
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SCR 48 **Hearing Date:** June 13, 2017
Author: Skinner
Version: May 11, 2017
Urgency: **Fiscal:** No
Consultant: MK

Subject: *Criminal Sentencing*

HISTORY

Source: #cut50

Prior Legislation: None

Support: Ella Baker Center for Human Rights; Felony Murder Elimination Project; Lifers with Optimistic Progress; Silicon Valley De-Bug; Youth Justice Coalition; several individuals

Opposition: None known

PURPOSE

The purpose of this resolution is to recognize the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime.

Existing law provides that all murder which 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 which 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 any murder which 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. (Penal Code Section 189)

Existing law provides that the penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one of specified circumstances is found to be true including:

The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

(B) Kidnapping in violation of Section 207, 209, or 209.5.

- (C) Rape in violation of Section 261.
- (D) Sodomy in violation of Section 286.
- (E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.
- (F) Oral copulation in violation of Section 288a.
- (G) Burglary in the first or second degree in violation of Section 460.
- (H) Arson in violation of subdivision (b) of Section 451.
- (I) Train wrecking in violation of Section 219.
- (J) Mayhem in violation of Section 203.
- (K) Rape by instrument in violation of Section 289.
- (L) Carjacking, as defined in Section 215.
- (M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder. (Penal Code §190.2)

This bill makes a number of declarations regarding the capacity of CDCR, the cost of incarcerations, the principle of sentencing a person according to his or her culpability, the fact that the felony murder rule only requires a person be shown to have participated in the commission of the felony and does not require the intent to kill anyone and related declarations.

This bill resolves that the Legislature recognizes the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime.

COMMENTS

1. Need for This Bill

According to the author:

The California prison population continues to increase even with the implementation of some important reforms such as Proposition 57. According to the CDCR website, California continues to house inmates in numbers beyond its maximum capacity at an average of 130%. In some institutions, such as Wasco State Prison, the inmate population is at 169.7 %, housing well over 2,000 people over the designed maximum capacity. Overpopulation has been the main contributing factor to inhumane and poor living conditions.

Voters have shown that they support criminal justice reform by overwhelmingly passing Proposition 47 in 2014 and Proposition 57 in 2016. There is a continued need to focus our dollars on keeping people in prison who are dangerous, and giving relief to those who are given disproportionate sentences. Currently in California, a large number of people are serving life sentences for first degree murder, when in actuality, they did not commit or participate in the murder.

The felony murder rule is a legal doctrine that excludes considerations of context and intention in a murder-crime: when someone is killed during the commission of a felony, regardless of how or by whom they are killed, the commissioner of the felony is charged with murder. The United States is the only country in the world to use the felony murder rule. Some states are going in the right direction, such as Hawaii and Kentucky have banned the felony murder rule by statute and in Michigan through the Supreme Court. In Michigan, the 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.”

Under the current felony-murder rule in California, criminal liability for a homicide is broadened. A defendant may be convicted of first-degree murder under the felony-murder rule if the defendant is involved in the commission, attempted commission, or flight following the commission or attempted commission of a statutorily-enumerated felony (Penal Code § 189), even if the defendant did not do the killing, and even if the killing was unintentional, accidental, or negligent. A defendant may be convicted of second-degree felony murder if a killing happened during the commission, attempted commission, or flight following the commission or attempted commission of an “inherently dangerous felony” even if the defendant did not do the killing, and even if the killing was unintentional, accidental, or negligent.

For example, in 2008 in Illinois, three teenagers broke into a home while two friends waited outside. A person inside the home, surprised by the burglars, shot and killed one of the boys. While the shooter wasn't prosecuted for the killing because he acted in self-defense, two of the teenage boys were charged with first-degree murder. Both boys took a plea deal as in which they pleaded guilty to involuntary manslaughter and burglary, and were both sentenced to 30 years in prison. There are many more cases that can be quoted. One of the boys, now a grown man was just granted a gubernatorial commutation.

In California, there is only a 17% chance of being granted parole through the parole board, for the non-killers sentenced under the felony murder rule, in order to be found suitable for release, they must take full responsibility for the murder and will be denied if cannot. This arbitrary regulation puts people in a difficult position of having to take responsibility for a murder which they did not participate in, inflict or premeditate and sometimes have knowledge it had even occurred until they were told at the time of their arrest.

It has been shown that the felony murder rule does not deter crime. In a 2002 study by Anup Malani from the University of Virginia, it showed that the felony murder rule did not decrease the rates of felony murder in the state.

The felony murder rule threatens the very foundation of our legal philosophy—the mens rea requirement and has no right to remain in our legal system. And a law that

crudely equates unarmed robbers with premeditating murderers, throwing them both into the same, overflowing prison cell, certainly has no role in our criminal justice system.

It is important for the legislature to acknowledge the unfairness of this law and how it has caused disproportionately long sentences for people who did not commit murder. We must limit first and second-degree felony-murder liability to only those defendants who actually did the killing or acted with a premeditated intent to aid and abet the homicidal act. Aiders and abettors in the commission, attempted commission, or flight from the commission or attempted commission of the underlying felony should no longer be convicted of first or second-degree under a felony murder theory. However, aiders and abettors may still be convicted of first or second-degree murder if it is proven beyond a reasonable doubt that the non-killer acted with either express or implied malice as defined in Penal Code § 187. That is, the non-killer must either “manifest a deliberate intention unlawfully to take away the life of a fellow creature” or act with implied malice, as defined by Penal Code § 188.

2. Need to make Changes to More Equitably Sentence Offenders

This Resolution states that the Legislature recognizes the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime and makes a number of statements supporting that resolution.

3. Argument in Support

The sponsor #cut50 states:

The Felony Murder Rule is a doctrine pursuant to which individuals are convicted for murder as a result of committing an enumerated felony in which another person dies, even if the individual convicted neither killed nor intended to kill another. While it is paramount to hold accountable those who endanger public safety, particularly those who commit the most serious offenses, it is also critical that the punishments meted out are proportional to a person’s culpability for an offense. The Felony Murder Rule takes us far away from this principle of justice and fairness. It is time for California to follow Michigan, Kentucky, Hawaii and Ohio, to move away from this inequity in our criminal justice system. SRC 48 is smart-on-crime and fiscally wise for California. This resolution recognizes the need to differentiate the non-killer in the crime from the person who is personally responsible for committing murder and holding them accountable for their individual culpability....

It is important for the California legislature to acknowledge the disproportionality of this law. We must limit first and second-degree felony-murder liability only to those defendants who committed the killing or acted with an intent to aid and abet the homicidal act. Aiders and abettors in the commission or attempted commission, or flight from the commission or attempted commission of the underlying felony, should no longer be convicted of first or second-degree murder under the felony murder theory. However, aiders and abettors may still be convicted of first or second-degree murder if it is proven beyond a reasonable doubt that the non-killer

acted with either express or implied malice as defined in Penal Code § 187. That is, the non-killer must either “manifest a deliberate intention unlawfully to take away the life of a fellow creature” or act with implied malice, as defined by Penal Code § 188.

Punishment must reflect the crime of on an individual basis. We should not condemn a person to a life sentence for a murder they did not commit nor intended to commit. There are many instances where there was no knowledge of a crime occurring and such instances threaten the very foundation of our legal system and undermine the mens rea requirement, i.e. the intention or knowledge of a wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused.

In California, there is only a 17% chance of being granted parole through the parole board, for non-killers sentenced under the felony murder rule. In order to be found suitable for parole, they must take full responsibility for the murder and demonstrate exemplary behavior while in prison. This arbitrary regulation puts people in a difficult position of having to take responsibility for a murder which they did not participate in, inflict or premeditate. This isn't conducive to rehabilitation.

We must encourage rehabilitation to reduce crime and make our communities safer.

-- END --