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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1406

02/08/2023 Authored by Frazier, Tabke, Moller, Becker-Finn and Feist
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; limiting liability for felony murder committed by another
1.3 person; extending the task force on aiding and abetting felony murder; providing
1.4 for a report; amending Minnesota Statutes 2022, section 609.05, by adding a
1.5 subdivision.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2022, section 609.05, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 2a. Exception. (a) A person may not be held criminally liable for a violation of
1.10 section 609.185, paragraph (a), clause (3), committed by another unless the person
1.11 intentionally aided, advised, hired, counseled, or conspired with or otherwise procured the
1.12 other with the intent to cause the death of a human being.

1.13 (b) A person may not be held criminally liable for a violation of section 609.19,
1.14 subdivision 2, clause (1), committed by another unless the person was a major participant
1.15 in the underlying felony and acted with extreme indifference to human life.

1.16 EFFECTIVE DATE. This section is effective August 1, 2023, and applies to crimes
1.17 committed on or after that date.

1.18 Sec. 2. LIABILITY FOR MURDER COMMITTED BY ANOTHER; RETROACTIVE
1.19 APPLICATION.

1.20 Subdivision 1. Purpose. Any person convicted of a violation of Minnesota Statutes,
1.21 section 609.185, paragraph (a), clause (3), or 609.19, subdivision 2, clause (1), and in the

2.1 custody of the commissioner of corrections or under court supervision is entitled to petition
2.2 to have the person's conviction vacated pursuant to this section.

2.3 Subd. 2. **Notification.** (a) By October 1, 2023, the commissioner of corrections shall
2.4 notify individuals convicted for a violation of Minnesota Statutes, section 609.185, paragraph
2.5 (a), clause (3), or 609.19, subdivision 2, clause (1), of the right to file a preliminary
2.6 application for relief if:

2.7 (1) the person was convicted for a violation of Minnesota Statutes, section 609.185,
2.8 paragraph (a), clause (3), and did not actually cause the death of a human being or
2.9 intentionally aid, advise, hire, counsel, or conspire with or otherwise procure another with
2.10 the intent to cause the death of a human being; or

2.11 (2) the person was convicted for a violation of Minnesota Statutes, section 609.19,
2.12 subdivision 2, clause (1), and did not actually cause the death of a human being or was not
2.13 a major participant in the underlying felony who acted with extreme indifference to human
2.14 life.

2.15 (b) The notice shall include the address of the Ramsey County District Court court
2.16 administration.

2.17 (c) The commissioner of corrections may coordinate with the judicial branch to establish
2.18 a standardized notification form.

2.19 Subd. 3. **Preliminary application.** (a) An applicant shall submit a preliminary application
2.20 to the Ramsey County District Court. The preliminary application must contain:

2.21 (1) the applicant's name and, if different, the name under which the person was convicted;

2.22 (2) the applicant's date of birth;

2.23 (3) the district court case number of the case for which the person is seeking relief;

2.24 (4) a statement as to whether the applicant was convicted following a trial or pursuant
2.25 to a plea;

2.26 (5) a statement as to whether the person filed a direct appeal from the conviction, a
2.27 petition for postconviction relief, or both;

2.28 (6) a brief statement, not to exceed 2,000 words, explaining why the applicant is entitled
2.29 to relief from a conviction for the death of a human being caused by another; and

2.30 (7) the name and address of any attorney representing the applicant.

2.31 (b) The preliminary application may contain:

3.1 (1) the name, date of birth, and district court case number of any other person charged
3.2 with, or convicted of, a crime arising from the same set of circumstances for which the
3.3 applicant was convicted; and

3.4 (2) a copy of a criminal complaint or indictment, or the relevant portions of a presentence
3.5 investigation or life imprisonment report, describing the facts of the case for which the
3.6 applicant was convicted.

3.7 (c) The judicial branch may establish a standardized preliminary application form, but
3.8 shall not reject a preliminary application for failure to use a standardized form.

3.9 (d) Any person seeking relief under this section must submit a preliminary application
3.10 no later than October 1, 2024. Submission is complete upon mailing.

3.11 (e) Submission of a preliminary application shall be without costs or any fees charged
3.12 to the applicant.

3.13 **Subd. 4. Review of preliminary application.** (a) Upon receipt of a preliminary
3.14 application, the court administrator of the Ramsey County District Court shall immediately
3.15 direct attention of the filing thereof to the chief judge or judge acting on the chief judge's
3.16 behalf who shall promptly assign the matter to a judge in said district.

3.17 (b) The judicial branch may appoint a special master to review preliminary applications
3.18 and may assign additional staff as needed to assist in the review of preliminary applications.

3.19 (c) The reviewing judge shall determine whether, in the discretion of that judge, there
3.20 is a reasonable probability that the applicant is entitled to relief under this section.

3.21 (d) In making the determination under paragraph (c), the reviewing judge shall consider
3.22 the preliminary application and any materials submitted with the preliminary application
3.23 and may consider relevant records in the possession of the judicial branch.

3.24 (e) The court may summarily deny an application when the applicant is not in the custody
3.25 of the commissioner of corrections or under court supervision; the applicant was not
3.26 convicted of a violation of Minnesota Statutes, section 609.185, paragraph (a), clause (3),
3.27 or 609.19, subdivision 2, clause (1), before August 1, 2023; the issues raised in the application
3.28 are not relevant to the relief available under this section or have previously been decided
3.29 by the court of appeals or the supreme court in the same case; or the applicant has filed a
3.30 second or successive preliminary application.

3.31 (f) If the reviewing judge determines that there is a reasonable probability that the
3.32 applicant is entitled to relief, the judge shall send notice to the applicant and the applicant's
3.33 attorney, if any, and the prosecutorial office responsible for prosecuting the applicant. In

4.1 the event the applicant is without counsel, the reviewing judge shall send notice to the state
4.2 public defender and shall advise the applicant of such referral.

4.3 (g) If the reviewing judge determines that there is not a reasonable probability that the
4.4 applicant is entitled to relief, the judge shall send notice to the applicant and the applicant's
4.5 attorney, if any.

4.6 Subd. 5. **Petition for relief; hearing.** (a) Within 60 days of receipt of the notice sent
4.7 pursuant to subdivision 4, paragraph (f), the individual seeking relief shall file and serve a
4.8 petition to vacate the conviction. The petition shall contain the information identified in
4.9 subdivision 3, paragraph (a), and a statement of why the petitioner is entitled to relief. The
4.10 petition may contain any other relevant information including police reports, trial transcripts,
4.11 and plea transcripts involving the petitioner or any other person investigated for, charged
4.12 with, or convicted of a crime arising out of the same set of circumstances for which the
4.13 petitioner was convicted. The filing of the petition and any document subsequent thereto
4.14 and all proceedings thereon shall be without costs or any fees charged to the petitioner.

4.15 (b) A county attorney representing the prosecutorial office shall respond to the petition
4.16 by answer or motion within 30 days after the filing of the petition pursuant to paragraph
4.17 (a), unless extended for good cause. The response shall be filed with the court administrator
4.18 of the district court and served on the petitioner if unrepresented or on the petitioner's
4.19 attorney. The response may serve notice of the intent to support the petition or include a
4.20 statement explaining why the petitioner is not entitled to relief along with any supporting
4.21 documents. The filing of the response and any document subsequent thereto and all
4.22 proceedings thereon shall be without costs or any fees charged to the county attorney.

4.23 (c) Within 30 days of receipt of the response from the county attorney, the court shall:

4.24 (1) issue an order pursuant to subdivision 6 and schedule the matter for sentencing or
4.25 resentencing pursuant to subdivision 6, paragraph (e), if the county attorney indicates an
4.26 intent to support the petition;

4.27 (2) issue an order denying the petition if additional information or submissions establish
4.28 that there is not a reasonable probability that the applicant is entitled to relief under this
4.29 section; or

4.30 (3) schedule the matter for a hearing and issue any appropriate order regarding submission
4.31 of evidence or identification of witnesses.

5.1 (d) The hearing shall be held in open court and conducted pursuant to Minnesota Statutes,
5.2 section 590.04, except that the petitioner must be present at the hearing, unless excused
5.3 under Rules of Criminal Procedure, rule 26.03, subdivision 1, clause (3).

5.4 Subd. 6. **Determination; order; resentencing.** (a) A petitioner who was convicted of
5.5 a violation of Minnesota Statutes, section 609.185, paragraph (a), clause (3), is entitled to
5.6 relief if the petitioner:

5.7 (1) did not cause the death of a human being; and

5.8 (2) did not intentionally aid, advise, hire, counsel, or conspire with or otherwise procure
5.9 another with the intent to cause the death of a human being.

5.10 (b) A petitioner who was convicted of a violation of Minnesota Statutes, section 609.19,
5.11 subdivision 2, clause (1), is entitled to relief if the petitioner:

5.12 (1) did not cause the death of a human being; and

5.13 (2) was not a major participant in the underlying felony and did not act with extreme
5.14 indifference to human life.

5.15 (c) If the court determines that the petitioner does not qualify for relief, the court shall
5.16 issue an order denying the petition. If the court determines that the petitioner is entitled to
5.17 relief, the court shall issue an order vacating the conviction for a violation of Minnesota
5.18 Statutes, section 609.185, paragraph (a), clause (3), or 609.19, subdivision 2, clause (1),
5.19 and either:

5.20 (1) resentence the petitioner for any other offense for which the petitioner was convicted;
5.21 or

5.22 (2) enter a conviction and impose a sentence for any other predicate felony arising out
5.23 of the course of conduct that served as the factual basis for the conviction vacated by the
5.24 court.

5.25 (d) The court shall state in writing or on the record the reasons for its decision on the
5.26 petition.

5.27 (e) If the court intends to resentence a petitioner or impose a sentence on a petitioner,
5.28 the court must hold the hearing at a time that allows any victim an opportunity to submit a
5.29 statement consistent with Minnesota Statutes, section 611A.038. The prosecutor shall make
5.30 a good faith and reasonable effort to notify any person determined to be a victim of the
5.31 hearing and the right to submit or make a statement. A sentence imposed under this
5.32 subdivision shall not increase the petitioner's period of confinement or, if the petitioner was

6.1 servicing a stayed sentence, increase the period of supervision. A person resentenced under
6.2 this paragraph is entitled to credit for time served in connection with the vacated offense.

6.3 (f) Relief granted under this section shall not be treated as an exoneration for purposes
6.4 of the Incarceration and Exoneration Remedies Act.

6.5 **EFFECTIVE DATE.** This section is effective August 1, 2023.

6.6 **Sec. 3. TASK FORCE ON AIDING AND ABETTING FELONY MURDER.**

6.7 (a) Laws 2021, First Special Session chapter 11, article 2, section 53, subdivisions 2, 3,
6.8 4, and 5, are revived and reenacted on the effective date of this section to expand the focus
6.9 of the task force's duties and work beyond the intersection of felony murder and aiding and
6.10 abetting liability for felony murder to more generally apply to the broader issues regarding
6.11 the state's felony murder doctrine and aiding and abetting liability schemes discussed in
6.12 "Task Force on Aiding and Abetting Felony Murder," Report to the Minnesota Legislature,
6.13 dated February 1, 2022, "The Task Force's recommendations," number 4.

6.14 (b) On or before January 15, 2024, the task force shall submit a report to the chairs and
6.15 ranking minority members of the house of representatives and senate committees and
6.16 divisions with jurisdiction over crime and sentencing on the findings and recommendations
6.17 of the task force.

6.18 (c) The task force expires January 16, 2024, or the day after submitting its report under
6.19 paragraph (b), whichever is earlier.

6.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.21 **Sec. 4. TASK FORCE ON AIDING AND ABETTING FELONY MURDER;**
6.22 **APPROPRIATION.**

6.23 \$..... in fiscal year 2024 is appropriated from the general fund to the commissioner of
6.24 corrections to implement the task force on aiding and abetting felony murder.