

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 3840

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DATE	D-PG	OFFICIAL STATUS
03/09/2022	5255	Introduction and first reading
		Referred to Judiciary and Public Safety Finance and Policy
03/28/2022	5660	Author added Cwodzinski

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 2020, sections 609.05, subdivisions 1,

1.5

2; 609.185; 609.19, subdivision 2.

1.6

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

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Section 1. Minnesota Statutes 2020, section 609.05, subdivision 1, is amended to read:

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Subdivision 1. **Aiding, abetting; liability.** A person is criminally liable for a crime

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committed by another, except for a violation of section 609.185, paragraph (a), clause (2),

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(3), (5), (6), or (7), or 609.19, subdivision 2, paragraph (a), clause (1), if the person

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intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other

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to commit the crime.

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Sec. 2. Minnesota Statutes 2020, section 609.05, subdivision 2, is amended to read:

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Subd. 2. **Expansive liability.** A person liable under subdivision 1 is also liable for any

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other crime, except for a violation of section 609.185, paragraph (a), clause (2), (3), (5),

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(6), or (7), or 609.19, subdivision 2, paragraph (a), clause (1), committed in pursuance of

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the intended crime if reasonably foreseeable by the person as a probable consequence of

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committing or attempting to commit the crime intended.

2.1 Sec. 3. Minnesota Statutes 2020, section 609.185, is amended to read:

2.2 **609.185 MURDER IN THE FIRST DEGREE.**

2.3 (a) Whoever does any of the following is guilty of murder in the first degree and shall
2.4 be sentenced to imprisonment for life:

2.5 (1) causes the death of a human being with premeditation and with intent to effect the
2.6 death of the person or of another;

2.7 (2) causes the death of a human being while committing or attempting to commit criminal
2.8 sexual conduct in the first or second degree with force or violence, either upon or affecting
2.9 the person or another;

2.10 (3) causes the death of a human being with intent to effect the death of the person or
2.11 another, while committing or attempting to commit burglary, aggravated robbery, kidnapping,
2.12 arson in the first or second degree, a drive-by shooting, tampering with a witness in the first
2.13 degree, escape from custody, or any felony violation of chapter 152 involving the unlawful
2.14 sale of a controlled substance;

2.15 (4) causes the death of a peace officer, prosecuting attorney, judge, or a guard employed
2.16 at a Minnesota state or local correctional facility, with intent to effect the death of that person
2.17 or another, while the person is engaged in the performance of official duties;

2.18 (5) causes the death of a minor while committing child abuse, when the perpetrator has
2.19 engaged in a past pattern of child abuse upon a child and the death occurs under
2.20 circumstances manifesting an extreme indifference to human life;

2.21 (6) causes the death of a human being while committing domestic abuse, when the
2.22 perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another
2.23 family or household member and the death occurs under circumstances manifesting an
2.24 extreme indifference to human life; or

2.25 (7) causes the death of a human being while committing, conspiring to commit, or
2.26 attempting to commit a felony crime to further terrorism and the death occurs under
2.27 circumstances manifesting an extreme indifference to human life.

2.28 (b) For the purposes of paragraph (a), clause (4), "prosecuting attorney" has the meaning
2.29 given in section 609.221, subdivision 2, paragraph (c), clause (4).

2.30 (c) For the purposes of paragraph (a), clause (4), "judge" has the meaning given in section
2.31 609.221, subdivision 2, paragraph (c), clause (5).

(d) For purposes of paragraph (a), clause (5), "child abuse" means an act committed against a minor victim that constitutes a violation of the following laws of this state or any similar laws of the United States or any other state: section 609.221; 609.222; 609.223; 609.224; 609.2242; 609.342; 609.343; 609.344; 609.345; 609.377; 609.378; or 609.713.

(e) For purposes of paragraph (a), clause (6), "domestic abuse" means an act that:

(1) constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.342, 609.343, 609.344, 609.345, 609.713, or any similar laws of the United States or any other state; and

(2) is committed against the victim who is a family or household member as defined in section 518B.01, subdivision 2, paragraph (b).

(f) For purposes of paragraph (a), clause (7), "further terrorism" has the meaning given in section 609.714, subdivision 1.

(g) A person who commits or attempts to commit a felony listed in paragraph (a), clause (2), (3), or (7), in which a death occurs, or commits a felony listed in paragraph (a), clause (5) or (6), in which a death occurs, is guilty of murder in the first degree and shall be sentenced to imprisonment for life only if the person was:

(1) the person who actually caused the death; or

(2) not the person who actually caused the death but, with the intent to cause the death, intentionally aided, advised, hired, counseled, conspired with, or otherwise procured the other person to commit murder in the first degree.

Sec. 4. Minnesota Statutes 2020, section 609.19, subdivision 2, is amended to read:

Subd. 2. **Unintentional murders.** (a) Whoever does either of the following is guilty of unintentional murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting; or

(2) causes the death of a human being without intent to effect the death of any person, while intentionally inflicting or attempting to inflict bodily harm upon the victim, when the perpetrator is restrained under an order for protection and the victim is a person designated to receive protection under the order. As used in this clause, "order for protection" includes an order for protection issued under chapter 518B; a harassment restraining order issued

under section 609.748; a court order setting conditions of pretrial release or conditions of a criminal sentence or juvenile court disposition; a restraining order issued in a marriage dissolution action; and any order issued by a court of another state or of the United States that is similar to any of these orders.

(b) A person who commits or attempts to commit a felony listed in paragraph (a), clause (1), in which a death occurs is guilty of murder in the second degree only if the person was:

(1) the person who actually caused the death; or

(2) a major participant in the underlying felony and acted with extreme indifference to human life.

Sec. 5. LIABILITY FOR CRIMES OF ANOTHER; RETROACTIVE APPLICATION.

(a) A person convicted of a violation of Minnesota Statutes, section 609.185, paragraph (a), clause (2), (3), (5), (6), or (7), may file a petition to have the person's conviction vacated when the following apply:

(1) the person was found liable for a crime committed by another;

(2) the person did not actually cause the death; and

(3) the person did not intend to cause the death.

(b) A person convicted of a violation of Minnesota Statutes, section 609.19, subdivision 2, paragraph (a), clause (1), may file a petition to have the person's conviction vacated when the following apply:

(1) the person was found liable for a crime committed by another;

(2) the person did not actually cause the death; and

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

(c) The person described in paragraphs (a) and (b) shall file a petition under this section with the district court that sentenced the person and shall serve the petition upon the prosecutorial office in the jurisdiction. Any filing fee for this petition is waived. The petition shall be signed under oath by the petitioner and state the following:

(1) the petitioner's full name;

(2) the petitioner's date of birth;

5.1 (3) the district court case number and year of the petitioner's conviction;

5.2 (4) a declaration that the petitioner is eligible for relief and the grounds upon which
5.3 relief is based; and

5.4 (5) whether the petitioner requests appointment of counsel.

5.5 (d) The prosecutorial office that had jurisdiction over the offense may file a petition on
5.6 behalf of a person described in paragraph (a). Any filing fee for a petition filed by the
5.7 prosecutorial office is waived. The prosecutorial office must provide notice to the person
5.8 on whose behalf the petition is filed.

5.9 (e) Within 30 days of service of the petition, the prosecutorial office in the jurisdiction
5.10 may file a response to the petition. The response shall address the petitioner's eligibility for
5.11 relief.

5.12 (f) Within ten days of service of the prosecutor's response, the petitioner may file a reply
5.13 to the response.

5.14 (g) Within 30 days of the receipt of the petition, the prosecution's response, and the
5.15 petitioner's reply, the court shall review the parties' filings and determine whether the
5.16 petitioner has made a prima facie showing that the petitioner is entitled to relief. If any of
5.17 the information required by this subdivision is missing from the petition and cannot be
5.18 readily ascertained by the court, the court may deny the petition without prejudice to the
5.19 filing of another petition and advise the petitioner that the matter cannot be considered
5.20 without the missing information. If the court determines that the petitioner did not make a
5.21 prima facie showing, the court may request that the petitioner supplement the petition or
5.22 enter an order denying the petition. If the court determines that the petitioner has made a
5.23 prima facie showing, the court shall set the matter for a hearing.

5.24 (h) Unless the parties agree to a different time, the hearing shall be scheduled within 90
5.25 days of the court's determination that a petitioner has made a prima facie showing. This
5.26 deadline may be extended by agreement of the parties or for good cause. The prosecutorial
5.27 office in the jurisdiction shall promptly notify all victims of the date of the hearing as
5.28 required under Minnesota Statutes, section 611A. The parties may submit written arguments
5.29 to the court prior to the date of the hearing and may make oral arguments before the court
5.30 at the hearing. The parties may waive a resentencing hearing and stipulate that the petitioner
5.31 is eligible to have the conviction vacated and for resentencing. The petitioner must be present
5.32 at the hearing, unless excused under Rules of Criminal Procedure, rule 26.03, subdivision
5.33 1, clause (3). The prosecutor and the petitioner may rely on the record of conviction or offer

new or additional evidence at the hearing. The court may cancel the hearing if the parties stipulate that the petitioner is eligible to have the conviction vacated.

(i) If the court determines that the petitioner is entitled to relief, the court shall vacate the conviction for a violation of Minnesota Statutes, section 609.185, paragraph (a), clause (2), (3), (5), (6), or (7), or 609.19, subdivision 2, paragraph (a), clause (1), and, if applicable, either:

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

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

(j) Victims shall have the right to submit a statement to the court at the time of any resentencing as provided in Minnesota Statutes, section 611A.038.

(k) A sentence imposed under paragraph (i) may not increase the petitioner's period of confinement or, if the petitioner was serving a stayed sentence, increase the period of supervision.

(l) A person who is resentenced under paragraph (i) is entitled to credit for time served in connection with the vacated offense.

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

EFFECTIVE DATE. This section is effective August 1, 2022.

Sec. 6. TASK FORCE ON AIDING AND ABETTING FELONY MURDER.

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

(b) On or before January 15, 2022, the task force shall submit a report to the chairs and ranking minority members of the house of representatives and senate committees and

7.1 divisions with jurisdiction over crime and sentencing on the findings and recommendations
7.2 of the task force.

7.3 (c) The task force expires January 16, 2022, or the day after submitting its report under
7.4 paragraph (b), whichever is earlier.

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