

FIRST EXTRAORDINARY SESSION OF THE
SECOND REGULAR SESSION

HOUSE BILL NO. 3

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WASHINGTON.

5808H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 565.021 and 565.029, RSMo, and to enact in lieu thereof three new sections relating to murder charges resulting from the commission of a felony, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 565.021 and 565.029, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 558.042, 565.021, and 565.029, to read as follows:

558.042. 1. A person convicted of murder in the second degree under subdivision (2) of subsection 1 of section 565.021 as it existed prior to the effective date of such section may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed with charges under subdivision (2) of subsection 1 of section 565.021 as it existed prior to the effective date of such section;

(2) The petitioner was convicted of murder in the second degree under subdivision (2) of subsection 1 of section 565.021 as it existed prior to the effective date of such section following a trial or after accepting a plea offer in lieu of a trial at which the petitioner could be convicted of murder in the second degree under subdivision (2) of subsection 1 of section 565.021 as it existed prior to the effective date of such section; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (3) The petitioner could not be convicted of murder in the second degree under
15 subsection 1 of section 565.021 on or after the effective date of such section.

16 2. (1) The petition shall be filed with the court that sentenced the petitioner and
17 served by the petitioner on the prosecuting attorney and the attorney who represented the
18 petitioner at the time the petitioner was convicted. If the judge who originally sentenced
19 the petitioner is not available to resentence the petitioner, the presiding judge shall
20 designate another judge to rule on the petition. The petition shall include all of the
21 following:

22 (a) A declaration by the petitioner that he or she is eligible for relief under this
23 section based on all the requirements under subsection 1 of this section;

24 (b) The underlying case number and the year of the petitioner's conviction; and

25 (c) Whether the petitioner requests the appointment of counsel.

26 (2) If any of the information required by subdivision (1) of this subsection is
27 missing from the petition and cannot be readily ascertained by the court, the court may
28 deny the petition without prejudice to the filing of another petition and advise the
29 petitioner that the matter cannot be considered without the missing information.

30 3. The court shall review the petition and determine if the petitioner has made a
31 prima facie showing that the petitioner falls within the provisions of this section. If the
32 petitioner has requested counsel, the court shall appoint counsel to represent the petitioner.
33 The prosecutor shall file and serve a response within sixty days of service of the petition,
34 and the petitioner may file and serve a reply within thirty days after the prosecutor's
35 response is served. Such deadlines shall be extended for good cause. If the petitioner
36 makes a prima facie showing that he or she is entitled to relief, the court shall issue an
37 order to show cause.

38 4. (1) Within sixty days after the order to show cause has been issued, the court
39 shall hold a hearing to determine whether to vacate the murder conviction and to recall the
40 sentence and resentence the petitioner on any remaining counts in the same manner as if
41 the petitioner had not been previously sentenced, provided that the new sentence, if any,
42 is not greater than the initial sentence. The deadline under this subdivision may be
43 extended for good cause.

44 (2) The parties may waive a resentencing hearing and stipulate that the petitioner
45 is eligible to have his or her murder conviction vacated and for resentencing.

46 (3) At the hearing to determine whether the petitioner is entitled to relief, the
47 burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the
48 petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of
49 proof, the prior conviction, and any allegations and enhancements attached to the

50 conviction, shall be vacated and the petitioner shall be resentenced on the remaining
51 charges. The prosecutor and the petitioner may rely on the record of conviction or offer
52 new or additional evidence to meet their respective burdens.

53 5. If the petitioner is entitled to relief under this section, murder in the second
54 degree under subdivision (2) of subsection 1 of section 565.021 as it existed prior to the
55 effective date of such section was charged, and the underlying felony offense was not
56 charged, the petitioner's conviction shall be redesignated as the underlying felony for
57 resentencing purposes. Any applicable statute of limitations shall not be a bar to the
58 court's redesignation of the offense for this purpose.

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

61 7. A person who is resentenced under this section shall be given credit for time
62 served. The judge may order the petitioner to be subject to parole supervision for up to
63 three years following the completion of the sentence.

565.021. 1. A person commits the offense of murder in the second degree if he or she:

2 (1) Knowingly causes the death of another person or, with the purpose of causing serious
3 physical injury to another person, causes the death of another person; or

4 (2) ~~[Commits or attempts to commit any felony, and, in the perpetration or the attempted~~
5 ~~perpetration of such felony or in the flight from the perpetration or attempted perpetration of~~
6 ~~such felony, another person is killed as a result of the perpetration or attempted perpetration of~~
7 ~~such felony or immediate flight from the perpetration of such felony or attempted perpetration~~
8 ~~of such felony]~~ Participates in the perpetration or attempted perpetration of a felony in
9 which the death of a person occurs and one of the following is true:

10 (a) The person actually caused such death;

11 (b) The person did not actually cause such death, but, with the intent to cause the
12 death, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted a
13 person to cause such death; or

14 (c) The person was a major participant in the underlying felony and acted with
15 reckless indifference to human life.

16 2. In determining whether a person was a major participant in the underlying
17 felony, the jury or, in a jury-waived trial, the judge shall consider the following:

18 (1) The person's role in planning the crime that led to the death or deaths;

19 (2) The person's role in supplying or using lethal weapons;

20 (3) The person's knowledge about the dangers posed by the crime, any weapons
21 used, or past experience or conduct of the other participant or participants;

22 (4) If the person was in a position to facilitate or prevent the death;

23 **(5) If the person's action or inaction played a role in the death; and**

24 **(6) The person's actions after lethal force was used.**

25 **3.** The offense of murder in the second degree is a class A felony, and the punishment
26 for second degree murder shall be in addition to the punishment for commission of a related
27 felony or attempted felony, other than murder or manslaughter.

28 ~~[3-]~~ **4.** Notwithstanding section 556.046 and section 565.029, in any charge of murder
29 in the second degree, the jury shall be instructed on, or, in a jury-waived trial, the judge shall
30 consider, any and all of the subdivisions in subsection 1 of this section which are supported by
31 the evidence and requested by one of the parties or the court.

565.029. 1. With the exceptions provided in subsection 3 of this section and subsection
2 ~~[3]~~ **4** of section 565.021, section 556.046 shall be used for the purpose of consideration of lesser
3 offenses by the trier in all homicide cases.

4 2. The following lists shall comprise, in the order listed, the lesser degree offenses:

5 (1) The lesser degree offenses of murder in the first degree are:

6 (a) Murder in the second degree under subdivisions (1) and (2) of subsection 1 of section
7 565.021;

8 (b) Voluntary manslaughter under subdivision (1) of subsection 1 of section 565.023;

9 (c) Involuntary manslaughter in the first degree; and

10 (d) Involuntary manslaughter in the second degree;

11 (2) The lesser degree offenses of murder in the second degree are:

12 (a) Voluntary manslaughter under subdivision (1) of subsection 1 of section 565.023;

13 (b) Involuntary manslaughter in the first degree; and

14 (c) Involuntary manslaughter in the second degree.

15 3. No instruction on a lesser included offense shall be submitted unless requested by one
16 of the parties or the court.

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