

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.

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