

SECOND REGULAR SESSION

# HOUSE BILL NO. 2522

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WASHINGTON.

3097H.011

DANA RADEMAN MILLER, Chief Clerk

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## 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.

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*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Section A. Sections 565.021 and 565.029, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 558.042, 565.021, and 565.029, to read as follows: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 August 28, 2020, 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 August 28, 2020;**

**(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 August 28, 2020, 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 August 28, 2020; and**

**(3) The petitioner could not be convicted of murder in the second degree under subsection 1 of section 565.021 on or after August 28, 2020.**

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.

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 that 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 petitioner 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 been sentenced, provided that the new sentence, if**  
42 **any, 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 resented 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 August**  
55 **28, 2020, was charged, and the underlying felony offense was not charged, the petitioner's**  
56 **conviction shall be redesignated as the underlying felony for resentencing purposes. Any**  
57 **applicable statute of limitations shall not be a bar to the court's redesignation of the offense**  
58 **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]~~ **With the intent to cause the death of another person, aided, abetted,**  
9 **counseled, commanded, induced, solicited, requested, or assisted a person to cause the**  
10 **death of another person; or**

11 (3) **Was a major participant in the underlying felony that resulted in the death of**  
12 **another person.**

13 **2. In determining whether a person was a major participant in the underlying**  
14 **felony, the court shall consider the following:**

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

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

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

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

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

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

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

25           ~~[3-]~~ **4.** Notwithstanding section 556.046 and section 565.029, in any charge of murder  
26 in the second degree, the jury shall be instructed on, or, in a jury-waived trial, the judge shall  
27 consider, any and all of the subdivisions in subsection 1 of this section which are supported by  
28 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), **and 3** of subsection  
7 1 of section 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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