



# A NEW APPROACH TO FELONY- MURDER IN ILLINOIS

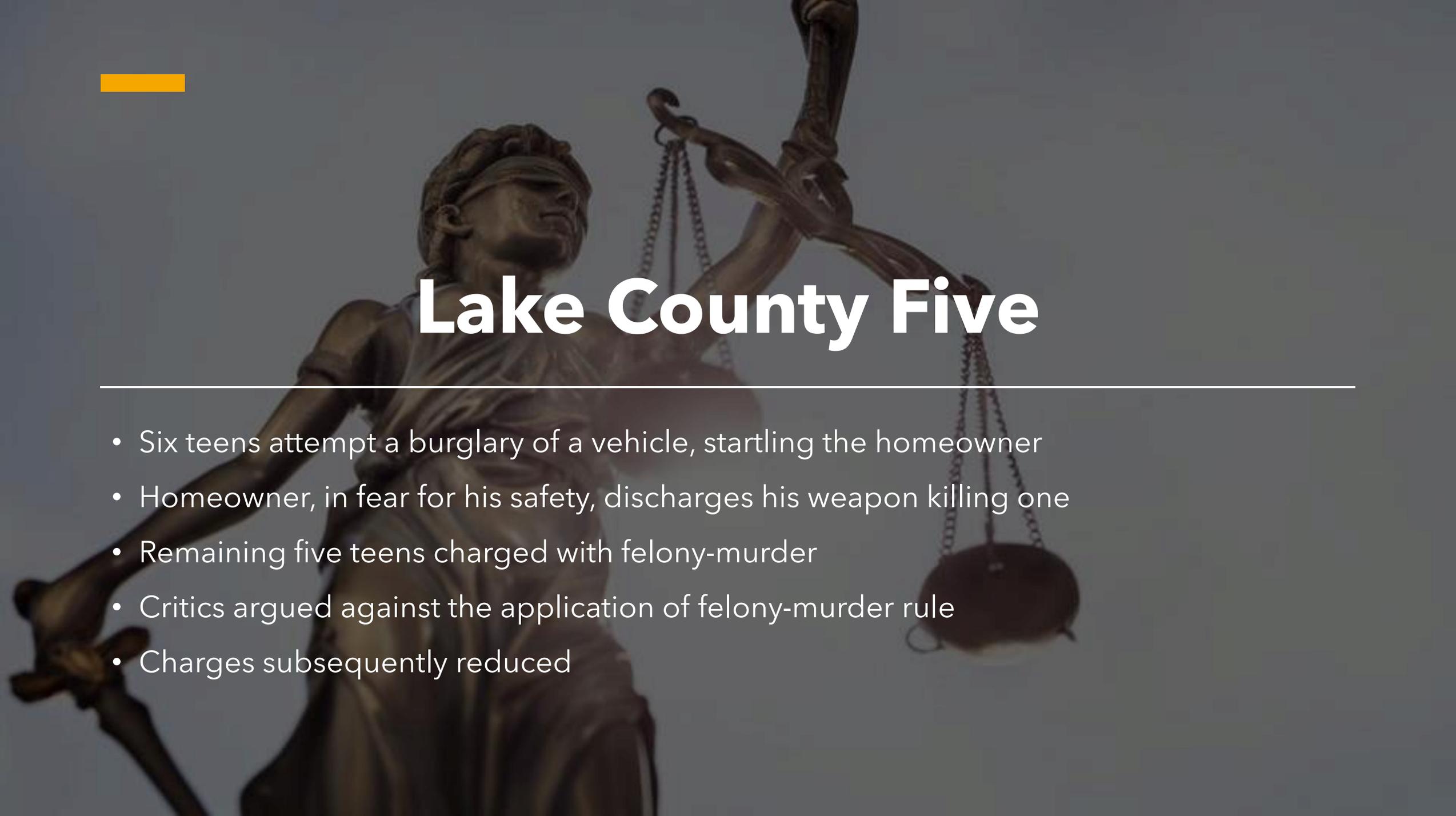
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# Lake County Five

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- Six teens attempt a burglary of a vehicle, startling the homeowner
- Homeowner, in fear for his safety, discharges his weapon killing one
- Remaining five teens charged with felony-murder
- Critics argued against the application of felony-murder rule
- Charges subsequently reduced

# Advocates for reform argue . . .

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Excessively  
broad

Creates  
mass  
incarceration

Unfair to  
juveniles

Does not  
create safer  
communities

Abused by  
prosecutors

Heavy  
handed

No deterrent  
effect

# Advocates for a strict approach argue...

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Deterrent effect

Dangerousness of  
the underlying  
felony can lead to  
foreseeable  
consequences

Value of the co-  
felon's life

Prevention of the  
death of innocent  
people

# History of Felony Murder in America

- English common law applied to commission of any felony.
- U.S. later restricted to cases involving "high risk of death."
- 45 states recognize felony-murder in some capacity. Only five states have completely abolished the doctrine.
- 27 states have adopted the "agency" theory.
- 18 states have adopted the "proximate cause" theory.
- Federal Courts also apply "proximate cause."

# Proximate Cause v. Agency

- Proximate Cause (minority) states: A defendant can be held responsible for the death of another, if the actions committed during the forcible felony **sets in motion a chain of events which were or should have been in contemplation when the motion was initiated.**
- Agency (majority) states: if a killing occurs growing out of the commission of a felony, no liability will attach if the actions are **directly attributed to one other than the defendant or those who took part in the underlying felony.**

# Illinois Felony-Murder

- Earliest known statute resembling felony murder referenced in committee comments.
- Butler v. People (1888) - Agency
- People v. Payne (1935) - Proximate Cause
- Illinois amends felony-murder (1961) "he or she is attempting or committing a forcible felony other than second degree murder."
- All subsequent cases since held "reasonably foreseeable that forcible felonies can lead to death." (Proximate cause)
- People v. Lowery (1997)



# IL HB 3653: Criminal Justice Omnibus Bill

- Several versions of felony-murder (agency) prior to final bill.
- HB 1615 - "in the course and furtherance of the crime, he personally causes the death . . ."
- SB 2292 - "he personally causes the death," and adds that co-felon "knew that the other participant would engage in conduct that would result in death or GBH."



## **HB 3653 cont.**

- New Law: “[H]e or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he or she or another participant causes the death of a person.”

# Alabama Felony-Murder



- Alabama's felony-murder statute nearly identical to 2021 Illinois version
- Witherspoon v. State - 2009 cited Illinois cases in support of "proximate cause" theory.

# Alabama v. Illinois

- Alabama: "He or she commits (forcible felony) . . . and, in the course of and in furtherance of the crime that he or she is committing or attempting to commit . . . he or she, or another participant, if there be any, causes the death of any person."
- Illinois: "He or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony, . . . and in the course of or in furtherance of such crime, or flight therefrom, he or she or another participant causes the death of a person."

# Issues & Solutions

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- Interpretation
  - No floor discussion
- Alabama's interpretation
- Justifiable self-defense
- Deterrence?
- Sentencing
  - Downgrade the offense

