FACT SHEET FOR SENATE BILL 1437

Senate Bill (S.B.) 1437, "Accomplice Liability for Felony Murder," was signed into law Sept. 30, 2018, and became effective on January 1, 2019.

S.B. 1437 does two things.

First, it changes the way people can be charged and convicted of murder under the theories known as "felony-murder," and "natural and probable consequences." (Penal Code § 189 and, 188 and CALCRIM 402, respectively.)

Second, it allows certain defendants who have already been convicted under these theories of murder (by trial or by a guilty plea,) to petition the sentencing court asking that court to vacate (overturn) their murder conviction. (Penal Code § 1170.95.)

Felony-Murder Rule

The felony-murder rule states that a defendant who commits or attempts to commit one of the listed serious felonies in Penal Code section 189 and kills someone during that crime, is guilty of first-degree murder even if he had no intent to kill the victim. Those listed serious felonies are:

> 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. (Penal Code § 189 (a).)

If the defendant is the "actual killer," then S.B. 1437 is not applicable to him and his first-degree murder conviction will remain. S.B. 1437 does not apply to these types of defendants. (Penal Code § 189 (e) and Penal Code § 1170.95 (a)(3).)

S.B. 1437 applies to **accomplices**. An accomplice is someone who "aids and abets" or helps a "principal" – the person actually committing the crime. An accomplice is as guilty as the principal and is treated as one. (Penal Code § 31.)

Under the old felony-murder rule, an accomplice to one of the listed serious felonies (known as a "target offense") is not only guilty of the target offense but is also guilty for any killing that occurred *during* the commission or attempted commission of the target offense listed above. So an accomplice will be convicted of first-degree murder even if she is not the actual killer.

For example, the getaway driver in a bank robbery is an accomplice to the robbery and if during the robbery someone is killed, that accomplice may be convicted of first-degree murder.

Under the *new* felony-murder rule, an accomplice to a target offense can only be convicted of murder if:

- He is the actual killer, or,
- He shared the intent to kill with the actual killer, or,
- The murder victim was a police officer, or,
- He was a "major participant in the underlying felony [target offense] and acted with reckless indifference to human life".
  (Penal Code § 189 (e) (1), (2), (3), and (f).)

A "major participant [... who] acted with reckless indifference to human life," is an accomplice whose "personal involvement [is] substantial, greater than the actions of an ordinary aider and abettor to an ordinary felony murder". (*People v. Banks* (2015) 61 Cal.4th 788.) The term "major participant [...] who acted with reckless indifference to human life," previously applied only to accomplice-defendants charged with a "special circumstance." (Penal Code § 190.2) It now applies to all accomplice-defendants in felony-murders. (Penal Code § 189 (e)(3).)

Felony-Murder Petitions

Senate Bill 1437 makes it very easy for an inmate to file a petition with the court. They need only to check a few boxes, serve the District Attorney's Office, their trial attorney, and the county public defender, and file it with the sentencing court. You can see a sample form here.

Once the court has the petition, then:

- The court will make sure that the petitioner (defendant/inmate) is eligible under S.B. 1437.

- The District Attorney will respond to the petition in a written motion within 60 days of receiving the petition. (Penal Code § 1170.95 (c).)

If the court finds that the petitioner is **not** eligible under S.B. 1437, then the conviction stands.

If the court finds that the petitioner **is** eligible under S.B 1437, then

- The court will schedule a hearing ("order to show cause") within 60 days. (Penal Code § 1170.95 (d)(1).)

- The District Attorney has the burden of proof to prove, beyond a reasonable doubt, that the petitioner is ineligible for relief under S.B. 1437, so the District Attorney will determine if it can be proved that, either,

- The petitioner is the actual killer, or,
- The petitioner shared the intent to kill with the actual killer, or,
- The murder victim was a police officer, or,
- The petitioner was a "major participant in the underlying felony and acted with reckless indifference to human life".

- The District Attorney can use court transcripts, court records, or "offer new or additional evidence" at the hearing to prove the petitioner is ineligible for relief under S.B. 1437. (Penal Code § 1170.95 (d)(3).)

- The petitioner may also offer similar evidence including a previous court or jury finding that the petitioner has been found **not** to be a "major participant [... who] acted with reckless indifference to human life." If this later evidence is proved, "the court shall vacate the petitioner's conviction." (Penal Code § 1170.95 (d)(2).)

If the District Attorney proves, beyond a reasonable doubt, that the petitioner is ineligible for relief under S.B. 1437, then the petitioner's murder conviction will remain.

If the District Attorney cannot prove, beyond a reasonable doubt, that the petitioner is ineligible for relief under S.B. 1437, then:

- The court will resentence the petitioner to those charges that remain, such as the target offense, and the murder conviction will be vacated. (Penal Code § 1170.95 (d)(3).)

- Only the murder conviction is vacated.

- At the resentencing hearing, the court will determine the amount of credit for time served the petitioner has already served, and *may* order the petitioner to be on parole for up to three years after her release. (Penal Code § 1170.95 (g).)

- A petitioner might be immediately released depending on how long he has been in prison.

- The normal rights to be heard at a sentencing hearing are still retained by the victims.

"Natural and Probable Consequences" Rule

The murder theory of "natural and probable consequences" is an accomplice theory for *second-degree* murder. This is a court rule and is not in any statute.

The theory states that an accomplice to *any* felony (again, “target offense”) that should have known that the commission of a murder was a natural and probable (foreseeable) consequence of the commission of the target offense is guilty of second-degree murder. (CALCRIM 402.)

This is very similar to the court-created “second-degree felony murder” rule. (Penal Code § 188 (3).)

For all intents and purposes, the “natural and probable consequences” second-degree felony murder theories for murder have been abolished by S.B 1437.

“Natural and Probable Consequences” Petitions

The rules for filing these petitions are the same as for the felony-murder rule.

If the petitioner **is** eligible under S.B. 1437 alleging that he was convicted under a murder theory of "natural and probable consequences", then the District Attorney has the burden of proof to prove, beyond a reasonable doubt, that the petitioner is ineligible for relief under S.B. 1437. The District Attorney will determine if it can be proved that,

> The petitioner was convicted under an alternate theory of murder such as:
>
> - The petitioner, acting with “malice”, is the actual killer, or,
> - The petitioner shared the intent to kill with the actual killer.

“Second-Degree Felony Murder” Rule

The “second-degree felony murder” rule is a court-created murder theory that is a combination of the first-degree felony-murder and the natural and probable consequences theories.

The “second-degree felony murder” rule is not commonly used. It states that a defendant who commits or attempts to commit an “inherently dangerous” felony and kills someone during that crime, is guilty of second-degree murder even if he had no intent to kill the victim. (CALCRIM 541A.)

Similar to the first-degree felony-murder rule, an accomplice may be held liable for the acts of the actual killer under this theory. (CALCRIM 541B)

For all intents and purposes, the “second-degree felony murder” rule for accomplices has been abolished by S.B 1437. (Penal Code § 188 (3).) It is unknown if this rule will survive for those who committed the act that directly led to a murder.

“Second-Degree Felony Murder” Rule Petitions

The rules for filing these petitions are the same as for the first-degree felony-murder rule.

If the petitioner **is** eligible under SB 1437, alleging that he was convicted under a murder theory of “second-degree felony murder,” then the District Attorney has the burden of proof to prove, beyond a reasonable doubt, that the petitioner is ineligible for relief under S.B. 1437. The District Attorney will determine if it can be proved that the petitioner was convicted under an alternate theory of murder such as:

- The petitioner, acting with “malice”, is the actual killer, or,
- The petitioner shared the intent to kill with the actual killer.

The District Attorney’s Response to S.B. 1437

In response to S.B. 1437, as well as other recent pieces of legislation and court rulings, the San Joaquin County District Attorney’s office has created a Post-Conviction Review Unit (PCRU).

The PCRU will oversee all S.B. 1437 petitions. That will include working with the Office’s Victim Services Division. All attempts will be made to contact family members of murder victims whose killer is seeking to be released from prison. Since S.B. 1437 is fully retroactive, some of these cases are 30 years old. Victim contact information in our files may no longer exist or may be inaccurate.

If you believe that you are a family member of a murder victim and will be impacted by S.B 1437, please contact the PCRU with as much information as you can at: Conviction.Integrity@sjcda.org