

HOUSE BILL NO. 6449

November 18, 2020, Introduced by Rep. LaFave and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding section 2a to chapter X.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

1
2 Sec. 2a. (1) An individual who was convicted of first degree
3 murder in violation of section 316 of the Michigan penal code, 1931
4 PA 328, MCL 750.316, under a felony-murder theory of prosecution
5 before November 24, 1980 and who is serving a sentence of life in
6 prison without the possibility of parole may file a motion for a

1 new trial in the court of his or her conviction on the ground that
2 the jury was not properly instructed about the prosecution's burden
3 to prove the existence of malice beyond a reasonable doubt. An
4 indigent individual who files a motion under this subsection is
5 entitled to the appointment of counsel upon request.

6 (2) Not more than 60 days after receipt of a motion under
7 subsection (1), the court shall conduct a hearing on the motion at
8 which the individual has the burden of proving both of the
9 following:

10 (a) The lack of a proper jury instruction.

11 (b) That the individual was not concurrently convicted of
12 premeditated murder for the death of the same victim.

13 (3) If the court determines the individual has failed to meet
14 the burden under subsection (2), the conviction and sentence must
15 be affirmed.

16 (4) If the individual meets his or her burden under subsection
17 (2), the prosecution has the burden of proving the existence of
18 malice beyond a reasonable doubt.

19 (5) If the prosecution fails to carry its burden of proof, the
20 defendant's conviction and sentence must be vacated. The trial
21 court may enter a conviction on any lesser included offense as the
22 evidence supports and sentence the defendant accordingly, with
23 appropriate credit for time served.

24 (6) If the prosecution carries its burden of proof by proving
25 malice beyond a reasonable doubt, the conviction and sentence must
26 be affirmed.

27 (7) The proofs required under this section must be based on
28 the record developed in the trial court, including transcripts and
29 exhibits. However, if no record is available, the parties may

1 produce witnesses or other evidence as necessary to carry their
2 respective burdens.

3 (8) An individual who obtains relief under this section is not
4 eligible for compensation under the wrongful imprisonment
5 compensation act, 2016 PA 343, MCL 691.1751 to 691.1757 on the
6 basis of relief under this section.

7 (9) Either party may appeal the decision of the trial court to
8 the court of appeals as of right.

9 Enacting section 1. In light of the United States Supreme
10 Court holding in *In re Winship*, 397 U.S. 358 (1970), that due
11 process requires the prosecution to prove every element of a crime
12 beyond a reasonable doubt and the United States Supreme Court
13 holding in *Ivan v City of New York*, 407 U.S. 203 (1972), that
14 *Winship* is to be applied retroactively, it is the intent of the
15 legislature that an individual serving a term of imprisonment of
16 life without the possibility of parole for a conviction of felony
17 murder entered before the Michigan supreme court decided *People v*
18 *Aaron*, 409 Mich 672 (1980), is entitled to obtain judicial review
19 of the integrity of his or her conviction.