

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 300**Author:** Cortese (D)**Amended:** 7/7/21**Vote:** 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 4/6/21**AYES:** Bradford, Kamlager, Skinner, Wiener**NO VOTE RECORDED:** Ochoa Bogh

SUBJECT: Crimes: murder: punishment**SOURCE:** California Coalition for Women Prisoners
Californians United for a Responsible Budget
Drop LWOP Coalition
Ella Baker Center for Human Rights
Families United to End LWOP
Felony Murder Elimination Project
Silicon Valley De-Bug

DIGEST:

This bill repeals the provision of law requiring punishment by death or imprisonment for life without the possibility of parole (LWOP) for a person convicted of murder in the first degree who is not the actual killer, but acted with reckless indifference for human life as a major participant in specified dangerous felonies.

Senate Floor Amendments of 7/7/21 remove retroactive application of the provisions, add intent language, and add an urgency clause to the bill.

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) Clarifies that for conviction of murder generally, a participant in a crime must have the mental state described as malice, unless specified criteria are met. (Pen. Code, § 189.)
 - a) States that malice shall not be imputed to a person based solely on his or her participation in a crime.
 - b) States that a participant in certain specified felonies is liable for first degree murder only if one of the following is proven.
 - b.i) The person was the actual killer;
 - b.ii) 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 in the commission of murder in the first degree; and,
 - b.iii) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as specified.

- c) Allows a defendant to be convicted of first degree murder if the victim is a peace officer who was killed in the course of duty, where the defendant was a participant in certain specified felonies and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of duty, regardless of the defendant's state of mind.
- 7) Provides, as enacted by Proposition 115, approved by the voters on the June 5, 1990 statewide general election, that when a prosecutor charges a special circumstance enhancement and it is found true, a person found guilty of first degree murder who are not the actual killer, acted with reckless indifference to human life, was a major participant in certain specified felonies, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission of that felony shall be punished by death or LWOP. (Pen. Code, § 190.2.)

This bill:

- 1) Repeals the provisions of law that requires punishment by death or LWOP for persons convicted of murder in the first degree who are not the actual killer, but acted with reckless indifference to human life as a major participant in specified dangerous felonies.
- 2) Provides that it is the intent of the Legislature that individuals who plan and carry out murders be held responsible for that conduct according to their level of culpability. The Legislature does not intend to dissuade the prosecution of individuals who orchestrate murder under existing law, including prosecution for conspiracy.
- 3) Makes uncodified findings and declarations.

Background

In 2018 California significantly reformed the felony-murder doctrine in California. Historically, the felony murder rule applied to murder in the first degree as well as murder in the second degree. The rule created liability for murder for actors (and their accomplices) who kill another person during the commission of a felony. The death needed not to be in furtherance of the felony, in fact the death could be accidental. The stated purpose for the rule has always been 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 rule applied 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.)

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 fired a weapon in the air to deter criminals from burglarizing their property could be convicted of second-degree felony murder if the firing of the weapon killed a human being. That defendant could have been convicted of 15-years to life in state prison.

SB 1437 (Skinner, Chapter 1015, Statutes of 2018) reformed the felony murder rule in California by clarifying that malice cannot be imputed to a person based solely on his or her participation in a specified crime. This eliminated second degree felony murder as a basis for murder liability. The participant in those specified felonies can only be liable for murder if one of the following factors is proved:

- 1) The person was the actual killer;
- 2) The person was not the actual killer, but had the intent to kill and they aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of the murder; or
- 3) The person was a major participant in the underlying felony and acted with reckless indifference to human life.

Additionally, SB 1437 provided a procedure for incarcerated persons to petition to have their sentences recalled and to be resentenced pursuant to the provisions and standards of the bill.

SB 1437 did not amend the special circumstances provisions of the California Penal Code. Those provisions were implemented by Proposition 115 in 1990 and require a 2/3 vote by both houses of the state legislature to amend.

The implementation of SB 1437 left a peculiar scenario where persons who were not sentenced to LWOP or death were able to petition courts for relief by showing they never intended to kill and they met the qualifications for resentencing, but those who were sentenced to death and LWOP could not petition for relief. This bill corrects that discrepancy by allowing persons sentenced to death or LWOP to petition for relief and resentencing.

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

According to the Senate Appropriations Committee:

- ³⁵₁₇ *Courts:* Unknown, potentially-major one-time costs in the millions of dollars to the courts to adjudicate resentencing petitions. The courts are likely to receive an influx of petitions during the initial years after enactment of this bill, then new filings likely would taper off. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)
- ³⁵₁₇ *Transportation & supervision:* Unknown, potentially-significant workload costs in the thousands of dollars to the Department of Corrections and Rehabilitation (CDCR) to supervise and transport individuals in state custody to attend hearings to vacate first-degree murder convictions and for resentencing. Actual costs would depend on the number of incarcerated persons who file a petition pursuant to this measure and make a prima facie showing that they are entitled to relief and for whom remote/video appearances at the proceedings are not exercised. (General Fund)
- ³⁵₁₇ *Department of Justice (DOJ):* Unknown, potentially-significant workload cost pressures for Deputy Attorneys General (DAGs) to litigate on appeal the applicability of relief pursuant to this measure for individuals whose petitions are denied by the superior courts. (General Fund)
- ³⁵₁₇ *Incarceration savings:* Unknown, potentially-major savings annually in reduced state incarceration costs for individuals whom the courts resentence to a shorter term of imprisonment and/or release from state facilities and for those who, absent this measure, would be convicted to first-degree murder prospectively. The proposed FY 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. Actual savings would depend on the number of individuals who are resentenced and who avoid incarceration in state prison because of this measure. Aside from marginal cost savings per individual, however, the department would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

SUPPORT: (Verified 7/1/21)

California Coalition for Women Prisoners (co-source)
Californians United for a Responsible Budget (co-source)
Drop LWOP Coalition (co-source)
Ella Baker Center for Human Rights (co-source)
Families United to End LWOP (co-source)
Felony Murder Elimination Project (co-source)
Silicon Valley De-Bug (co-source)
8th Amendment Project
ACLU of California
Alameda County Public Defender's Office
Alliance San Diego
American Friends Service Committee
Anti-recidivism Coalition
Asian Americans Advancing Justice – California
Asian Law Alliance
Asian Prisoner Support Committee
Asian Solidarity Collective
Bay Rising
Bend the Arc: Jewish Action
Black Women for Wellness Action Project
California Attorneys for Criminal Justice
California Calls
California Catholic Conference
California Federation of Teachers AFL-CIO
California Immigrant Policy Center
California Nurses Association
California Prison Focus
California Prison Focus/Kage Universal
California Religious Action Center of Reform Judaism
Californians for Safety and Justice
Center on Juvenile and Criminal Justice
Change Begins With Me Indivisible Group
Children's Defense Fund – CA
Communications Workers of America Local 9415
Communities United for Restorative Youth Justice
Community Advocates for Just and Moral Governance
Community Health Councils
Courage California
Cure California
Death Penalty Focus

Democratic Party of the San Fernando Valley
Dignity and Power Now
Drug Policy Alliance
Empowering Pacific Islander Communities
Equality California
Faith in Action East Bay
Friends Committee on Legislation of California
Heals Project- Helping End All Life Sentences
Homies Unidos Inc.
Human Impact Partners
Human Rights Watch
Immigrant Legal Resource Center
Individual Letter
Indivisible San Francisco
Indivisible Yolo
Initiate Justice
Interfaith Movement for Human Integrity
Islamic Shura Council of Southern California
Kehilla Community Synagogue
LA Defensa
Lawyers' Committee for Civil Rights - San Francisco
League of Women Voters of California
Legal Aid at Work
Legal Services for Prisoners with Children
Lincoln Memorial Congregational Church
Los Angeles Urban League
Motivating Individual Leadership for Public Advancement
Multi-faith Action Coalition
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
Oregon Cure
Pillars of the Community
Place4grace
Prison Policy Initiative
Prisoner Advocacy Network
Progressive Democrats for Social Justice
Re:store Justice
Reimagining Justice (at the Goldman School of Public Policy)
Resilience Orange County
Reuniting Families Contra Costa
Riverside Temple Beth El
Root & Rebound
Rubicon Programs
San Francisco Public Defender
San Mateo County Participatory Defense

Secure Justice
Self-Awareness and Recovery
Showing Up for Racial Justice - Marin
Showing Up for Racial Justice at Sacred Heart in San Jose
Showing Up for Racial Justice, Bay Area
Showing Up for Racial Justice, North County
Showing Up for Racial Justice, San Diego
Smart Justice California
Special Circumstances Conviction Project
Starting Over Inc.
SURG San Diego
SURJ Contra Costa County
SURJ North County San Diego
Survived & Punished
Team Justice
The American Constitution Society Chapter for Santa Clara University School of Law
The Dream Corps
The Prisoner Hunger Strike Solidarity Coalition
The Sentencing Project
The Social Justice Ministry of the Live Oak Unitarian Universalist Congregation of Goleta, CA
The Transformative In-Prison Workgroup
Think Dignity
Time for Change Foundation
Together We Will/indivisible - Los Gatos
UCLA Center for Study of Women
Uncommon Law
United Core Alliance
United Food and Commercial Workers, Western States Council
Uprise Theatre
Urban Peace Movement
Viet Rainbow of Orange County
Voices for Progress
We the People - San Diego
Western Regional Advocacy Project
White People 4 Black Lives
Young Women's Freedom Center
YWCA Berkeley/Oakland
multiple individuals

OPPOSITION: (Verified 7/1/21)

California District Attorneys Association
California Police Chiefs Association
Los Angeles County Professional Peace Officers Association
Peace Officers' Research Association of California

ARGUMENTS IN SUPPORT: According to the Felony Murder Elimination Project:

The death penalty and life without the possibility of parole (LWOP) are punishments so extreme they are virtually unheard of in much of the world. California not only regularly imposes these sentences but currently *requires* judges to impose them for any adult convicted of “murder with special circumstances,” even if the person did not kill anyone nor intend anyone to die. Like other enhancements, special circumstances law allows for unchecked prosecutorial discretion that has resulted in disturbing racial disparities in death penalty and LWOP sentences. Under current law, if a person dies during the course of certain felonies, even if the death is accidental, anyone involved in the felony is subject to these severe punishments even though the death was not caused by their individual action or intent.

SB 300 will address this injustice by allowing for a sentence other than the death penalty or LWOP for a person who did not kill anyone or intend for anyone to die. This bill takes a modest step towards repealing our unjust special circumstances scheme by allowing judges to impose a parole eligible sentence, should they deem that a death penalty or LWOP sentence is disproportionate. The bill also provides an avenue for currently incarcerated people to petition the court for resentencing, offering recourse to Californians who have been unjustly sentenced to LWOP or execution.

Decades of research have failed to show any public safety benefit from LWOP or the death penalty. On the contrary, severe punishments like these have driven the mass incarceration crisis that has destroyed lives, families, and entire communities, particularly Black and Brown communities that have long been deprived of supportive investments and programs while being targeted by policing, racism, and oppression. Reducing our reliance on punishment and imprisonment, including for people serving extreme sentences, will benefit our communities by returning people to their families and freeing up funds that can be invested in addressing true community safety and well-being.

ARGUMENTS IN OPPOSITION: According to the Peace Officers’ Research Association of California:

In 1990, Proposition 115 was passed to provide that a person, not the actual killer, who is found guilty of first-degree murder, and who, with reckless indifference to human life and as a major participant in certain specified violent felonies, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission of that felony, shall be punished by death or imprisonment in the state prison without the possibility of parole. SB 300 would repeal the aforementioned provision requiring punishment by death or imprisonment for life without the possibility of parole for a person convicted of murder in the first degree who is not the actual killer,

but acted with reckless indifference for human life as a major participant in certain specified violent felonies.

Prop 15 was passed because the voters recognized that regardless of whether an individual was the actual person who committed the murder, the fact that they had participated in the act, with the intent to kill or knowing full well their actions could cause the death of someone, is just as egregious as the act of murder itself. Under this legislation, if two individuals shoot at a law enforcement officer and that officer dies, but it is proven that only one bullet killed the officer, then the person whose shot did not hit the officer will not be subject to the same penalties of the actual shooter. For these reasons, PORAC opposes SB 300.

Prepared by: Gabe Caswell / PUB. S. /
7/9/21 11:21:19

**** **END** ****