

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure (Refs & Annos)

Title 7. Of Proceedings After the Commencement of the Trial and Before Judgment

Chapter 4.5. Trial Court Sentencing (Refs & Annos)

Article 1. Initial Sentencing (Refs & Annos)

West's Ann.Cal.Penal Code § 1170.95

§ 1170.95. Convicted of first or second degree murder; petition to vacate murder conviction and to be resentenced on remaining counts because of changes in law made effective January 1, 2019

Effective: January 1, 2019

Currentness

(a) A person convicted of felony murder or murder under a natural and probable consequences theory may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.

(2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder.

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

(b)(1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and

on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

(A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a).

(B) The superior court case number and year of the petitioner's conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

(c) The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.

(d)(1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not been previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. This deadline may be extended for good cause.

(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to human life or

was not a major participant in the felony, the court shall vacate the petitioner's conviction and resentence the petitioner.

(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentedenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.

(e) If petitioner is entitled to relief pursuant to this section, murder was charged generically, and the target offense was not charged, the petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes. Any applicable statute of limitations shall not be a bar to the court's redesignation of the offense for this purpose.

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

(g) A person who is resentedenced pursuant to this section shall be given credit for time served. The judge may order the petitioner to be subject to parole supervision for up to three years following the completion of the sentence.

Credits

(Added by Stats.2018, c. 1015 (S.B.1437), § 4, eff. Jan. 1, 2019.)

West's Ann. Cal. Penal Code § 1170.95, CA PENAL § 1170.95
Current with urgency legislation through Ch. 2 of 2019 Reg.Sess

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Title 8. Of Crimes Against the Person
Chapter 1. Homicide (Refs & Annos)

West's Ann.Cal.Penal Code § 189

§ 189. Murder; degrees

Effective: January 1, 2019

Currentness

(a) All murder that is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or murder that is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree.

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

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

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

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

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

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

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

(1) The person was the actual killer.

(2) 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.

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

(f) Subdivision (e) does not apply to a defendant when the victim is a peace officer who was killed while in the course of his or her duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of his or her duties.

Credits

(Enacted in 1872. Amended by Code Am.1873-74, c. 614, p. 427, § 16; Stats.1949, First Ex.Sess., c. 16, p. 30, § 1, eff. Jan. 6, 1950; Stats.1969, c. 923, p. 1852, § 1; Stats.1970, c. 771, p. 1456, § 3, eff. Aug. 19, 1970; Stats.1981, c. 404, p. 1593, § 7; Stats.1982, c. 949, p. 3438, § 1, eff. Sept. 13, 1982; Stats.1982, c. 950, p. 3440, § 1, eff. Sept. 13, 1982; Initiative Measure (Prop. 115), approved June 5, 1990, eff. June 6, 1990; Stats.1993, c. 609, (S.B.310), § 1; Stats.1993, c. 610 (A.B.6), § 4, eff. Oct. 1, 1993; Stats.1993, c. 610 (A.B.6), § 4.5, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1993, c. 611 (S.B.60), § 4, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 4.5, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1999, c. 694 (A.B.1574), § 1; Stats.2002, c. 606 (A.B.1838), § 1, eff. Sept. 17, 2002; Stats.2010, c. 178 (S.B.1115), § 51, operative Jan. 1, 2012; Stats.2018, c. 423 (S.B.1494), § 42, eff. Jan. 1, 2019; Stats.2018, c. 1015 (S.B.1437), § 3, eff. Jan. 1, 2019.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Amendment

Section 189 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons. [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (2350)

West's Ann. Cal. Penal Code § 189, CA PENAL § 189
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(2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder.

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

(b)(1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and

on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

(A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a).

(B) The superior court case number and year of the petitioner's conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

(c) The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.

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(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to human life or

was not a major participant in the felony, the court shall vacate the petitioner's conviction and resentence the petitioner.

(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.

(e) If petitioner is entitled to relief pursuant to this section, murder was charged generically, and the target offense was not charged, the petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes. Any applicable statute of limitations shall not be a bar to the court's redesignation of the offense for this purpose.

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

(g) A person who is resentenced pursuant to this section shall be given credit for time served. The judge may order the petitioner to be subject to parole supervision for up to three years following the completion of the sentence.

Credits

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West's Ann.Cal.Penal Code § 188

§ 188. Malice, express malice, and implied malice defined

Effective: January 1, 2019

Currentness

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

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

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

(3) Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime.

(b) If it is shown that the killing resulted from an intentional act with express or implied malice, as defined in subdivision (a), 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 that awareness is included within the definition of malice.

Credits

(Enacted in 1872. Amended by Stats.1981, c. 404, p. 1593, § 6; Stats.1982, c. 893, § 4; Stats.2018, c. 1015 (S.B.1437), § 2, eff. Jan. 1, 2019.)

Notes of Decisions (374)

West's Ann. Cal. Penal Code § 188, CA PENAL § 188
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Responding to SB 1437 Petitions



Felony Murder—Former Law

Every participant in the commission of a dangerous felony that results in death is guilty of First Degree Murder. (arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, forcible sexual assault, torture)

- a. any participant in a dangerous felony that causes a person's death
- b. intentionally (by actual killer), unintentionally, accidentally, or negligently

*Second Degree Felony Murder: Underlying felony is inherently dangerous

Revision to Felony Murder Rule—PC 189

A participant in a felony can only be found guilty of murder if:

- a) The person was the actual killer.
- b) The person "with the intent to kill", aided, abetted, counseled, commanded, induced, requested or assisted the actual killer in the commission of murder in the first degree.
- c) The person was a major participant in the underlying felony and acted with reckless indifference to human life.

*Second-degree Felony Murder abolished.

Revision to Felony Murder Rule—PC 189

**If you have a case where an aider and abettor to a felony murder was charged with Special Circ under 190.2(d) and there was a finding of Not True the new law indicates that the court Shall Vacate the conviction.

190.2(d) applies to Aiders and Abettors to Felony Murder who are Major Participants in the Felony and Act with Reckless Indifference to Human Life.

***if you get a case like this, see Lisa or Stacy

Natural and Probable Consequences Doctrine (Former Law)

Aiders and abettors liable not only for the crimes they intend to commit, but for any crime committed by a fellow participant if it was **reasonably foreseeable**.

- a) Acted with knowledge of the unlawful purpose of perpetrator
- b) Intended to commit, encourage or facilitate the commission of target crime
- c) By act or advice aided, promoted, encouraged or instigated target crime
- d) The def. confederate committed a murder rather than target crime
- e) The murder was a natural and probable consequence of the target crime

--Objective Standard (reasonable person standard)

New Law Penal Code Section 188(a)

In order for an aider and abettor to be convicted of murder:
"a principal in a crime shall act with **Malice Aforethought**".

- Malice shall not be imputed to a person based solely on his participation in a crime.

Def. acted with Express Malice (intent to kill) or

Def. acted with Implied Malice (circumstances attending the killing show an abandoned and malignant heart.)

--This is a subjective standard

Natural and Probable consequences is still a valid theory for all other crimes. New law only applies First and Second Degree murder.

Constitutional Argument

- Propositions 7 and 115.
- The legislature's enactment of SB 1437 is an **unconstitutional amendment** to Both Propositions
 - Unless a voter initiative contains language to allow amendment by the Legislature, it **may only** be altered by vote of the electorate.
 - If the initiative contains language allowing Legislative amendments it must be by a super majority **(2/3)** vote in both houses.

Constitutional Argument

2. Amendment to Prop 7

a. Passed in 1978 to "turn back the tide of violent crime by imposing increased and lengthy prison terms for 1st and 2nd deg murder (15 and 25-life). Passed by 71 percent of voters. Prop 7 did not allow for Legislative Amendment. Therefore, only the electorate could amend.

Only the electorate can amend Prop 7, but legislature did it anyways

Amended in 2 ways:

- Altered the sentencing prescribed by Prop 7 for 1st & 2nd deg murder (created 1170.95 resentencing provision)
- Eliminated imputed malice murder and added conduct to be liable for 1st deg felony murder.

Constitutional Argument

- Amendment to Prop 115

- Passed in 1990 as the Crime Victim's Reform Act to create a system in which violent criminals "receive just punishment..." It amended PC §189 expanding the definition of 1st deg murder to include 5 additional serious crimes to the Felony Murder list. It also amended Prop 7 to increase the number of defs eligible for punishment for 1st deg felony murder.

Prop 115 allowed for legislative amendment by a supermajority (2/3) vote of both houses. Legislature passed 1437 without a 2/3 vote in both houses.

SB1437 amended PC 189 by adding subd. (e) requiring additional elements to be proven and substantially limiting who can be liable for FM.

Materials to Consider

- Trial transcripts
- Court of Appeal Opinions
- Docket entries
- Probation Report
- Closed File including Boxes
- Trial Briefs
- Lifer Letters
- C File from CDC
- Co-Def Probation reports, interviews, post-conviction pleadings

Legal Resources and Analysis

- Read Couzens "Accomplice Liability for Murder" on Shared Drive
- Read CDAA San Diego Analysis on Shared Drive
- Read Alameda County DA SB1437 analysis on Shared Drive

Felony Murder Rule Brief

- Discuss the requirement that defendant make a prima facie showing in petition—check the box forms do not contain enough info.—(not a winner)
- Defendant not entitled to resentencing because: His/her conduct falls outside of New law, This will be very fact specific!!
 - Defendant was the actual killer
 - Defendant aided and abetted with the intent to kill
 - Defendant was a Major Participant in underlying felony and acted with Reckless Indifference to Human Life
 - If **TRUE** Finding on Special Circ (190.2(d))—Def. does not qualify

Natural and Probable Consequences Brief

- Discuss the requirement that defendant make a prima facie showing in petition—check the box forms do not contain enough info. -(not a winner)
- Defendant not entitled to resentencing because: His/her conduct falls outside of New law. This will be very fact specific!!

--NPC not abolished but modified:

NPC + Implied Malice

**Subjective Standard



