Senate Concurrent Resolution No. 48

RESOLUTION CHAPTER 175

Senate Concurrent Resolution No. 48—Relative to criminal sentencing.

[Filed with Secretary of State September 22, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SCR 48, Skinner. Criminal sentencing.

This measure would recognize the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime.

WHEREAS, According to the Department of Corrections and Rehabilitation (CDCR) Internet Web site, California continues to house inmates in numbers beyond its maximum capacity at an average of 130 percent of capacity. In some institutions, such as Wasco State Prison, the inmate population is at 169.7 percent of capacity, housing well over 2,000 people over the designed maximum capacity. Overpopulation has been the main contributing factor to inhumane and poor living conditions; and

WHEREAS, In California, incarceration of an inmate by CDCR is costing taxpayers $70,836 annually, according to the Legislative Analyst's Office as of the 2016–17 fiscal year; and

WHEREAS, It is a bedrock principle of the law and of equity that a person should be punished for his or her actions according to his or her own level of individual culpability; reform is needed in California to limit convictions and subsequent sentencing in both felony murder cases and aider and abettor matters prosecuted under "natural and probable consequences" doctrine so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences which are not commensurate with the culpability of the defendant; and

WHEREAS, In California, defendants in felony murder cases are not judged based on their level of intention or culpability but are sentenced as if they had the intent to kill even if the victim of the underlying felony actually commits the fatal act; and

WHEREAS, In California, a conviction for capital murder results in a death or life without the possibility of parole sentence, a conviction for noncapital first-degree murder results in a sentence of 25 years to life imprisonment; and a sentence for second-degree murder as long as the facts do not indicate a shooting from a vehicle or the victim being a peace officer results in a sentence of 15 years to life; and

WHEREAS, A 17-percent grant rate in 2016 according to CDCR demonstrates that a 25 years to life sentence generally results in few defendants being granted parole; and

WHEREAS, Prosecutors must prove beyond a reasonable doubt that a defendant acted with premeditation and deliberation and expressly intended to kill the victim in order for the defendant to be convicted of first-degree murder; and

WHEREAS, Under the felony-murder rule, criminal liability for a homicide is significantly broadened; and a prosecutor only needs to prove that the defendant is involved in the commission, attempted commission, or flight following the commission or attempted commission of a statutorily enumerated felony (Section 189 of the Penal Code) to secure a first-degree murder conviction even if the defendant did not do the killing, and even if the killing was unintentional, accidental, or negligent; and

WHEREAS, In the case of second-degree felony murder, the prosecutor only has to prove that the defendant intended to commit an "inherently dangerous" felony; and

WHEREAS, Under the felony-murder rule, a defendant does not have to intend to kill anyone, nor commit the homicidal act, to be sentenced to first-degree murder or second-degree murder; and

WHEREAS, It is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen results of another felon's action, especially when such conduct was not agreed upon; and

WHEREAS, Criminal liability and sentencing should comport with individual culpability, thereby making conviction under a felony murder theory inconsistent with basic principles of law and equity; and

WHEREAS, In California, to be liable for special circumstance felony murder and sentenced to death or to life without the possibility of parole, pursuant to Section 190.2 of the Penal Code, the prosecution must prove the defendant intended to commit the underlying felony and also prove two additional elements: that the person who did not commit the homicidal act acted as a major participant in the felony and acted with reckless indifference to human life; (see People v. Banks (2015) 61 Cal.4th 788); and

WHEREAS, The California Supreme Court in the Banks decision stated that imposing these two statutory additional requirements—required to impose either life without the possibility of parole or a death sentence—comports with the United States Supreme Court Eighth Amendment jurisprudence proscribing cruel and unusual punishment; and

WHEREAS, In cases not prosecuted under a felony-murder theory, in order to convict a defendant of first-degree murder, a jury has to find beyond a reasonable doubt that a person acted with intentional malice; and

WHEREAS, In California, under the felony-murder rule, the prosecution does not have to prove that a killing was intended and need only prove that a defendant intended to commit the underlying felony or intended to commit an inherently dangerous felony; and

WHEREAS, Both Hawaii and Kentucky eradicated the practice by statute and Michigan abrogated the felony-murder rule through case law; and

WHEREAS, The Michigan Supreme Court noted when it abolished the felony-murder rule, "Whatever reasons can be gleaned from the dubious origin of the felony-murder rule to explain its existence, those reasons no longer exist today. Indeed, most states, including our own, have recognized the harshness and inequity of the rule as is evidenced by the numerous restrictions placed on it. The felony murder doctrine is unnecessary and in many cases unjust in that it violates the basic premise of individual moral culpability upon which our criminal law is based" (People v. Aaron (1980) 299 N.W. 2d 304); and

WHEREAS, The due process clause found in both the Fourteenth and Fifth amendments to the United States Constitution requires proof beyond a reasonable doubt of every fact necessary to constitute the crime in order to convict the accused. This should hold true for felony murder cases, but the doctrine of felony murder circumvents this important principle and allows for conviction and punishment to be the same as for those who committed a murder with malice aforethought; and

WHEREAS, Felony murder was conceived in England in the 1700s and brought to the United States in the early 1800s. After much criticism from the courts in England due to the disproportionality of sentencing individuals who had no malice or intent to kill the same as perpetrators of the fatal act, Parliament abolished the felony-murder rule in 1957; and

WHEREAS, The United States is one of the only countries in the world that still allows prosecutions under the felony-murder rule; and

WHEREAS, In addition to the disproportionate sentencing that occurs in felony murder cases, there is need for additional reform when addressing aider and abettor liability for other criminal matters, specifically the "natural and probable" consequences doctrine, which also results in greater punishment for lesser culpability; and

WHEREAS, In California, people who commit a felony are not sentenced according to their individual level of culpability, but all participants, even those who indirectly encouraged the commission of a felony, even by words or gestures, may be held to the same degree of culpability as the person who committed the offense (People v. Villa (1957) 156 Cal.App.2d 128); and

WHEREAS, Defendants charged and convicted under felony murder are subject to the same sentencing as the actual perpetrator of the murder, even if their actual involvement was limited to a lesser crime, judges and jurors are not allowed to apportion degrees of culpability. Good public policy dictates that after conviction, judges or jurors should be given this opportunity; similar to the method currently employed for serious felonies called "strike hearings." In this way a defendant may receive a more appropriate sentence for the crime committed; and

WHEREAS, An aider and abettor is criminally responsible not only for the crime he or she intends, but also for any crime that "naturally and probably" results from his or her intended crime; the result of this doctrine is that all participants in a fistfight can be held liable for first-degree murder

when only one defendant commits a murder, notwithstanding the fact that the other participants did not know the defendant was armed, the killing occurred after the fistfight ended, and the participants did not aid or abet the shooting (People v. Medina (2009) 46 Cal.4th 913); resulting in individuals lacking the mens rea and culpability for murder being punished as if they were the ones who committed the fatal act; and

WHEREAS, As stated by Justice Goodwin Liu in People v. Cruz-Santos, this leads to overbroad application: "At its essence, the natural and probable consequences doctrine imposes liability on the basis of negligence layered on top of a defendant's culpability for aiding and abetting a target offense. (See People v. Chiu, (2014) 59 Cal.4th 155 at p. 164 ["'because the nontarget offense is unintended, the mens rea of the aider and abettor with respect to that offense is irrelevant and culpability is imposed simply because a reasonable person could have foreseen the commission of the nontarget crime.' "].) Although reasonable foreseeability can be a legitimate basis for assigning culpability, courts and commentators have long observed that the concept is susceptible to overbroad application. (See Thing v. La Chusa (1989) 48 Cal.3d 644, 668 ["there are clear judicial days on which a court can foresee forever"]; Goldberg v. Housing Authority of City of Newark (N.J. 1962) 186 A.2d 291, 293 ["Everyone can foresee the commission of crime virtually anywhere and at any time."]; Guthrie et al. (2001) Inside the Judicial Mind, 86 Cornell L.Rev. 777, 799 ["Hindsight vision is 20/20. People overstate their own ability to have predicted the past and believe that others should have been able to predict events better than was possible. Psychologists call this tendency for people to overestimate the predictability of past events the 'hindsight bias.' " (fns. omitted)]; Rachlinski (1998) A Positive Psychological Theory of Judging in Hindsight, 65 U. Chi. L.Rev. 571, 571 ["'Nothing is so easy as to be wise after the event.' " (fn. omitted, quoting Cornman v. The Eastern Counties Railway Co. (Exch. 1859) 157 Eng. Rep. 1050, 1052)].); and

WHEREAS, It is the proper role of trial courts to screen out cases in which the concept of foreseeability cannot bridge the gap between a defendant's culpability in aiding and abetting the target offense and the culpability ordinarily required to convict on the nontarget offense. This judicial check serves to ensure that natural and probable consequences liability—a judge made doctrine in tension with the usual mens rea requirement of the criminal law—is kept "consistent with reasonable concepts of culpability." People v. Chiu (2014) 59 Cal.4th 155, 165; and

WHEREAS, It can be cruel and unusual punishment to not assess individual liability for nonperpetrators of the fatal act or in nonhomicide matters the criminal charge resulting in prosecution and impute culpability for another's bad act, thereby imposing lengthy sentences that are disproportionate to the conduct in the underlying case; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature recognizes the need for statutory changes

to more equitably sentence offenders in accordance with their involvement in the crime; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

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