

HOUSE No. 3403

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Murphy, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to second degree murder.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------|-----------------------------------------------------------------|------------------|
| <i>Paul Sheehan</i> | <i>73 Broad Reach Street Apt. T-163C Weymouth, MA 02191</i> | <i>1/16/2019</i> |

HOUSE No. 3403

By Mr. Murphy of Weymouth (by request), a petition (accompanied by bill, House, No. 3403) of Paul Sheehan relative to second degree murder. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to second degree murder.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1 of chapter 265 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by adding the following section:

3 Section 1A: A person is guilty of murder in the second degree when:

4 1. With intent to cause the death of another person, he causes the death of such person
5 or of a third person; except that in any prosecution under this subdivision, it is an affirmative
6 defense that:

7 (a) The defendant acted under the influence of extreme emotional disturbance for which
8 there was a reasonable explanation or excuse, the reasonableness of which is to be determined
9 from the viewpoint of a person in the defendant's situation under the circumstances as the
10 defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a
11 prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime;
12 or

13 (b) The defendant's conduct consisted of causing or aiding, without the use of duress or
14 deception, another person to commit suicide. Nothing contained in this paragraph shall constitute
15 a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or
16 any other crime; or

17 2. Under circumstances evincing a depraved indifference to human life, he recklessly
18 engages in conduct which creates a grave risk of death to another person, and thereby causes the
19 death of another person; or

20 3. Acting either alone or with one or more other persons, he commits or attempts to
21 commit robbery, burglary, kidnapping, arson, rape in the first degree, criminal sexual act in the
22 first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree,
23 or escape in the second degree, and, in the course of and in furtherance of such crime or of
24 immediate flight therefrom, he, or another participant, if there be any, causes the death of a
25 person other than one of the participants; except that in any prosecution under this subdivision, in
26 which the defendant was not the only participant in the underlying crime, it is an affirmative
27 defense that the defendant:

28 (a) Did not commit the homicidal act or in any way solicit, request, command,
29 importune, cause or aid the commission thereof; and

30 (b) Was not armed with a deadly weapon, or any instrument, article or substance readily
31 capable of causing death or serious physical injury and of a sort not ordinarily carried in public
32 places by law-abiding persons; and

33 (c) Had no reasonable ground to believe that any other participant was armed with such
34 a weapon, instrument, article or substance; and

35 (d) Had no reasonable ground to believe that any other participant intended to engage in
36 conduct likely to result in death or serious physical injury; or

37 4. Under circumstances evincing a depraved indifference to human life, and being
38 eighteen years old or more the defendant recklessly engages in conduct which creates a grave
39 risk of serious physical injury or death to another person less than eleven years old and thereby
40 causes the death of such person; or

41 5. Being eighteen years old or more, while in the course of committing rape in the first,
42 second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the
43 first degree, aggravated sexual abuse in the first, second, third or fourth degree, or incest in the
44 first, second or third degree, against a person less than fourteen years old, he or she intentionally
45 causes the death of such person.

46