conjunction with any of several specified crimes is a first degree murder. On November 24, 1980, with its decision on People v. Aaron (409 Mich. 672, 299 NW 2d 304), the Michigan Supreme Court held that in order to convict a defendant of murder, it must be shown that he or she acted "with intent to kill or to inflict great bodily harm or with a wanton and willful disregard of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm." In other words, malice must be shown. The court also held that the issue of malice must always be submitted to the jury. The court decided that Michigan had no felony murder rule that allowed the mental element of murder to be satisfied by proof of the intention to commit the underlying felony. With respect to Section 316 of the penal code, the court said that murder would first have to be proved before the statute could be applied to elevate the offense to first degree murder.

Aaron applied to all trials then in progress and occurring after the date it was issued. However, Michigan prisons hold a number of people sentenced to life in prison without parole under Section 316 of the penal code. With at least some of those people, there is a question of whether justice is served by such a sentence. One well-publicized case is that of Ahmad Abdur-Rahman (formerly Ronald Irwin), who was found guilty of first degree murder for his participation, at age 19, in a 1971 Black Panther raid on a suspected drug house (it turned out that the Panthers evidently were wrong in their suspicions). According to newspaper accounts, Mr. Abdur-Rahman was searching upstairs rooms when one of his companions killed an occupant on a floor below. While his accomplices plead guilty to lesser charges and have since been released, Mr. Abdur-Rahman plead innocent and was convicted of first degree murder under the felony murder statute as it was then construed. Mr. Abdur-Rahman has been widely described as a model prisoner deserving of parole or commutation.

It has been proposed that Michigan statute be amended in light of the Supreme Court's decision in People v. Aaron, and that prisoners convicted of first degree felony murder before that decision was issued be eligible for parole if malice was not proved.

### ***THE CONTENT OF THE BILLS:***

House Bill 6181 would amend the corrections code to place under parole board jurisdiction certain prisoners sentenced to life for first degree murder. The prisoner would be under parole board jurisdiction only if he or she was convicted of felony murder (that is, murder occurring in the course of a felony) before November 25, 1980, and neither the prisoner's intention to kill or do great bodily harm, nor a disregard of the likelihood that someone would be harmed, had been proved in the trial for felony murder.

Paroles under the bill would be subject to existing provisions that require at least ten years to be served and specify regular interviews with a member of the parole board. Before a prisoner could be paroled under the bill, a public hearing would be held in the manner prescribed for pardons and commutations. The sentencing judge (or his or her successor) would be notified of the hearing, as would the prosecutor. Both could present written or oral testimony to the parole board.

MCL 791.234 and 791.244

House Bill 6182 would amend the section of the Michigan Penal Code that makes a murder committed in conjunction with any of several specified crimes a first degree murder. The bill would specify that someone convicted of felony murder under this section before November 25, 1980 would be subject to the jurisdiction of the parole board as provided by Section 234 of the corrections code (MCL 791.234), which would be amended by House Bill 6181.

MCL 750.316

The bills are not tie-barred; either could take effect by itself.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency notes that the bills would have some fiscal impact, the extent of which would depend on the number of prisoners involved, and the relative costs of housing the prisoners and holding hearings as required under House Bill 6181. (11-28-90)

### ***ARGUMENTS:***

#### ***For:***

The bills would make it possible for justice to be done in the cases of Ahmad Abdur-Rahman and others who were unfairly sentenced to life in prison without parole under an interpretation of law that has since been struck down by the supreme court. It is clearing unjust for a person to be convicted of first degree murder if the necessary intent has not been proved, but under the felony murder statute as once construed, a conviction of armed robbery in a situation where an accomplice unexpectedly killed someone was sufficient for a conviction of first degree murder. As noted by the supreme court, such a felony murder rule "violates the basic premise of individual moral culpability upon which our criminal law is based." The bills would offer these prisoners the possibility of parole, if the facts of their cases and their conduct in prison warranted it.

#### ***Against:***

The bills propose to make eligible for parole prisoners who are incarcerated for valid convictions obtained under the law in existence at the time. While judges and prosecutors would be

able to offer evidence that argued against the prisoner's release, good information will be difficult if not impossible to obtain for convictions obtained decades ago. Further, it is not clear who is to make the determination that malice was not proved at trial, thus placing the prisoner in question under parole board jurisdiction; presumably, the parole board itself is to make this determination. Neither is it clear how such a determination is to be made; again, adequate evidence is apt to be lacking for convictions dating ten years or more back to a time when the elements specified by the bill did not have to be proved. The law already provides a remedy for situations where justice is not served by the continued incarceration of a prisoner: commutation. Under the bills, the legitimate commutation powers of the governor would be bypassed.

***POSITIONS:***

The Michigan Council on Crime and Delinquency supports the bills. (11-28-90)

The Prosecuting Attorneys Association of Michigan opposes the bills. (11-28-90)