LEGISLATIVE COUNSEL’S DIGEST

SCR No.
as introduced, ______.
General Subject: Criminal sentencing.

This measure would recognize the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime and the need to rectify the fundamental contradiction between the concept of rehabilitation and the irredeemable sentence of life in prison without the possibility of parole.
Fiscal committee: no.
WHEREAS, The felony-murder rule was first applied in England in the 1700s and was 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 in the same manner as perpetrators of the fatal act, Parliament abolished the felony-murder rule in 1957; and

WHEREAS, The United States is one of the few countries in the world that still prosecutes individuals under the felony-murder rule; and

WHEREAS, The felony-murder rule, as to an aider and abettor, imposes liability without culpability. The aider and abettor does not possess the requisite intent to kill as in traditional murder statutes; and

WHEREAS, In cases not prosecuted under a felony murder theory, a jury must find beyond a reasonable doubt that the defendant acted with intentional malice and forethought in order to convict the defendant of first-degree murder. A first-degree murder conviction may result in a sentence of 25 years to life, life without the possibility of parole, or death; and

WHEREAS, Use of the felony-murder rule in the context of aiders and abettors has been slowly eroded by recent decisions of the United States Supreme Court and our own California Supreme Court; and

WHEREAS, While some reform has been made in California by the passage of Senate Bill 1437 in 2018, which limited convictions and subsequent sentencing in felony-murder cases, further reform is urgently needed to limit convictions and subsequent severe and irredeemable sentencing in felony-murder with special circumstance cases, so that the law of California fairly and consistently addresses the culpability of the individual; and

WHEREAS, In all but 3 of the 22 special circumstances identified in subdivision (a) of Section 190.2 of the Penal Code, a defendant must have perpetrated an intentional killing to be sentenced to death or life in prison without the possibility of parole; and

WHEREAS, Paragraph (17) of subdivision (a) of Section 190.2 of the Penal Code mandates a sentence of death or life in prison without the possibility of parole to be imposed upon a defendant who was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit any one of 13 felonies during which a death, either accidental or intentional, occurs; and

WHEREAS, Subdivision (b) was added to Section 190.2 by Proposition 115 in 1990 and specifies that an actual killer need not have had any intent to kill at the time of the commission of the offense that is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole. Subdivision (c) was also added, which specified that every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole. Finally, Proposition 115 added subdivision (d) to Section 190.2 of the Penal Code, which specifies that "every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a), which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall
be punished by death or imprisonment in the state prison for life without the possibility of parole”; and

WHEREAS, The summary of Proposition 115 prepared by the Legislative Analyst states that “the proposal makes numerous significant and complex changes in criminal law and in the judicial procedures that must be followed in criminal cases”; and

WHEREAS, California’s Proposition 115 required ordinary citizens who lacked the necessary legal expertise and knowledge of judicial procedures to make “significant and complex changes” to California’s Constitution regarding criminal law and judicial procedures; and

WHEREAS, In California, a conviction for felony-murder with special circumstances requires a sentence of death or life in prison without the possibility of parole; and

WHEREAS, It is a bedrock principle of the law and of equity that a person should be punished for their actions according to their own level of individual culpability; and

WHEREAS, It can be cruel and unusual punishment to not assess individual liability for nonperpetrators of the fatal act and impute culpability for another’s bad act, thereby imposing irredeemable sentences that are disproportionate to the conduct in the underlying case; and

WHEREAS, In California, a defendant in a felony-murder with a special circumstance case is not punished 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 2015, based on the decisions of the United States Supreme Court in Enmund v. Florida (1982) 458 U.S. 782 and Tison v. Arizona (1987) 481 U.S. 137, the California Supreme Court decided People v. Banks (2015) 61 Cal.4th 788 (BANKS), which established a five-factor test used to assess the sufficiency of the evidence to support a special circumstance finding. The California Supreme Court clarified its decision in Banks one year later in People v. Clark (2016) 63 Cal.4th 522 (CLARK), which set forth factors to be used in determining whether a defendant has acted with “reckless indifference to human life”; and

WHEREAS, While Banks and Clark are recognized by the courts in a habeas corpus petition for those already convicted, the determination of what constitutes “major participation” or “reckless indifference to human life” in a particular case remains subject to judicial interpretation or bias towards the finality of judgment; and

WHEREAS, The California Supreme Court in the Banks decision stated that imposing these two additional statutory requirements, major participation and reckless indifference to human life, to mandate either life without the possibility of parole or a death sentence, conforms with the United States Supreme Court Eighth Amendment jurisprudence denouncing cruel and unusual punishment; and

WHEREAS, The decision of whether to allege a special circumstance is at the sole discretion of the district attorney, which results in inconsistent, unequal, and potentially biased application of this lethal law; and

WHEREAS, Ninety percent of the 200 women and transgender people in California women’s prisons serving life without the possibility of parole were sentenced as aiders and abettors with special circumstances, including under the felony-murder rule with special circumstances, the majority of whom were survivors of abuse, such as intimate partner violence, child abuse, sexual violence, and human trafficking; and
WHEREAS, According to the Department of Corrections and Rehabilitation (CDCR) Strategic Offender Management System, as of July 31, 2018, there were 5,206 people serving a sentence of life without the possibility of parole, 3,711 of which were first-time offenders and 3,221 of which were 25 years of age or younger at the time the crime was committed; and

WHEREAS, The most common age of a defendant at the time of the crime for which they have received a sentence of life without parole is 19 years of age; and

WHEREAS, The largest population of those sentenced under the felony-murder rule with special circumstances and serving a sentence of life without the possibility of parole are youth who were between 18 and 25 years of age at the time of the crime; and

WHEREAS, Neurological research has concluded that the human brain is not fully formed until 25 years of age and that young people do not have adult levels of judgment, impulse control, or the ability to foresee the consequences of their actions; and

WHEREAS, Condemning a young person to a life behind bars with no possibility of release entirely disregards the human capacity for rehabilitation, the enhanced ability of young people to grow and change, and the very real physical and psychological differences between younger people and mature adults; and

WHEREAS, People of color are disproportionately sentenced to life without the possibility of parole, as evidenced by the fact that 68 percent of people who receive that sentence are Black and Latinx; and

WHEREAS, According to the CDCR Monthly Report of Population, as of September 30, 2019, California continues to house inmates in numbers beyond its maximum capacity at an average of 130 percent of capacity. In some institutions, such as California State Prison, Solano, the inmate population is at 173.9 percent of capacity, housing almost 2000 people over the designed maximum capacity. Overpopulation remains the main contributing factor to inhumane and poor living conditions in state prisons; and

WHEREAS, According to the Legislative Analyst’s Office, incarceration of an inmate by CDCR is costing taxpayers $84,848 annually as of the 2019–20 fiscal year; and

WHEREAS, CDCR has historically made rehabilitation programs and educational programs unavailable or inaccessible to incarcerated individuals sentenced to the death penalty or life without the possibility of parole; and

WHEREAS, The California Supreme Court in People v. Dillon (1983) 34 Cal.3d 441 states “… the state must exercise its power to prescribe penalties within the limits of civilized standards and must treat its members with respect for their intrinsic worth as human beings: ‘Punishment which is so excessive as to transgress those limits and deny that worth cannot be tolerated.’ We concluded that a punishment may violate the California constitutional prohibition ‘if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity’; 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 the need to rectify the fundamental contradiction between the concept of rehabilitation
and the irredeemable sentence of life in prison without the possibility of parole; 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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Senate Concurrent Resolution No. ____
Relative to criminal sentencing.