

HOUSE BILL 1115

E1, E2

1lr2270

By: **Delegate Wilson**

Introduced and read first time: February 5, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Felony Murder – Limitations and Review**

3 FOR the purpose of altering the required elements for murder in the first degree under
4 certain circumstances; authorizing a certain person to petition for a review of certain
5 conviction under certain circumstances; requiring a court to hold a hearing at a
6 certain time to make a certain determination; requiring a certain person to notify
7 certain persons of a certain petition for review of conviction; requiring a court to take
8 certain actions under certain circumstances; making conforming changes; and
9 generally relating to felony murder.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Law
12 Section 2–201
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2020 Supplement)

15 BY adding to
16 Article – Criminal Law
17 Section 2–201.1
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2020 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Criminal Law**

23 2–201.

24 (a) A murder is in the first degree if it is:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (1) a deliberate, premeditated, and willful killing;
- 2 (2) committed by lying in wait;
- 3 (3) committed by poison; or
- 4 (4) committed in the perpetration of or an attempt to perpetrate:
- 5 (i) arson in the first degree;
- 6 (ii) burning a barn, stable, tobacco house, warehouse, or other
7 outbuilding that:
- 8 1. is not parcel to a dwelling; and
- 9 2. contains cattle, goods, wares, merchandise, horses, grain,
10 hay, or tobacco;
- 11 (iii) burglary in the first, second, or third degree;
- 12 (iv) carjacking or armed carjacking;
- 13 (v) escape in the first degree from a State correctional facility or a
14 local correctional facility;
- 15 (vi) kidnapping under § 3–502 or § 3–503(a)(2) of this article;
- 16 (vii) mayhem;
- 17 (viii) rape;
- 18 (ix) robbery under § 3–402 or § 3–403 of this article;
- 19 (x) sexual offense in the first or second degree;
- 20 (xi) sodomy as that crime existed before October 1, 2020; or
- 21 (xii) a violation of § 4–503 of this article concerning destructive
22 devices.

23 **(B) A PERSON PARTICIPATING IN THE PERPETRATION OF OR AN ATTEMPT**
24 **TO PERPETRATE AN OFFENSE SPECIFIED IN SUBSECTION (A)(4) OF THIS SECTION**
25 **MAY NOT BE CHARGED WITH MURDER IN THE FIRST DEGREE UNLESS:**

26 **(1) THE PERSON COMMITTED THE KILLING;**

1 **(2) THE PERSON DID NOT COMMIT THE KILLING, BUT WITH INTENT TO**
2 **KILL:**

3 **(I) AIDED OR ABETTED THE ACTUAL KILLER;**

4 **(II) COUNSELED THE ACTUAL KILLER;**

5 **(III) COMMANDED THE ACTUAL KILLER;**

6 **(IV) INDUCED THE ACTUAL KILLER;**

7 **(V) SOLICITED THE KILLING;**

8 **(VI) REQUESTED THE KILLING; OR**

9 **(VII) ASSISTED THE ACTUAL KILLER;**

10 **(3) THE PERSON WAS A MAJOR PARTICIPANT IN THE UNDERLYING**
11 **FELONY AND ACTED WITH RECKLESS INDIFFERENCE TO HUMAN LIFE; OR**

12 **(4) THE VICTIM WAS A PEACE OFFICER WHO WAS KILLED IN THE**
13 **COURSE OF PERFORMING THE VICTIM'S DUTIES AND WHERE THE DEFENDANT KNEW**
14 **OR SHOULD REASONABLY HAVE KNOWN THE VICTIM WAS A PEACE OFFICER**
15 **ENGAGED IN THE PERFORMANCE OF THE VICTIM'S DUTIES.**

16 **[(b)] (C) (1)** A person who commits a murder in the first degree is guilty of a
17 felony and on conviction shall be sentenced to:

18 (i) imprisonment for life without the possibility of parole; or

19 (ii) imprisonment for life.

20 (2) Unless a sentence of imprisonment for life without the possibility of
21 parole is imposed in compliance with § 2-203 of this subtitle and § 2-304 of this title, the
22 sentence shall be imprisonment for life.

23 **[(c)] (D)** A person who solicits another or conspires with another to commit
24 murder in the first degree is guilty of murder in the first degree if the death of another
25 occurs as a result of the solicitation or conspiracy.

26 **2-201.1.**

27 **(A) A PERSON CONVICTED OF FELONY MURDER UNDER § 2-201(A)(4) OF**
28 **THIS SUBTITLE MAY FILE A PETITION WITH THE SENTENCING COURT TO VACATE THE**

1 MURDER CONVICTION AND TO RESENTENCE THE PERSON ON ANY REMAINING
2 CHARGES IF THERE IS A SUBSTANTIAL OR SIGNIFICANT POSSIBILITY THAT THE
3 PERSON COULD NOT BE CONVICTED OF FIRST DEGREE MURDER UNDER § 2-201 OF
4 THIS SUBTITLE AFTER OCTOBER 1, 2021.

5 (B) THE PERSON SHALL FILE THE PETITION WITH THE SENTENCING COURT
6 WITH SERVICE TO THE STATE'S ATTORNEY AND THE ATTORNEY WHO REPRESENTED
7 THE PERSON AT TRIAL OR THE PUBLIC DEFENDER OF THE COUNTY WHERE THE
8 PERSON WAS CONVICTED.

9 (C) IF THE SENTENCING JUDGE IS NOT AVAILABLE, THE PRESIDING JUDGE
10 SHALL DESIGNATE ANOTHER JUDGE TO RULE ON THE PETITION.

11 (D) (1) THE PETITION SHALL INCLUDE:

12 (I) A DECLARATION THAT THE PETITIONER IS ELIGIBLE FOR
13 RELIEF UNDER THIS SECTION, BASED ON THE REQUIREMENTS OF SUBSECTION (A)
14 OF THIS SECTION;

15 (II) THE CASE NUMBER AND YEAR OF THE CASE; AND

16 (III) IF APPLICABLE, A REQUEST FOR THE APPOINTMENT OF
17 COUNSEL.

18 (2) IF ANY INFORMATION REQUIRED BY THIS SECTION IS MISSING
19 FROM THE PETITION AND CANNOT BE READILY ASCERTAINED BY THE COURT, THE
20 COURT MAY DENY THE PETITION WITHOUT PREJUDICE TO THE FILING OF ANOTHER
21 PETITION AND ADVISE THAT THE MATTER CANNOT BE CONSIDERED WITHOUT THE
22 MISSING INFORMATION.

23 (E) (1) THE COURT SHALL:

24 (I) REVIEW THE PETITION AND DETERMINE IF THE PETITIONER
25 HAS MADE A PRIMA FACIE SHOWING THAT THE PERSON IS ELIGIBLE FOR RELIEF
26 UNDER THIS SECTION; AND

27 (II) IF THE PETITION INCLUDES A REQUEST FOR THE
28 APPOINTMENT OF COUNSEL, APPOINT COUNSEL.

29 (2) (I) THE STATE'S ATTORNEY SHALL FILE AND SERVE A
30 RESPONSE WITHIN 60 DAYS AFTER SERVICE OF THE PETITION.

1 **(II) THE PETITIONER MAY FILE AND SERVE A REPLY WITHIN 30**
2 **DAYS AFTER THE STATE’S ATTORNEY’S RESPONSE IS SERVED.**

3 **(III) THE COURT MAY EXTEND THE DEADLINES FOR GOOD**
4 **CAUSE.**

5 **(3) (I) IF THE PETITIONER MAKES A PRIMA FACIE SHOWING FOR**
6 **ELIGIBILITY FOR RELIEF UNDER THIS SECTION, THE COURT SHALL SCHEDULE A**
7 **HEARING ON THE PETITION TO DETERMINE WHETHER TO VACATE THE CONVICTION**
8 **AND RESENTENCE THE PETITIONER ON ANY REMAINING CHARGES, PROVIDED THAT**
9 **THE NEW SENTENCE, IF ANY, IS NOT GREATER THAN THE ORIGINAL SENTENCE.**

10 **(II) IF A PETITIONER IS RESENTENCED UNDER THIS SECTION,**
11 **THE COURT SHALL GIVE THE PETITIONER CREDIT FOR TIME SERVED.**

12 **(4) (I) AT THE HEARING, THE STATE HAS THE BURDEN TO PROVE,**
13 **BEYOND A REASONABLE DOUBT, THAT THE PETITIONER IS NOT ELIGIBLE FOR**
14 **RESENTENCING.**

15 **(II) IF THE STATE FAILS TO SUSTAIN ITS BURDEN OF PROOF,**
16 **THE PRIOR CONVICTION, AND ANY ALLEGATIONS AND ENHANCEMENTS ATTACHED**
17 **TO THE CONVICTION, SHALL BE VACATED AND THE PETITIONER SHALL BE**
18 **RESENTENCED ON THE REMAINING CHARGES.**

19 **(III) THE STATE MAY RELY ON THE RECORD OF CONVICTION OR**
20 **OFFER NEW OR ADDITIONAL EVIDENCE TO MEET ITS BURDEN OF PROOF.**

21 **(F) THIS SECTION DOES NOT DIMINISH OR ABROGATE ANY RIGHTS OR**
22 **REMEDIES OTHERWISE AVAILABLE TO THE PETITIONER.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2021.