

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 3669

(SENATE AUTHORS: OUMOU VERBETEN, Mann, Westlin and Pratt)

DATE	D-PG	OFFICIAL STATUS
02/15/2024	11595	Introduction and first reading
		Referred to Judiciary and Public Safety
02/29/2024		Comm report: To pass as amended
		Second reading

1.1 A bill for an act

1.2 relating to public safety; clarifying eligibility standard applicable to retroactive

1.3 relief for certain persons convicted of aiding and abetting felony murder; making

1.4 conforming changes; amending Minnesota Statutes 2023 Supplement, sections

1.5 638.12, subdivision 2; 638.15, subdivision 1; Laws 2023, chapter 52, article 4,

1.6 section 24, subdivisions 3, 4, 7.

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

1.8 Section 1. Minnesota Statutes 2023 Supplement, section 638.12, subdivision 2, is amended

1.9 to read:

1.10 Subd. 2. **Pardon eligibility; waiver.** (a) Except as provided in paragraphs (b) and (c),

1.11 an individual convicted of a crime in a court of this state may apply for a pardon of the

1.12 individual's conviction on or after five years from the sentence's expiration or discharge

1.13 date.

1.14 (b) An individual convicted before August 1, 2023, of a violation of section 609.19,

1.15 subdivision 1, clause (1), under the theory of liability for crimes of another may apply for

1.16 a pardon upon the sentence's expiration or discharge date if the individual:

1.17 (1) was charged with a violation of section 609.185, paragraph (a), clause (3), and:

1.18 (i) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);

1.19 (ii) did not cause the death of a human being; and

1.20 (iii) did not intentionally aid, advise, hire, counsel, or conspire with or otherwise procure

1.21 another with the intent to cause the death of a human being; or

1.22 (2) was charged with a violation of section 609.19, subdivision 2, and:

2.1 (i) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);

2.2 (ii) did not cause the death of a human being; and

2.3 (iii) was not a major participant, as defined in section 609.05, subdivision 2a, paragraph
2.4 (c), in the underlying felony ~~and~~ or did not act with extreme indifference to human life.

2.5 (c) An individual may request the board to waive the waiting period if there is a showing
2.6 of unusual circumstances and special need.

2.7 (d) The commission must review a waiver request and recommend to the board whether
2.8 to grant the request. When considering a waiver request, the commission is exempt from
2.9 the meeting requirements under section 638.14 and chapter 13D.

2.10 (e) The board must grant a waiver request unless the governor or a board majority opposes
2.11 the waiver.

2.12 **EFFECTIVE DATE.** This section is effective July 1, 2024.

2.13 Sec. 2. Minnesota Statutes 2023 Supplement, section 638.15, subdivision 1, is amended
2.14 to read:

2.15 Subdivision 1. **Grounds for recommending clemency.** (a) When recommending whether
2.16 to grant clemency, the commission must consider any factors that the commission deems
2.17 appropriate, including but not limited to:

2.18 (1) the nature, seriousness, and circumstances of the applicant's crime; the applicant's
2.19 age at the time of the crime; and the time that has elapsed between the crime and the
2.20 application;

2.21 (2) the successful completion or revocation of previous probation, parole, supervised
2.22 release, or conditional release;

2.23 (3) the number, nature, and circumstances of the applicant's other criminal convictions;

2.24 (4) the extent to which the applicant has demonstrated rehabilitation through
2.25 postconviction conduct, character, and reputation;

2.26 (5) the extent to which the applicant has accepted responsibility, demonstrated remorse,
2.27 and made restitution to victims;

2.28 (6) whether the sentence is clearly excessive in light of the applicant's crime and criminal
2.29 history and any sentence received by an accomplice and with due regard given to:

2.30 (i) any plea agreement;

- 3.1 (ii) the sentencing judge's views; and
- 3.2 (iii) the sentencing ranges established by law;
- 3.3 (7) whether the applicant was convicted before August 1, 2023, of a violation of section
- 3.4 609.19, subdivision 1, clause (1), under the theory of liability for crimes of another and, if
- 3.5 so, whether the applicant:
- 3.6 (i) was charged with a violation of section 609.185, paragraph (a), clause (3), and:
- 3.7 (A) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);
- 3.8 (B) did not cause the death of a human being; and
- 3.9 (C) did not intentionally aid, advise, hire, counsel, or conspire with or otherwise procure
- 3.10 another with the intent to cause the death of a human being; or
- 3.11 (ii) was charged with a violation of section 609.19, subdivision 2, and:
- 3.12 (A) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);
- 3.13 (B) did not cause the death of a human being; and
- 3.14 (C) was not a major participant, as defined in section 609.05, subdivision 2a, paragraph
- 3.15 (c), in the underlying felony ~~and~~ or did not act with extreme indifference to human life;
- 3.16 (8) whether the applicant's age or medical status indicates that it is in the best interest
- 3.17 of society that the applicant receive clemency;
- 3.18 (9) the applicant's asserted need for clemency, including family needs and barriers to
- 3.19 housing or employment created by the conviction;
- 3.20 (10) for an applicant under the department's custody, the adequacy of the applicant's
- 3.21 reentry plan;
- 3.22 (11) the amount of time already served by the applicant and the availability of other
- 3.23 forms of judicial or administrative relief;
- 3.24 (12) the extent to which there is credible evidence indicating that the applicant is or may
- 3.25 be innocent of the crime for which they were convicted; and
- 3.26 (13) if provided by the applicant, the applicant's demographic information, including
- 3.27 race, ethnicity, gender, disability status, and age.
- 3.28 (b) Unless an applicant knowingly omitted past criminal convictions on the application,
- 3.29 the commission or the board must not prejudice an applicant for failing to identify past
- 3.30 criminal convictions.

4.1 **EFFECTIVE DATE.** This section is effective July 1, 2024.

4.2 Sec. 3. Laws 2023, chapter 52, article 4, section 24, subdivision 3, is amended to read:

4.3 Subd. 3. **Notification.** (a) By ~~December~~ July 1, 2023 2024, the commissioner of
4.4 corrections shall notify individuals convicted for a violation of Minnesota Statutes, section
4.5 609.185, paragraph (a), clause (3), or 609.19, subdivision 2, clause (1), of the right to file
4.6 a preliminary application for relief if:

4.7 (1) the person was convicted for a violation of Minnesota Statutes, section 609.185,
4.8 paragraph (a), clause (3), and the person:

4.9 (i) did not cause the death of a human being; and

4.10 (ii) did not intentionally aid, advise, hire, counsel, or conspire with or otherwise procure
4.11 another with the intent to cause the death of a human being; or

4.12 (2) the person was convicted for a violation of Minnesota Statutes, section 609.19,
4.13 subdivision 2, clause (1), and the person:

4.14 (i) did not cause the death of a human being; and

4.15 (ii) was not a major participant in the underlying felony ~~and~~ or did not act with extreme
4.16 indifference to human life.

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

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

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

4.22 Sec. 4. Laws 2023, chapter 52, article 4, section 24, subdivision 4, is amended to read:

4.23 Subd. 4. **Preliminary application.** (a) An applicant shall submit a preliminary application
4.24 to the Ramsey County District Court. The preliminary application must contain:

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

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

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

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

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

5.3 (6) a brief statement, not to exceed 3,000 words, explaining why the applicant is entitled
 5.4 to relief under this section from a conviction for the death of a human being caused by
 5.5 another; and

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

5.7 (b) The preliminary application may contain:

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

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

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

5.16 (d) Any person seeking relief under this section must submit a preliminary application
 5.17 no later than October 1, ~~2025~~ 2026. Submission is complete upon mailing.

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

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

5.21 Sec. 5. Laws 2023, chapter 52, article 4, section 24, subdivision 7, is amended to read:

5.22 Subd. 7. **Determination; order; resentencing.** (a) A petitioner who was convicted of
 5.23 a violation of Minnesota Statutes, section 609.185, paragraph (a), clause (3), is entitled to
 5.24 relief if the petitioner shows by a preponderance of the evidence that the petitioner:

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

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

5.28 (b) A petitioner who was convicted of a violation of Minnesota Statutes, section 609.19,
 5.29 subdivision 2, clause (1), is entitled to relief if the petitioner shows by a preponderance of
 5.30 the evidence that the petitioner:

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

6.1 (2) was not a major participant in the underlying felony ~~and~~ or did not act with extreme
6.2 indifference to human life.

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

6.8 (1) resentence the petitioner for the most serious remaining offense for which the
6.9 petitioner was convicted; or

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

6.13 (d) The new sentence announced by the court under this section must be for the most
6.14 serious predicate felony unless the most serious remaining offense for which the petitioner
6.15 was convicted is that offense or a more serious offense.

6.16 (e) If, pursuant to paragraph (c), the court either resents a petitioner or imposes a
6.17 sentence, the court shall also resentence the petitioner for any other offense if the sentence
6.18 was announced by a district court of the same county, the sentence was either ordered to
6.19 be served consecutively to the vacated conviction or the criminal history calculation for
6.20 that sentence included the vacated sentence, and the changes made pursuant to paragraph
6.21 (c) would have resulted in a different criminal history score being used at the time of
6.22 sentencing.

6.23 (f) The court shall state in writing or on the record the reasons for its decision on the
6.24 petition.

6.25 (g) If the court intends to resentence a petitioner or impose a sentence on a petitioner,
6.26 the court must hold the hearing at a time that allows any victim an opportunity to submit a
6.27 statement consistent with Minnesota Statutes, section 611A.038. The prosecutor shall make
6.28 a good faith and reasonable effort to notify any person determined to be a victim of the
6.29 hearing and the right to submit or make a statement. A sentence imposed under this
6.30 subdivision shall not increase the petitioner's total period of confinement or, if the petitioner
6.31 was serving a stayed sentence, increase the period of supervision. The court may increase
6.32 the period of confinement for a sentence that was ordered to be served consecutively to the
6.33 vacated conviction based on a change in the appropriate criminal history score provided the
6.34 court does not increase the petitioner's total period of confinement. A person resentenced

7.1 under this paragraph is entitled to credit for time served in connection with the vacated
7.2 offense.

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

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

7.6 Sec. 6. **ADDITIONAL REQUIREMENTS.**

7.7 (a) An individual who was denied relief under Laws 2023, chapter 52, article 4, section
7.8 24, for a conviction under Minnesota Statutes, section 609.19, subdivision 2, clause (1),
7.9 due to a determination that the individual was not a major participant in the underlying
7.10 felony and did not act with extreme indifference to human life, and who is now eligible for
7.11 relief under the charges made in this act, may reapply for relief.

7.12 (b) By July 1, 2024, the commissioner of corrections shall notify individuals to whom
7.13 notice was previously provided under Laws 2023, chapter 52, article 4, section 24,
7.14 subdivision 3, paragraph (a), clause (2), about the changes to law made in this act. The
7.15 notice must inform the individual that the individual may apply or reapply for relief under
7.16 Laws 2023, chapter 52, article 4, section 24, if eligible based on the changes made in this
7.17 act.

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