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Attorney for Defendant and Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
) No. S260598
Plaintiff and Respondent,)
) No. B295998
vs.)
) Los Angeles
VINCE E. LEWIS,) Superior Court
) No. TA117431
Defendant and Appellant.)
)

**DEFENDANT/APPELLANT’S
SECOND REQUEST FOR JUDICIAL NOTICE**

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Defendant, appellant, and petitioner Vince E. Lewis, through his counsel, respectfully requests, pursuant to Evidence Code section 459 and Rule 8.252(a), California Rules of Court, that the Court judicially notice:

(1) The two prior, unenacted versions of Senate Bill No. 1437 of the 2017-2018 California Legislature: as introduced February 16, 2018, and as amended in the Senate on May 25, 2018.

(2) The Senate Floor Analysis of Senate Bill No. 1437, prepared on May 29, 2018 by the Senate Rules Committee Office of Senate Floor Analyses.

A copy of each of these documents is attached to this motion. The documents were downloaded from, and are available at, <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml> (visited August 26, 2020).

The documents to be noticed are relevant to the issues before the Court concerning the interpretation of Penal Code section 1170.95 as enacted by Senate Bill No. 1437. They are cited, and their relevance is explained, in the reply brief on the merits being filed this day. (Rule 8.252(a)(2)(A).) These matters were not presented to the superior court, because Mr. Lewis's petition was denied before counsel was appointed for him. (Rule 8.252(a)(2)(B).) The matters are a proper subject of judicial notice as official acts of the legislative branch. (Evid. Code, §§ 452, subd. (c), 453, 459; Rule 8.252(a)(2)(C).) The matter to be noticed relates to proceedings occurring before the order now under review. (Rule 8.252(a)(2)(D).)

Submitted September 16, 2020, at Oakland, California.

/s/ Robert D. Bacon
ROBERT D. BACON
Attorney for Appellant

DECLARATION

I declare under penalty of perjury that the statements made in this request are true.

Signed at Oakland, California, September 16, 2020.

/s/ Robert D. Bacon
ROBERT D. BACON

DECLARATION OF SERVICE BY MAIL & E-MAIL

I am over the age of 18 years and not a party to this case. My business address is: PMB 110, 484 Lake Park Avenue, Oakland, California 94610; bacon2254@aol.com.

On September 16, 2020, I served **DEFENDANT/APPELLANT'S REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof in an envelope addressed to each of the persons named below at the addresses shown, and by sealing and depositing the envelope in the U.S. Mail at Oakland, California, with postage fully prepaid. There is delivery service by U.S. Mail at each of the places so addressed, and there is regular communication by mail between the place of mailing and each of the places so addressed.

Mr. Vince Lewis
AL6235
Substance Abuse Treatment Facility
P.O. Box 5248
Corcoran, California 93212

On the same day, I also served the same document on each of the persons named below by attaching a PDF copy to an E-mail addressed as indicated: Idan Ivri, counsel for respondent: DocketingLAAWT@doj.ca.gov and idan.ivri@doj.ca.gov.
The California Appellate Project: capdocs@lacap.com.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on September 16, 2020 at Oakland, California.

/s/ Robert D. Bacon
ROBERT D. BACON

Introduced by Senators Skinner and AndersonFebruary 16, 2018

An act to amend Sections 188, 189, 667.1, 1170.125, and 1192.7 of, and to add Chapter 16 (commencing with Section 1425) to Title 10 of Part 2 of, the Penal Code, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

SB 1437, as introduced, Skinner. Accomplice liability for felony murder.

Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. Existing law defines malice for this purpose as either express or implied and defines those terms.

This bill would prohibit malice from being imputed to a person based solely on his or her participation in a crime. The bill would prohibit a participant or conspirator in the commission or attempted commission of a felony inherently dangerous to human life to be imputed to have acted with implied malice, unless he or she personally committed the homicidal act.

Existing law defines first degree murder, in part, as all murder that is committed in the perpetration of, or attempt to perpetrate, specified felonies, including arson, rape, carjacking, robbery, burglary, mayhem, and kidnapping. Existing law, as enacted by Proposition 7, approved by the voters at the November 7, 1978, statewide general election, prescribes a penalty for that crime of death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. Existing law defines 2nd degree murder as all murder that is not in the first degree and imposes a penalty of imprisonment in the state prison for a term of 15 years to life.

This bill would prohibit a participant or conspirator in the perpetration or attempted perpetration of one of the specified first degree murder felonies in which a death occurs from being liable for murder, unless the person personally committed the homicidal act, the person acted with premeditated intent to aid and abet an act wherein a death would occur, or the person was a major participant in the underlying felony and acted with reckless indifference to human life.

Existing law, as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 21, adopted March 7, 2000, among other things, defines a serious felony. Existing law, also added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified.

This bill would include in the list of serious felonies the commission of a felony inherently dangerous to human life wherein a person was killed.

This bill would provide a means of resentencing a defendant when a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of first degree felony murder, 2nd degree felony murder, or murder under the natural and probable consequences doctrine, the defendant was sentenced for first degree or 2nd degree murder or accepted a plea offer in lieu of a trial at which the defendant could be convicted for first degree or 2nd degree murder, and the defendant could not be charged with murder after the enactment of this bill. The bill would provide that the court cannot, through this resentencing process, remove a strike from the petitioner's record. By requiring the participation of district attorneys and public defenders in the resentencing process, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 188 of the Penal Code is amended to
2 read:

3 188. ~~Such~~ (a) For purposes of Section 187, malice may be
4 express or implied. ~~It~~

5 (1) Malice is express when there is manifested a deliberate
6 intention to unlawfully to take away the life of a fellow creature.
7 ~~It~~

8 (2) Malice is ~~implied~~, implied when no considerable provocation
9 appears, or when the circumstances attending the killing show an
10 abandoned and malignant heart.

11 (3) Malice shall not be imputed to a person based solely on his
12 or her participation in a crime. A participant or conspirator in
13 the commission or attempted commission of a felony inherently
14 dangerous to human life may be imputed to have acted with implied
15 malice only if he or she personally committed the homicidal act.

16 ~~When~~

17 (b) If it is shown that the killing resulted from ~~the intentional~~
18 ~~doing of an intentional~~ act with express or implied malice, ~~malice~~,
19 as defined ~~above~~, in subdivision (a), no other mental state need be
20 shown to establish the mental state of malice aforethought. Neither
21 an awareness of the obligation to act within the general body of
22 laws regulating society nor acting despite ~~such~~ that awareness is
23 included within the definition of malice.

24 SEC. 2. Section 189 of the Penal Code is amended to read:

25 189. (a) All murder ~~which~~ that is perpetrated by means of a
26 destructive device or explosive, a weapon of mass destruction,
27 knowing use of ammunition designed primarily to penetrate metal
28 or armor, poison, lying in wait, torture, or by any other kind of
29 willful, deliberate, and premeditated killing, or ~~which~~ that is
30 committed in the perpetration of, or attempt to perpetrate, arson,
31 rape, carjacking, robbery, burglary, mayhem, kidnapping, train
32 wrecking, or any act punishable under Section 206, 286, 288, 288a,
33 or 289, or ~~any~~ murder ~~which~~ that is perpetrated by means of
34 discharging a firearm from a motor vehicle, intentionally at another

1 person outside of the vehicle with the intent to inflict death, is
 2 murder of the first degree. ~~All~~

3 (b) All other kinds of murders are of the second degree.

4 ~~As~~

5 (c) As used in this section, the following definitions apply:

6 ~~“destructive~~

7 (1) ~~“Destructive device” means any destructive device as~~
 8 ~~defined has the same meaning as in Section 16460, and “explosive”~~
 9 ~~means any explosive as defined 16460.~~

10 (2) ~~“Explosive” has the same meaning as in Section 12000 of~~
 11 ~~the Health and Safety Code.~~

12 ~~As used in this section, “weapon~~

13 (3) ~~“Weapon of mass destruction” means any item defined in~~
 14 ~~Section 11417.~~

15 ~~To~~

16 (d) To prove the killing was “deliberate and premeditated,” it
 17 ~~shall not be~~ is not necessary to prove the defendant maturely and
 18 meaningfully reflected upon the gravity of his or her act.

19 (e) A participant or conspirator in the perpetration or attempted
 20 perpetration of a felony listed in subdivision (a) in which a death
 21 occurs is liable for murder only if one of the following is proven:

22 (1) The person personally committed the homicidal act.

23 (2) The person acted with premeditated intent to aid and abet
 24 an act wherein a death would occur.

25 (3) The person was a major participant in the underlying felony
 26 and acted with reckless indifference to human life.

27 SEC. 3. Section 667.1 of the Penal Code is amended to read:

28 667.1. (a) Notwithstanding subdivision (h) of Section 667,
 29 for all offenses committed on or after November 7, 2012, but before
 30 January 1, 2019, all references to existing statutes in subdivisions
 31 (c) to (g), inclusive, of Section 667, are to those statutes as they
 32 existed on November 7, 2012.

33 (b) Notwithstanding subdivision (h) of Section 667, for all
 34 offenses committed on or after January 1, 2019, all references to
 35 existing statutes in subdivisions (c) to (g), inclusive, of Section
 36 667, are to those statutes as they existed on January 1, 2019.

37 SEC. 4. Section 1170.125 of the Penal Code is amended to
 38 read:

39 1170.125. (a) Notwithstanding Section 2 of Proposition 184,
 40 as adopted at the November 8, 1994, ~~General Election, statewide~~

1 *general election* for all offenses committed on or after November
2 7, 2012, *but before January 1, 2019*, all references to existing
3 statutes in Sections 1170.12 and 1170.126 are to those sections as
4 they existed on November 7, 2012.

5 *(b) Notwithstanding Section 2 of Proposition 184, as adopted*
6 *at the November 8, 1994, statewide general election, for all*
7 *offenses committed on or after January 1, 2019, all references to*
8 *existing statutes in Sections 1170.12 and 1170.126 are to those*
9 *sections as they read on January 1, 2019.*

10 SEC. 5. Section 1192.7 of the Penal Code is amended to read:

11 1192.7. (a) (1) It is the intent of the Legislature that district
12 attorneys prosecute violent sex crimes under statutes that provide
13 sentencing under a “one strike,” “three strikes” or habitual sex
14 offender statute instead of ~~engaging in~~ plea bargaining over those
15 offenses.

16 (2) Plea bargaining in ~~any~~ a case in which the indictment or
17 information charges ~~any~~ a serious felony, ~~any~~ a felony in which
18 it is alleged that a firearm was personally used by the defendant,
19 or ~~any~~ an offense of driving while under the influence of alcohol,
20 drugs, narcotics, or any other intoxicating substance, or any
21 combination thereof, is prohibited, unless there is insufficient
22 evidence to prove the people’s case, or testimony of a material
23 witness cannot be obtained, or a reduction or dismissal would not
24 result in a substantial change in sentence.

25 (3) If the indictment or information charges the defendant with
26 a violent sex crime, as listed in subdivision (c) of Section 667.61,
27 that could be prosecuted under Sections 269, 288.7, subdivisions
28 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
29 bargaining is prohibited unless there is insufficient evidence to
30 prove the people’s case, ~~or~~ testimony of a material witness cannot
31 be obtained, or a reduction or dismissal would not result in a
32 substantial change in sentence. ~~At the time of~~ *When* presenting the
33 agreement to the court, the district attorney shall state on the record
34 why a sentence under one of those sections was not sought.

35 (b) As used in this section “plea bargaining” means any
36 bargaining, negotiation, or discussion between a criminal
37 defendant, or his or her counsel, and a prosecuting attorney or
38 judge, whereby the defendant agrees to plead guilty or nolo
39 contendere, in exchange for any promises, commitments,
40 concessions, assurances, or consideration by the prosecuting

1 attorney or judge relating to ~~any~~ a charge against the defendant or
2 to the sentencing of the defendant.

3 (c) As used in this section, “serious felony” means any of the
4 following:

5 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
6 (4) sodomy by force, violence, duress, menace, threat of great
7 bodily injury, or fear of immediate and unlawful bodily injury on
8 the victim or another person; (5) oral copulation by force, violence,
9 duress, menace, threat of great bodily injury, or fear of immediate
10 and unlawful bodily injury on the victim or another person; (6)
11 lewd or lascivious act on a child under 14 years of age; (7) any
12 felony punishable by death or imprisonment in the state prison for
13 life; (8) any felony in which the defendant personally inflicts great
14 bodily injury on any person, other than an accomplice, or any
15 felony in which the defendant personally uses a firearm; (9)
16 attempted murder; (10) assault with intent to commit rape or
17 robbery; (11) assault with a deadly weapon or instrument on a
18 peace officer; (12) assault by a life prisoner on a noninmate; (13)
19 assault with a deadly weapon by an inmate; (14) arson; (15)
20 exploding a destructive device or any explosive with intent to
21 injure; (16) exploding a destructive device or ~~any~~ an explosive
22 causing bodily injury, great bodily injury, or mayhem; (17)
23 exploding a destructive device or ~~any~~ an explosive with intent to
24 murder; (18) ~~any~~ burglary of the first degree; (19) robbery or bank
25 robbery; (20) kidnapping; (21) holding of a hostage by a person
26 confined in a state prison; (22) attempt to commit a felony
27 punishable by death or imprisonment in the state prison for life;
28 (23) ~~any~~ a felony in which the defendant personally used a
29 dangerous or deadly weapon; (24) selling, furnishing,
30 administering, giving, or offering to sell, furnish, administer, or
31 give to a minor ~~any~~ heroin, cocaine, phencyclidine (PCP), or any
32 methamphetamine-related drug, as described in paragraph (2) of
33 subdivision (d) of Section 11055 of the Health and Safety Code,
34 or any of the precursors of methamphetamines, as described in
35 subparagraph (A) of paragraph (1) of subdivision (f) of Section
36 11055 or subdivision (a) of Section 11100 of the Health and Safety
37 Code; (25) any violation of subdivision (a) of Section 289 where
38 the act is accomplished against the victim’s will by force, violence,
39 duress, menace, or fear of immediate and unlawful bodily injury
40 on the victim or another person; (26) grand theft involving a

1 firearm; (27) carjacking; (28) ~~any a felony offense, which offense~~
 2 *that* would also constitute a felony violation of Section 186.22;
 3 (29) assault with the intent to commit mayhem, rape, sodomy, or
 4 oral copulation, in violation of Section 220; (30) throwing acid or
 5 flammable substances, in violation of Section 244; (31) assault
 6 with a deadly weapon, firearm, machinegun, assault weapon, or
 7 semiautomatic firearm or assault on a peace officer or firefighter,
 8 in violation of Section 245; (32) assault with a deadly weapon
 9 against a public transit employee, custodial officer, or school
 10 employee, in violation of Section 245.2, 245.3, or 245.5; (33)
 11 discharge of a firearm at an inhabited dwelling, vehicle, or aircraft,
 12 in violation of Section 246; (34) commission of rape or sexual
 13 penetration in concert with another person, in violation of Section
 14 264.1; (35) continuous sexual abuse of a child, in violation of
 15 Section 288.5; (36) shooting from a vehicle, in violation of
 16 subdivision (c) or (d) of Section 26100; (37) intimidation of victims
 17 or witnesses, in violation of Section 136.1; (38) criminal threats,
 18 in violation of Section 422; (39) ~~any an~~ attempt to commit a crime
 19 listed in this subdivision other than an assault; (40) ~~any a~~ violation
 20 of Section 12022.53; (41) a violation of subdivision (b) or (c) of
 21 Section 11418; (42) *any felony that is inherently dangerous to*
 22 *human life in which a person was killed*, and ~~(42)~~ (43) any
 23 conspiracy to commit an offense described in this subdivision.

24 (d) As used in this section, “bank robbery” means to take or
 25 attempt to take, by force or violence, or by intimidation from the
 26 person or presence of another ~~any property or money property,~~
 27 *money*, or any other thing of value belonging to, or in the care,
 28 custody, control, management, or possession of, ~~any a~~ bank, credit
 29 union, or ~~any~~ savings and loan association.

30 As used in this subdivision, the following terms have the
 31 following meanings:

32 (1) “Bank” means ~~any a~~ member of the Federal Reserve System,
 33 ~~and any a~~ bank, banking association, trust company, savings bank,
 34 or other banking institution organized or operating under the laws
 35 of the United States, and ~~any a~~ bank the deposits of which are
 36 insured by the Federal Deposit Insurance Corporation.

37 (2) “Savings and loan association” means ~~any a~~ federal savings
 38 and loan association and ~~any an~~ “insured institution” as defined
 39 in Section 401 of the National Housing Act, as amended, and any

1 federal credit union as defined in Section 2 of the Federal Credit
2 Union Act.

3 (3) “Credit union” means ~~any~~ a federal credit union and ~~any~~ a
4 state-chartered credit union the accounts of which are insured by
5 the Administrator of the National Credit Union administration.

6 (e) The provisions of this section shall not be amended by the
7 Legislature except by statute passed in each house by rollcall vote
8 entered in the journal, two-thirds of the membership concurring,
9 or by a statute that becomes effective only when approved by the
10 electors.

11 SEC. 6. Chapter 16 (commencing with Section 1425) is added
12 to Title 10 of Part 2 of the Penal Code, to read:

13

14 CHAPTER 16. RECALLING SENTENCING

15

16 1425. (a) A defendant may submit a request for resentencing
17 when all of the following conditions apply:

18 (1) A complaint, information, or indictment was filed against
19 the defendant that allowed the prosecution to proceed under a
20 theory of first degree felony murder, second degree felony murder,
21 or murder under the natural and probable consequences doctrine.

22 (2) The defendant was sentenced to first degree or second degree
23 murder or accepted a plea offer in lieu of a trial at which the
24 defendant could be convicted for first degree or second degree
25 murder.

26 (3) The defendant could not be convicted of first degree or
27 second degree murder because of changes to Section 188 or 189
28 made effective January 1, 2019.

29 (b) The petition shall include both of the following:

30 (1) A statement by the petitioner that he or she believes that he
31 or she is eligible for relief under this section, based on all of the
32 requirements of subdivision (a).

33 (2) The names and case numbers of all other coparticipants in
34 the underlying felony and whether they were charged and tried
35 separately, or a statement that the petitioner does not know the
36 names and case numbers of coparticipants.

37 (c) If any of the information required in subdivision (b) is
38 missing from the petition, the court shall return the petition to the
39 petitioner and advise him or her that the matter cannot be
40 considered without the missing information.

1 (d) Upon receipt of the petition, the court shall request all of
2 the following:

3 (1) A copy of the charging documents from the superior court
4 in which the case was prosecuted.

5 (2) The abstract of judgment.

6 (3) The reporter's transcript of the plea, if applicable, and the
7 sentencing transcript.

8 (4) The verdict forms, if a trial was held.

9 (5) Any other information the court finds relevant to its decision,
10 including information related to the charging, conviction, and
11 sentencing of the petitioner's codefendants in the trial court.

12 (e) The court shall also provide notice to the attorney who
13 represented the petitioner in the superior court and to the district
14 attorney in the county in which petitioner was prosecuted. Notice
15 shall inform each that a petition had been filed pursuant to this
16 section and shall request that a response be filed from both parties
17 as to whether the petitioner is entitled to relief.

18 (f) (1) If the court finds that there is sufficient evidence that
19 the petitioner falls within the provisions of this section, the court
20 shall hold a resentencing hearing to determine whether to recall
21 the sentence and commitment previously ordered and to resentence
22 the petitioner in the same manner as if the petitioner had not
23 previously been sentenced, provided that the new sentence, if any,
24 is not greater than the initial sentence.

25 (2) The court shall inform the petitioner's defense counsel and
26 the district attorney in the county in which the petitioner was
27 prosecuted and sentenced that the petitioner is entitled to a
28 resentencing hearing.

29 (3) The parties may waive a resentencing hearing and stipulate
30 that the petitioner is eligible for resentencing.

31 (4) If the petitioner was charged with or convicted of first degree
32 felony murder, resentencing shall be granted unless the prosecution
33 proves, beyond a reasonable doubt, that the petitioner meets the
34 requirements of subdivision (e) of Section 189.

35 (5) If the petitioner was charged with or convicted of second
36 degree felony resentencing shall be granted unless the prosecution
37 proves, beyond a reasonable doubt, that the petitioner personally
38 committed the homicidal act.

39 (g) This section does not authorize a court to remove a strike
40 from the petitioner's record.

1 SEC. 7. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

O

AMENDED IN SENATE MAY 25, 2018

SENATE BILL

No. 1437

Introduced by Senators Skinner and Anderson
(Principal coauthor: Assembly Member Gipson)
(Coauthor: Senator Wiener)
(Coauthors: Assembly Members Burke and Medina)

February 16, 2018

An act to amend Sections 188, 189, 667.1, 1170.125, and 1192.7 of, and to add Chapter 16 (commencing with Section 1425) to Title 10 of Part 2 of, the Penal Code, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

SB 1437, as amended, Skinner. Accomplice liability for felony murder.

Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. Existing law defines malice for this purpose as either express or implied and defines those terms.

This bill would prohibit malice from being imputed to a person based solely on his or her participation in a crime. The bill would prohibit a participant ~~or conspirator~~ in the commission or attempted commission of a felony inherently dangerous to human life to be imputed to have acted with implied malice, unless he or she personally committed the homicidal act.

Existing law defines first degree murder, in part, as all murder that is committed in the perpetration of, or attempt to perpetrate, specified felonies, including arson, rape, carjacking, robbery, burglary, mayhem, and kidnapping. Existing law, as enacted by Proposition 7, approved by the voters at the November 7, 1978, statewide general election, prescribes a penalty for that crime of death, imprisonment in the state

prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. Existing law defines 2nd degree murder as all murder that is not in the first degree and imposes a penalty of imprisonment in the state prison for a term of 15 years to life.

This bill would prohibit a participant ~~or conspirator~~ in the perpetration or attempted perpetration of one of the specified first degree murder felonies in which a death occurs from being liable for murder, unless the person ~~personally committed the homicidal act, the person acted with premeditated intent to aid and abet an act wherein a death would occur,~~ *was the actual killer or the person was not the actual killer but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer;* or the person was a major participant in the underlying felony and acted with reckless indifference to human life.

Existing law, as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 21, adopted March 7, 2000, among other things, defines a serious felony. Existing law, also added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified.

This bill would include in the list of serious felonies the commission of a felony inherently dangerous to human life wherein a person was killed.

This bill would provide a means of *vacating the conviction and* resentencing a defendant when a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of first degree felony murder, 2nd degree felony murder, or murder under the natural and probable consequences doctrine, the defendant was sentenced for first degree or 2nd degree murder or accepted a plea offer in lieu of a trial at which the defendant could be convicted for first degree or 2nd degree murder, and the defendant could not be charged with murder after the enactment of this bill. The bill would provide that the court cannot, through this resentencing process, remove a strike from the petitioner's record. By requiring the participation of district attorneys and public defenders in the

resentencing process, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 188 of the Penal Code is amended to
2 read:

3 188. (a) For purposes of Section 187, malice may be express
4 or implied.

5 (1) Malice is express when there is manifested a deliberate
6 intention to unlawfully take away the life of a fellow creature.

7 (2) Malice is implied when no considerable provocation appears,
8 or when the circumstances attending the killing show an abandoned
9 and malignant heart.

10 (3) Malice shall not be imputed to a person based solely on his
11 or her participation in a crime. A participant ~~or conspirator~~ in the
12 commission or attempted commission of a felony inherently
13 dangerous to human life may be imputed to have acted with implied
14 malice only if he or she personally committed the homicidal act.

15 (b) If it is shown that the killing resulted from an intentional act
16 with express or implied malice, as defined in subdivision (a), no
17 other mental state need be shown to establish the mental state of
18 malice aforethought. Neither an awareness of the obligation to act
19 within the general body of laws regulating society nor acting
20 despite that awareness is included within the definition of malice.

21 SEC. 2. Section 189 of the Penal Code is amended to read:

22 189. (a) All murder that is perpetrated by means of a
23 destructive device or explosive, a weapon of mass destruction,
24 knowing use of ammunition designed primarily to penetrate metal
25 or armor, poison, lying in wait, torture, or by any other kind of
26 willful, deliberate, and premeditated killing, or that is committed

1 in the perpetration of, or attempt to perpetrate, arson, rape,
 2 carjacking, robbery, burglary, mayhem, kidnapping, train wrecking,
 3 or any act punishable under Section 206, 286, 288, 288a, or 289,
 4 or murder that is perpetrated by means of discharging a firearm
 5 from a motor vehicle, intentionally at another person outside of
 6 the vehicle with the intent to inflict death, is murder of the first
 7 degree.

8 (b) All other kinds of murders are of the second degree.

9 (c) As used in this section, the following definitions apply:

10 (1) "Destructive device" has the same meaning as in Section
 11 16460.

12 (2) "Explosive" has the same meaning as in Section 12000 of
 13 the Health and Safety Code.

14 (3) "Weapon of mass destruction" means any item defined in
 15 Section 11417.

16 (d) To prove the killing was "deliberate and premeditated," it
 17 is not necessary to prove the defendant maturely and meaningfully
 18 reflected upon the gravity of his or her act.

19 (e) A participant ~~or conspirator~~ in the perpetration or attempted
 20 perpetration of a felony listed in subdivision (a) in which a death
 21 occurs is liable for murder only if one of the following is proven:

22 (1) The person ~~personally committed the homicidal act.~~ *was the*
 23 *actual killer.*

24 ~~(2) The person acted with premeditated intent to aid and abet~~
 25 ~~an act wherein a death would occur.~~

26 *(2) The person was not the actual killer, but, with the intent to*
 27 *kill, aided, abetted, counseled, commanded, induced, solicited,*
 28 *requested, or assisted the actual killer in the commission of murder*
 29 *in the first degree.*

30 (3) The person was a major participant in the underlying felony
 31 and acted with reckless indifference to human ~~life.~~ *life, as described*
 32 *in subdivision (d) of Section 190.2.*

33 SEC. 3. Section 667.1 of the Penal Code is amended to read:

34 667.1. (a) Notwithstanding subdivision (h) of Section 667, for
 35 all offenses committed on or after November 7, 2012, but before
 36 January 1, 2019, all references to existing statutes in subdivisions
 37 (c) to (g), inclusive, of Section 667, are to those statutes as they
 38 existed on November 7, 2012.

39 (b) Notwithstanding subdivision (h) of Section 667, for all
 40 offenses committed on or after January 1, 2019, all references to

1 existing statutes in subdivisions (c) to (g), inclusive, of Section
2 667, are to those statutes as they existed on January 1, 2019.

3 SEC. 4. Section 1170.125 of the Penal Code is amended to
4 read:

5 1170.125. (a) Notwithstanding Section 2 of Proposition 184,
6 as adopted at the November 8, 1994, statewide general election
7 for all offenses committed on or after November 7, 2012, but before
8 January 1, 2019, all references to existing statutes in Sections
9 1170.12 and 1170.126 are to those sections as they existed on
10 November 7, 2012.

11 (b) Notwithstanding Section 2 of Proposition 184, as adopted
12 at the November 8, 1994, statewide general election, for all offenses
13 committed on or after January 1, 2019, all references to existing
14 statutes in Sections 1170.12 and 1170.126 are to those sections as
15 they read on January 1, 2019.

16 SEC. 5. Section 1192.7 of the Penal Code is amended to read:

17 1192.7. (a) (1) It is the intent of the Legislature that district
18 attorneys prosecute violent sex crimes under statutes that provide
19 sentencing under a “one strike,” “three strikes” or habitual sex
20 offender statute instead of plea bargaining those offenses.

21 (2) Plea bargaining in a case in which the indictment or
22 information charges a serious felony, a felony in which it is alleged
23 that a firearm was personally used by the defendant, or an offense
24 of driving while under the influence of alcohol, drugs, narcotics,
25 or any other intoxicating substance, or any combination thereof,
26 is prohibited, unless there is insufficient evidence to prove the
27 people’s case, or testimony of a material witness cannot be
28 obtained, or a reduction or dismissal would not result in a
29 substantial change in sentence.

30 (3) If the indictment or information charges the defendant with
31 a violent sex crime, as listed in subdivision (c) of Section 667.61,
32 that could be prosecuted under Sections 269, 288.7, subdivisions
33 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
34 bargaining is prohibited unless there is insufficient evidence to
35 prove the people’s case, testimony of a material witness cannot be
36 obtained, or a reduction or dismissal would not result in a
37 substantial change in sentence. When presenting the agreement to
38 the court, the district attorney shall state on the record why a
39 sentence under one of those sections was not sought.

1 (b) As used in this section “plea bargaining” means any
2 bargaining, negotiation, or discussion between a criminal
3 defendant, or his or her counsel, and a prosecuting attorney or
4 judge, whereby the defendant agrees to plead guilty or nolo
5 contendere, in exchange for any promises, commitments,
6 concessions, assurances, or consideration by the prosecuting
7 attorney or judge relating to a charge against the defendant or to
8 the sentencing of the defendant.

9 (c) As used in this section, “serious felony” means any of the
10 following:

11 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
12 (4) sodomy by force, violence, duress, menace, threat of great
13 bodily injury, or fear of immediate and unlawful bodily injury on
14 the victim or another person; (5) oral copulation by force, violence,
15 duress, menace, threat of great bodily injury, or fear of immediate
16 and unlawful bodily injury on the victim or another person; (6)
17 lewd or lascivious act on a child under 14 years of age; (7) any
18 felony punishable by death or imprisonment in the state prison for
19 life; (8) any felony in which the defendant personally inflicts great
20 bodily injury on any person, other than an accomplice, or any
21 felony in which the defendant personally uses a firearm; (9)
22 attempted murder; (10) assault with intent to commit rape or
23 robbery; (11) assault with a deadly weapon or instrument on a
24 peace officer; (12) assault by a life prisoner on a noninmate; (13)
25 assault with a deadly weapon by an inmate; (14) arson; (15)
26 exploding a destructive device or any explosive with intent to
27 injure; (16) exploding a destructive device or an explosive causing
28 bodily injury, great bodily injury, or mayhem; (17) exploding a
29 destructive device or an explosive with intent to murder; (18)
30 burglary of the first degree; (19) robbery or bank robbery; (20)
31 kidnapping; (21) holding of a hostage by a person confined in a
32 state prison; (22) attempt to commit a felony punishable by death
33 or imprisonment in the state prison for life; (23) a felony in which
34 the defendant personally used a dangerous or deadly weapon; (24)
35 selling, furnishing, administering, giving, or offering to sell,
36 furnish, administer, or give to a minor heroin, cocaine,
37 phencyclidine (PCP), or any methamphetamine-related drug, as
38 described in paragraph (2) of subdivision (d) of Section 11055 of
39 the Health and Safety Code, or any of the precursors of
40 methamphetamines, as described in subparagraph (A) of paragraph

1 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
2 11100 of the Health and Safety Code; (25) any violation of
3 subdivision (a) of Section 289 where the act is accomplished
4 against the victim's will by force, violence, duress, menace, or
5 fear of immediate and unlawful bodily injury on the victim or
6 another person; (26) grand theft involving a firearm; (27)
7 carjacking; (28) a felony offense that would also constitute a felony
8 violation of Section 186.22; (29) assault with the intent to commit
9 mayhem, rape, sodomy, or oral copulation, in violation of Section
10 220; (30) throwing acid or flammable substances, in violation of
11 Section 244; (31) assault with a deadly weapon, firearm,
12 machinegun, assault weapon, or semiautomatic firearm or assault
13 on a peace officer or firefighter, in violation of Section 245; (32)
14 assault with a deadly weapon against a public transit employee,
15 custodial officer, or school employee, in violation of Section 245.2,
16 245.3, or 245.5; (33) discharge of a firearm at an inhabited
17 dwelling, vehicle, or aircraft, in violation of Section 246; (34)
18 commission of rape or sexual penetration in concert with another
19 person, in violation of Section 264.1; (35) continuous sexual abuse
20 of a child, in violation of Section 288.5; (36) shooting from a
21 vehicle, in violation of subdivision (c) or (d) of Section 26100;
22 (37) intimidation of victims or witnesses, in violation of Section
23 136.1; (38) criminal threats, in violation of Section 422; (39) an
24 attempt to commit a crime listed in this subdivision other than an
25 assault; (40) a violation of Section 12022.53; (41) a violation of
26 subdivision (b) or (c) of Section 11418; (42) any felony that is
27 inherently dangerous to human life in which a person was killed,
28 and (43) any conspiracy to commit an offense described in this
29 subdivision.

30 (d) As used in this section, "bank robbery" means to take or
31 attempt to take, by force or violence, or by intimidation from the
32 person or presence of another property, money, or any other thing
33 of value belonging to, or in the care, custody, control, management,
34 or possession of, a bank, credit union, or savings and loan
35 association.

36 As used in this subdivision, the following terms have the
37 following meanings:

38 (1) "Bank" means a member of the Federal Reserve System, a
39 bank, banking association, trust company, savings bank, or other
40 banking institution organized or operating under the laws of the

1 United States, and a bank the deposits of which are insured by the
2 Federal Deposit Insurance Corporation.

3 (2) "Savings and loan association" means a federal savings and
4 loan association and an "insured institution" as defined in Section
5 401 of the National Housing Act, as amended, and any federal
6 credit union as defined in Section 2 of the Federal Credit Union
7 Act.

8 (3) "Credit union" means a federal credit union and a
9 state-chartered credit union the accounts of which are insured by
10 the Administrator of the National Credit Union administration.

11 (e) The provisions of this section shall not be amended by the
12 Legislature except by statute passed in each house by rollcall vote
13 entered in the journal, two-thirds of the membership concurring,
14 or by a statute that becomes effective only when approved by the
15 electors.

16 SEC. 6. Chapter 16 (commencing with Section 1425) is added
17 to Title 10 of Part 2 of the Penal Code, to read:

18

19

CHAPTER 16. RECALLING SENTENCING

20

21 1425. (a) A defendant may submit a request *to have his or her*
22 *conviction vacated and petition* for resentencing when all of the
23 following conditions apply:

24 (1) A complaint, information, or indictment was filed against
25 the defendant that allowed the prosecution to proceed under a
26 theory of first degree felony murder, second degree felony murder,
27 or murder under the natural and probable consequences doctrine.

28 (2) The defendant was sentenced to first degree or second degree
29 murder or accepted a plea offer in lieu of a trial at which the
30 defendant could be convicted for first degree or second degree
31 murder.

32 (3) The defendant could not be convicted of first degree or
33 second degree murder because of changes to Section 188 or 189
34 made effective January 1, 2019.

35 (b) The petition shall include ~~both of the following~~: *a*
36 *declaration by the petitioner that he or she believes that he or she*
37 *is eligible for relief under this section, based on all of the*
38 *requirements of subdivision (a).*

1 ~~(1) A statement by the petitioner that he or she believes that he~~
2 ~~or she is eligible for relief under this section, based on all of the~~
3 ~~requirements of subdivision (a).~~

4 ~~(2) The names and case numbers of all other coparticipants in~~
5 ~~the underlying felony and whether they were charged and tried~~
6 ~~separately, or a statement that the petitioner does not know the~~
7 ~~names and case numbers of coparticipants.~~

8 ~~(e) If any of the information required in subdivision (b) is~~
9 ~~missing from the petition, the court shall return the petition to the~~
10 ~~petitioner and advise him or her that the matter cannot be~~
11 ~~considered without the missing information.~~

12 ~~(d)~~

13 ~~(c) Upon receipt of the petition, the court shall request all of the~~
14 ~~following: provide notice to the attorney who represented the~~
15 ~~petitioner in the superior court, or to the public defender if the~~
16 ~~attorney of record is no longer available, and to the district~~
17 ~~attorney in the county in which the petitioner was prosecuted. The~~
18 ~~notice shall inform those parties that a petition had been filed~~
19 ~~pursuant to this section and that a response from both parties as~~
20 ~~to whether the petitioner is entitled to relief is required to be filed~~
21 ~~within 60 days.~~

22 ~~(1) A copy of the charging documents from the superior court~~
23 ~~in which the case was prosecuted.~~

24 ~~(2) The abstract of judgment.~~

25 ~~(3) The reporter's transcript of the plea, if applicable, and the~~
26 ~~sentencing transcript.~~

27 ~~(4) The verdict forms, if a trial was held.~~

28 ~~(5) Any other information the court finds relevant to its decision,~~
29 ~~including information related to the charging, conviction, and~~
30 ~~sentencing of the petitioner's codefendants in the trial court.~~

31 ~~(e) The court shall also provide notice to the attorney who~~
32 ~~represented the petitioner in the superior court and to the district~~
33 ~~attorney in the county in which petitioner was prosecuted. Notice~~
34 ~~shall inform each that a petition had been filed pursuant to this~~
35 ~~section and shall request that a response be filed from both parties~~
36 ~~as to whether the petitioner is entitled to relief.~~

37 ~~(f)~~

38 ~~(d) (1) If the court finds that there is sufficient evidence that~~
39 ~~the petitioner falls within the provisions of this section, the court~~
40 ~~shall hold a resentencing hearing to determine whether to recall~~

1 the sentence and commitment previously ordered and to resentence
2 the petitioner in the same manner as if the petitioner had not
3 previously been sentenced, provided that the new sentence, if any,
4 is not greater than the initial sentence.

5 (2) The court shall inform the petitioner's defense counsel and
6 the district attorney in the county in which the petitioner was
7 prosecuted and sentenced that the petitioner is entitled to a
8 resentencing hearing.

9 (3) The parties may waive a resentencing hearing and stipulate
10 that the petitioner is eligible ~~for resentencing~~. *to have his or her*
11 *sentence vacated and for resentencing. If there was a prior finding*
12 *by a court or jury that the petitioner did not act with reckless*
13 *indifference to human life or was not a major participant in the*
14 *felony, the court shall vacate the petitioner's conviction and*
15 *resentence.*

16 ~~(4) If the petitioner was charged with or convicted of first degree~~
17 ~~felony murder, resentencing shall be granted unless the prosecution~~
18 ~~proves, beyond a reasonable doubt, that the petitioner meets the~~
19 ~~requirements of subdivision (e) of Section 189.~~

20 ~~(5) If the petitioner was charged with or convicted of second~~
21 ~~degree felony resentencing shall be granted unless the prosecution~~
22 ~~proves, beyond a reasonable doubt, that the petitioner personally~~
23 ~~committed the homicidal act.~~

24 *(4) If the petitioner was charged with or convicted of first degree*
25 *murder under a theory of felony murder, the petitioner shall have*
26 *the initial burden of going forward with evidence that he or she*
27 *was not the actual killer, did not act with the intent to kill, and did*
28 *not act as a major participant with reckless disregard for human*
29 *life in the commission of the felony. If the defendant meets the*
30 *burden of going forward with the evidence, the burden of proof*
31 *shall be on the prosecution to prove, beyond a reasonable doubt,*
32 *that the petitioner is ineligible for resentencing. If the prosecution*
33 *fails to sustain its burden of proof, the prior conviction, and any*
34 *allegations and enhancements attached to the conviction, shall be*
35 *vacated and the petitioner shall be resentenced on the remaining*
36 *charges. The prosecutor may rely on the record of conviction to*
37 *meet its burden, but the petitioner may offer new or additional*
38 *evidence to meet the burden of going forward or in rebuttal of the*
39 *prosecution's evidence.*

1 (5) *If the petitioner was charged with or convicted of second*
2 *degree murder under a theory of felony murder or the natural and*
3 *probable consequences doctrine, the petitioner shall have the*
4 *initial burden of going forward with evidence that he or she did*
5 *not personally commit the homicidal act. If the defendant meets*
6 *the burden of going forward with the evidence, the burden of proof*
7 *shall be on the prosecution to prove, beyond a reasonable doubt,*
8 *that the petitioner is ineligible for resentencing. If the prosecution*
9 *fails to sustain its burden of proof, the prior conviction, and any*
10 *allegations and enhancements attached to the conviction, shall be*
11 *vacated and the petitioner shall be resentenced on the remaining*
12 *charges. The prosecutor may rely on the record of conviction to*
13 *meet its burden, but the petitioner may offer new or additional*
14 *evidence to meet the burden of going forward or in rebuttal of the*
15 *prosecution's evidence.*

16 ~~(g)~~

17 (e) This section does not authorize a court to remove a strike
18 from the petitioner's record.

19 SEC. 7. If the Commission on State Mandates determines that
20 this act contains costs mandated by the state, reimbursement to
21 local agencies and school districts for those costs shall be made
22 pursuant to Part 7 (commencing with Section 17500) of Division
23 4 of Title 2 of the Government Code.

THIRD READING

Bill No: SB 1437
Author: Skinner (D) and Anderson (R), et al.
Amended: 5/25/18
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-1, 4/24/18
AYES: Skinner, Anderson, Bradford, Jackson, Mitchell, Wiener
NOES: Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/25/18
AYES: Lara, Beall, Bradford, Hill, Wiener
NOES: Bates, Nielsen

SUBJECT: Accomplice liability for felony murder

SOURCE: Author

DIGEST: This bill revises the felony murder rule to prohibit a participant in the commission or attempted commission of a felony that has been determined as inherently dangerous to human life to be imputed to have acted with implied malice, unless he or she personally committed the homicidal act.

ANALYSIS:

Existing law:

- 1) Defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)
- 2) Defines malice for this purpose as either express or implied and defines those terms. (Pen. Code, § 188.)
 - a) It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.

- b) It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.
- 3) Provides that when it is shown that the killing resulted from an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice. (Pen. Code, § 188.)
 - 4) Defines first degree murder, in part, as all murder that is committed in the perpetration of, or attempt to perpetrate, specified felonies. (Pen. Code, § 189.)
 - 5) Prescribes, as enacted by Proposition 7, approved by the voters at the November 7, 1978 statewide general election, a penalty for that crime of death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. (Pen. Code, § 190.)
 - 6) Defines second degree murder as all murder that is not in the first degree and imposes a penalty of imprisonment in the state prison for a term of 15 years to life. (Pen. Code, §§ 187 & 190.05.)
 - 7) Defines a serious felony as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 21, adopted March 7, 2000. (Pen. Code, § 667.1.)
 - 8) Requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified, as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law. (Pen. Code, §§ 667.5 & 1192.7.)

This bill:

- 1) Prohibits malice from being imputed to a person based solely on his or her participation in a crime.
- 2) Prohibits a participant in the commission or attempted commission of a felony inherently dangerous to human life to be imputed to have acted with implied malice, unless he or she personally committed the homicidal act.
- 3) Prohibits a participant in the perpetration or attempted perpetration of one of the specified first degree murder felonies in which a death occurs from being liable

for murder, unless the person was the actual killer or the person was not the actual killer but, with the intent to kill, aided abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer, or the person was a major participant in the underlying felony and acted with reckless indifference to human life.

- 4) Includes in the list of serious felonies the commission of a felony inherently dangerous to human life wherein a person was killed.
- 5) Provides a means of vacating the conviction and resentencing a defendant when a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of first degree felony murder, second degree felony murder, or murder under the natural and probable consequences doctrine, the defendant was sentenced for first degree or second degree murder or accepted a plea offer in lieu of a trial at which the defendant could be convicted for first degree or second degree murder, and the defendant could not be charged with murder after the enactment of this bill. The initial burden is on the petitioner to show that he or she was not the killer, did not act with the intent to kill, and did not act as a major participant with a reckless disregard for human life in the commission of the felony.
- 6) Provides that the court cannot, through this resentencing process, remove a strike from the petitioner's record. By requiring the participation of district attorneys and public defenders in the resentencing process, this bill would impose a state-mandated local program.

Background

The felony murder rule applies to murder in the first degree as well as murder in the second degree. The rule creates liability for murder for actors (and their accomplices) who kill another person during the commission of a felony. The death need not be in furtherance of the felony, in fact the death can be accidental.

The purpose of the rule is to deter those who commit felonies from killing by holding them strictly responsible for any killing committed by a co-felon, whether intentional, negligent, or accidental during the perpetration or attempted perpetration of the felony. (*People v. Cavitt* (2004) 33 Cal. 4th 187, 197.)

First Degree Felony Murder

First degree felony murder rule applies when a death occurs during the commission of one of a list of enumerated felonies. These felonies are as follows: arson, robbery, any burglary, carjacking, train wrecking, kidnapping, mayhem, rape,

torture, and a list of sexual crimes (including rape, sodomy, oral copulation, forcible penetration, or lewd acts with a minor). (Pen. Code, § 189.)

If someone is standing watch while his friend breaks into a locked vehicle and is discovered by a security guard and they all flee on foot. If the security guard falls to the ground in pursuit of the burglars and dies as a result of the fall, both co-defendants could be convicted of murder.

Second Degree Felony Murder

Second degree murder occurs when a death occurs during the commission of a felony that has not been enumerated in code as constituting first degree felony murder, but that courts have defined as “inherently dangerous.” (*People v. Ford* (1964) 60 Cal.2d 772.) The standard courts are supposed to use for inherently dangerous is that the felony cannot be committed without creating a substantial risk that someone could be killed. (*People v. Burroughs* (1984) 35 Cal. 3d 824, 833.)

So therefore, a defendant who fires a weapon in the air to deter criminals from burglarizing their property can be convicted of second degree felony murder if the firing of the weapon kills a human being. That defendant could be convicted of 15 years to life in state prison.

Lack of Deterrent Effect on Criminal Behavior

“The Legislature has said the effect that this deterrent purpose outweighs the normal legislative policy of examining the individual state of mind of each person causing an unlawful killing to determine whether the killing was with or without malice, deliberate or accidental, and calibrating treatment of the person accordingly. Once a person perpetrates or attempts to perpetrate one of the enumerated felonies, then in the judgment of the Legislature, he is no longer entitled to such fine judicial calibration, but will be deemed guilty of first-degree murder for any homicide committed in the course thereof.” (*People v. Cavitt* (2004) 33 Cal. 4th 187, 197.)

The deterrent effect of the felony-murder doctrine has been debated for decades. Countless legal scholars and law review articles have addressed the issue. Most recent studies have concluded that the felony murder rule does not have a deterrent effect on the commission of dangerous felonies or deaths during the commission of a felony. Proponents have argued that the felony-murder rule encourages criminals to reduce the number of felonies they commit and take greater care to avoid causing death while committing a felony. Opponents argue that criminals

are unaware that the felony-murder rule even exists, and that it is impossible to deter criminals from committing unintentional and unforeseeable acts.

A 2002 study of FBI crime data found that nearly 20 percent of all murders annually between the years of 1970-1998 were felony murders. The results of the study suggested that the felony-murder rule has a relatively small effect on criminal behavior, and it does not substantially affect either the overall felony or felony-murder rate. Secondly, the study found that the effects varied by type of felony. While difficult to determine, the rule may have had a positive effect on reducing deaths during theft related offenses, it may have actually increased the rates of death in robbery-homicides. The rule was found to have no effect on rape deaths.

Elimination of the Felony Murder Doctrine Worldwide

The United States adopted the felony murder rule as a form of English Common Law. English Common Law is the common legal system and concepts that has been adopted by courts throughout England, the United Kingdom, and their colonies worldwide.

- 1) Abolished in England and Wales via the Homicide Act of 1957.
- 2) Abolished in Northern Ireland via the Criminal Justice Act of Northern Ireland in 1966.
- 3) Held unconstitutional in Canada as breaching the principles of fundamental justice. (*R v Vaillancourt* (1987) 2 SCR 636.)
- 4) Abolished in Australia and replaced with a modified version known as “constructive murder” which requires that the offender commit an offense with a base penalty of 25 years to life in prison and that the death occurred in an attempt, during, or immediately after the base offense. Abolished and modified in the Crimes Act of 1958.
- 5) There was never a felony murder rule in Scotland.

In the United States there are still 46 states that have some form of a felony murder rule. Hawaii, Kentucky, Michigan, and Ohio have completely abolished the felony murder rule. In 24 of those states, including California, the punishment can be death. The felony murder rule has been removed from the American Law Institute’s Model Penal Code.

This bill does not eliminate the felony murder rule. The purpose of this bill is to merely revise the felony murder rule to prohibit a participant in the commission or attempted commission of a felony that has been determined as inherently dangerous to human life to be imputed to have acted with implied malice, unless he or she personally committed the homicidal act.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- 1) Court: Unknown, potentially-major workload costs in the millions of dollars to the courts to process and adjudicate petitions. Costs would be dependent on the number of individuals who would file a petition for vacation of conviction and resentencing pursuant to this bill. (General Fund*)
- 2) Department of Corrections and Rehabilitation (CDCR): Unknown, potentially-major costs in the hundreds of thousands of dollars to the millions of dollars to the department to supervise and transport inmates from state facilities to the appropriate courthouses for resentencing hearings. Actual costs would be dependent on the number of individuals whom CDCR is required to transport and how many inmates the department could transport and supervise per excursion. (General Fund)

Additionally, CDCR anticipates administrative workload costs of about \$200,000 for case records audit and review of resentencing documents, data and document entry into the Strategic Offender Management System, and release processing and data entry into the Electronic Records Management System. (General Fund)

Unknown, potentially-major out-year or current-year savings in reduced incarceration expenses for inmates resentenced to a shorter term of incarceration. The proposed 2018-19 per capita cost to house a person in a state prison is \$80,729 annually, with an annual marginal rate per inmate of between \$10,000 and \$12,000. The average contract-prison rate cost per inmate is over \$30,000 annually. The actual savings would be dependent on the number of individuals who successfully petition the court for resentencing and whose sentences to state prison are reduced to a shorter term than what was initially imposed. When these averted admissions are compounded, the savings could reach into the millions of dollars annually. (General Fund)

- 3) Local costs: Unknown costs to county District Attorneys' Offices and Public Defenders' Offices to litigate petitions for resentencing. These costs likely

would be reimbursable by the state, the extent of which would be determined by the Commission on State Mandates. (General Fund, local funds)

SUPPORT: (Verified 5/25/18)

American Civil Liberties Union of California
American Friends Service Committee
Anti-Recidivism Coalition
Beit T'Shavah
Bend the Arc Jewish Action
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
CARES for Youth
Catholic Worker Hospitality House
Center for Juvenile Law and Policy
Center on Juvenile and Criminal Justice
Community Housing Partnership
Community Works West
Courage Campaign
East Side Studios
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Friends Committee on Legislation of California
Full Moon Pickles and Catering
Human Rights Watch
Initiate Justice
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Pacific Juvenile Defender Center
Pillars of the Community
Place4Grace
Prison Activist Resource Center
Prisoner Advocacy Network
Prisoner Hunger Strike Solidarity
Restore Justice
Riverside Temple Beth El
Rubicon Programs

Showing Up for Racial Injustice – Long Beach
Sister Inmate; Survived & Punished
The Advocacy Fund
The Modesto/Stanslaus NAACP
Time for Change Foundation
United Auto Workers Local 2865
University of San Francisco School of Law's Criminal and Juvenile Justice Clinic
and Racial Justice Clinic
USC Gould School of Law Post-Conviction Justice Project
WE ARE HERE TO HELP
Women's Center for Creative Work
Women's Council of the California Chapter of the National Association of Social
Workers
Young Women's Freedom Center
Youth Justice Coalition
29 individuals

OPPOSITION: (Verified 5/25/18)

Association of Deputy District Attorneys
California Association of Code Enforcement Officer
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers Association
California Peace Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Los Angeles County Professional Peace Officers Association
Peace Officers Research Association
Riverside Sheriffs Association

Prepared by: Gabe Caswell / PUB. S. /
5/29/18 9:08:31

**** END ****