

GENERAL OFFICE MEMORANDUM 19-082

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: REVISION TO POLICY RE: CONSTITUTIONAL CHALLENGES TO
SB 1437 – MURDER RESENTENCING

DATE: JULY 22, 2019

Senate Bill (SB) 1437 made significant changes to the laws regarding accomplice liability for murder (See General Office Memorandum (GOM) 18-149.) SB 1437 also enacted Penal Code¹ section 1170.95, allowing certain prisoners convicted of murder to petition for resentencing under the newly amended laws. Per GOM 18-174, Office policy allowed constitutional challenges to section 1170.95 in all cases that had been reduced to final judgment. In addition, the Office is aware that deputies have made other constitutional challenges beyond those contemplated by GOM 18-174 in resentencing cases, as well as in murder cases pending trial. This GOM supersedes GOM 18-174 to the extent it is inconsistent with the new policy stated in this GOM.

The new policy limits the circumstances where deputies may make constitutional challenges to any aspect of SB 1437. Going forward, deputies may make a constitutional challenge to any aspect of SB 1437 only if there is a reasonable argument that the defendant is guilty of murder under amended sections 188 and 189.

For resentencing petitions, deputies shall make this determination based on the record of conviction, as well as any additional evidence that could be admitted to support the charge. This additional evidence may include witness testimony or other evidence that was reasonably available but not presented at the time of the original conviction, even if that witness or evidence is no longer available.

The purpose of this new policy is to allow relief to defendants clearly eligible while still marshalling all available arguments in cases where the People have been unfairly prejudiced by the new laws.

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¹ Further statutory references are to the Penal Code.