FOR IMMEDIATE RELEASE
September 5, 2018

CONTACT: Jennifer Jacobs
(858) 518-1932

MEDIA ADVISORY

California District Attorneys Association to Hold Press Conference Calling on the Governor to Veto SB 1391 and SB 1437

'Citing lack of Constitutional authority to enact the legislation and serious threats to public safety'

WHEN: Thursday, September 6, 2018

TIME: 11:30 a.m.

WHERE: CDAA Training Center, 921 11th Street, Suite 300, Sacramento

CONFIRMED SPEAKERS:

Jeff Reisig, Yolo County District Attorney
Anne Marie Schubert, Sacramento County District Attorney
Todd Riebe, Amador County District Attorney
Vern Pierson, El Dorado County District Attorney
Family Members of Yolo County Victims (*People v. Daniel Marsh*)

- Victoria Hurd, Victim Claudia Maupin's daughter
- Sara Rice, Victim Claudia Maupin's granddaughter and Victoria Hurd's daughter
- Mary Northup, Victim Oliver "Chip" Northup's daughter

MEDIA: For radio or to schedule other interviews, please contact Jennifer Jacobs at (858) 518-1932 or jennifer@sunshinestrategy.com

# # #

CDAA
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

921 11th Street, Suite 300
Sacramento, CA 95814
916.443.2017
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September 5, 2018

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 1391 (Lara) – Veto Request

Dear Governor Brown:

On behalf of the California District Attorneys Association (CDAA) and the District Attorneys of Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Marin, Mendocino, Merced, Monterey, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Tulare, Ventura, Yolo, and Yuba counties, we write to respectfully request your veto of Senate Bill 1391, by Senator Mitchell.

Senate Bill 1391 eliminates the authority for a court to decide whether a 14- or 15-year-old charged with certain serious offenses is unfit for the juvenile system. This well-intentioned bill inappropriately applies a one-size-fits-all approach to situations that call for individual and unique examinations. In so doing, SB 1391 puts our communities at risk.

Under existing law, 14- and 15-year-olds who are charged with offenses listed in Welfare and Institutions Code section 707(b) may be prosecuted in the adult system if a court finds them unfit for the juvenile system. This is not a determination that a prosecutor can make unilaterally. As you know, a judge must make that decision only after carefully evaluating many factors related to the age and development of the juvenile offender.

The unfortunate reality is that some juveniles commit horrific crimes that render the juvenile court system ill-equipped and unprepared. The offenses that would trigger a fitness hearing are among the most serious offenses in our Penal Code. Moreover, forcing such juveniles who have committed some of these crimes into a system that cannot handle them, jeopardizes public safety, the safety of the accused and of other juveniles within the system, and diverts limited resources away from juveniles who could benefit from juvenile court services.

There are a number of tragic and devastating examples of 14- and 15-year-old juveniles committing crimes that clearly demonstrate the inadequacies of SB 1391:

- In April 2013, a 15-year-old boy in Davis savagely tortured and murdered an elderly couple in their home. He had methodically planned his attack, targeted the victims at random, and committed his heinous acts out of morbid curiosity. The details of the murders shocked even the most hardened professionals in the Yolo County criminal justice system.

- In 2013, a 14-year-old from Sacramento County kidnapped and ruthlessly beat a teenage girl to death in a murder that left her body unrecognizable.

- In July 2015, a 15-year-old in Santa Cruz County kidnapped, forcibly raped, and strangled his 8-year-old victim. While still alive, he put the victim inside plastic garbage bags, ultimately killing her by stabbing her with a knife through the bags. Then he threw her body into a Dumpster.

- In July 2016, a 16-year-old boy brutally murdered his 13-year-old sister with a pickax, knife, and sledgehammer in a crime that shocked the entire Placer County community, prompting the judge to declare "the circumstances of the crime were too grave for the case to be heard in juvenile court."

- Just this year in Ventura County, a 15-year-old criminal street gang member was arrested and charged with two murders within a month of one another. The defendant is accused of brutally stabbing a man to death less than four weeks after gunning a man down in a parking lot.

- In Santa Clara County, a 15-year-old boy was one of two who sadistically and callously stabbed a 15-year-old fellow classmate to death in what was described as a Satanist-inspired "thrill kill." The pair had befriended the teenage victim to plot his murder to see what it was like to kill a human being. His devastated family is anguished over the thought of the killer's release and the danger he poses to the community.

The juvenile justice system has the laudable goal of rehabilitation designed to promote community restoration, family ties, and accountability to victims, and to produce youth who become law-abiding and productive members of society. Thankfully, the vast majority of juvenile offenders fit squarely within the design of this system. But as the examples above illustrate, there are juveniles who commit crimes so horrendous, so sophisticated, and demonstrate such a lack of capacity for change that the juvenile justice system is unsuitable and incapable of addressing the need for safety of the community, the rights of victims and survivors of crime, and the needs of others within the juvenile justice system.

Finally, SB 1391 presents a basic problem in the way in which it was passed and is open to legal and procedural challenges. Effective and meaningful changes could be attained in a more collaborative and less costly and litigious manner.

For these reasons, we respectfully request that you veto Senate Bill 1391. Thank you for your consideration of this request. If you would like to discuss these issues further, please contact us.

Very truly yours,

Birgit Fladager, CDAA President
Stanislaus County District Attorney

Stephanie Bridgett
Shasta County District Attorney

Krishna Abrams
Solano County District Attorney

Dan Dow
San Luis Obispo County District Attorney

Lawrence Allen
Sierra County District Attorney

Joyce Dudley
Santa Barbara County

Don Anderson
Lake County District Attorney

C. David Eyster
Mendocino County

J. Kirk Andrus
Siskiyou County District Attorney

Keith Fagundes
Kings County District Attorney

Matthew Beauchamp
Colusa County District Attorney

Maggie Fleming
Humboldt County District Attorney

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Patrick McGrath
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Stacey Montgomery
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Tulare County District Attorney

Lisa Smittcamp
Fresno County District Attorney

Barbara Yook
Calaveras County District Attorney

Summer Stephan
San Diego County District Attorney

cc: Dan Seeman, Deputy Legislative Secretary, Office of the Governor
Senator Richard Lara

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September 4, 2018

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 1437 (Skinner) – Veto Request

Dear Governor Brown:

On behalf of the California District Attorneys Association (CDAA) and the District Attorneys of Alameda, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Marin, Merced, Monterey, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Tulare, Ventura, Yolo, and Yuba counties, we write to respectfully request your veto of Senate Bill 1437, by Senator Skinner. While this bill is well-intentioned, as it is written, it is deeply flawed and poses a significant risk to the safety of our communities.

Senate Bill 1437 eliminates murder liability for those who participate in felonies that are inherently dangerous to human life in which a death occurs if those participants do not personally commit the homicidal act, do not act with premeditated intent to aid and abet an act in which a death would occur, or for those who do not act as a major participant in the underlying felony and act with reckless indifference to human life.

SB 1437 presents significant problems in the way in which it was passed, subjecting it to legal, procedural, and constitutional challenges. The voters enacted Proposition 7, the Death Penalty Act of 1978, in the November general election of that year. Proposition 7 increased the penalty for felony murder and accomplice liability for felony murder as it was defined in Penal Code section 189.

The California Constitution authorizes the Legislature to amend or repeal an initiative statute only by a statute that becomes effective when approved by the electors, unless the initiative statute permits amendment or repeal without their approval (see Cal. Const., Art. II, Sec. 10, Subd. (c)). Proposition 7 does not permit amendment by the Legislature and any amendment, such as SB 1437, needs to be submitted to the voters to become effective.

Since SB 1437 reduces the number of people who could be convicted of murder, and instead only holds them liable for the underlying offense, it amends Proposition 7 because it changes the scope and definition of murder that voters relied upon when enacting the initiative in 1978. As such, SB 1437 requires the approval of the electors to become effective.

Attached to this correspondence is a letter dated June 6, 2018, from the Office of Legislative Counsel, the non-partisan public agency that drafts legislative proposals and prepares legal opinions to the Legislature. The Legislative Counsel's analysis of SB 1437 concurs that this bill represents an amendment to Proposition 7, requiring the assent of the voters to become effective.

Finally, CDAA and District Attorneys from across California have been and remain committed to adopting measured reform in this area. However, the complete elimination of murder liability for participants in dangerous felonies goes too far and draws no distinction between those who participate in dangerous felonies that result in the death of someone and those that do not. To treat these crimes as equal cheapens the lives of those lost to senseless violence and leaves forsaken those for whom criminal justice system is designed to protect.

We have worked tirelessly and spent countless hours developing sensible changes to this area of the law. We have proposed changes that temper accountability with compassion yet hold all participants to the crime answerable in some way for the victim's death while ensuring that punishment is commensurate with actual conduct. It is in this respect that SB 1437 falls short.

This bill also broadly authorizes anyone convicted of murder to seek relief through its retroactive resentencing provisions with the filing of a simple request. Once relief is sought, the burden rests on the People to prove beyond a reasonable doubt a petitioner's ineligibility to have their murder conviction set aside and to be resentenced only to underlying crimes that were likely never charged in the original case because of the state of the law in this area at the time.

Because SB 1437 retroactively applies to convictions that are resolved by a negotiated plea bargain, in addition to convictions that resulted from jury and bench trials, the absence of a full court record, including transcripts and exhibits, will prevent the People from establishing beyond a reasonable doubt whether a petitioner is excluded. The result will entitle virtually all petitioners who apply, even those who were actual killers, those who acted with an intent to kill, or those who were major participants in the crime that resulted in death, to a resentencing.

Moreover, this bill provides no exception to allow for the trial transcript to be used in a resentencing hearing. The effect of this would be to necessitate the calling of witnesses, other victims, and family members who may have been involved in the original case. The effects of this to crime victims and survivors would be devastating and financially burdensome as it would require what would essentially be a new mini-trial.

Quite simply, SB 1437 will allow everyone convicted of murder—actual killers, those acting with premeditated intent, and major participants acting with reckless indifference to human life included—to petition to have their convictions vacated. Many, including those most undeserving of relief and dangerous to our community, will be successful simply by virtue of the inartfully crafted procedures.

Effective and meaningful changes to the law of felony murder could be attained in a more collaborative and less costly and litigious manner. We are committed to working to find a reasonable and measured approach to felony murder reform. Unfortunately, this bill falls short and creates some potentially disastrous and costly problems that render this bill unworkable.

For these reasons, we respectfully request that you veto Senate Bill 1437. Thank you for your consideration of this request. If you would like to discuss these issues further, please contact us.

Very truly yours,

Birgit Fladager, CDAA President
Stanislaus County District Attorney

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cc: Dan Seeman, Deputy Legislative Secretary, Office of the Governor
Senator Nancy Skinner

LEGISLATIVE COUNSEL BUREAU

A TRADITION OF TRUSTED LEGAL SERVICE TO THE CALIFORNIA LEGISLATURE

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June 20, 2018

Honorable Jim Cooper
Room 6025, State Capitol

FELONY MURDER ACCOMPLICE LIABILITY - #1813978

Dear Mr. Cooper:

Pursuant to your request, we have prepared the enclosed measure relating to the accomplice liability for felony murder.

The proposed measure, if enacted, would prohibit malice, for purposes of a conviction of murder, from being implied based solely on a person's participation in a crime (Sec. 1; Sec. 188, Pen. C.). Additionally, the proposed measure would prohibit a participant in the perpetration or attempted perpetration of one of the felonies that can result in a conviction for first degree murder if a death occurs, from being liable for murder, unless the person was the actual killer; was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer; or the person was a major participant in the underlying felony and acted with reckless indifference to human life (Sec. 2; Sec. 189, Pen. C.). The effective result of the proposed measure would be to reduce the number of people who could be convicted of murder and, instead, make those people eligible for conviction only for the underlying felony offense.

Section 190 of the Penal Code (Section 190), enacted by Proposition 7, which was adopted by the voters in the June 5, 1978, statewide general election, established increased sentences for the commission of first degree and second degree murder. The courts generally presume that the voters were aware of existing law at the time of approving the initiative, including the definition of the crime for which they were imposing a sentence (see, for example *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1048 (voters presumed to be aware of existing law when they approve a ballot proposal)). Relevant to this measure, Section 189 of the Penal Code at the time the voters enacted Proposition 7 enumerated a discreet list of actions for which an individual could be convicted of first degree murder, including felony murder. Thus, by enacting Proposition 7 the voters

contemplated that felony murder, and the accomplice liability for felony murder, would be punishable according to the increased penalty enacted by the initiative.

The California Constitution authorizes the Legislature to amend or repeal an initiative statute only by a statute that becomes effective when approved by the electors, unless the initiative statute permits amendment or repeal without their approval (see subd. (c), Sec. 10, Art. II, Cal. Const.). A legislative proposal constitutes an amendment of an initiative statute if it changes the scope or effect of the initiative (*Proposition 103 Enforcement Project v. Charles Quackenbush* (1998) 64 Cal.App.4th 1473, 1485). Proposition 7 does not permit amendment by the Legislature, and thus any amendment would have to be submitted to the voters to become effective.

The legal effect of your proposed measure would be to reduce the number of people who could be convicted of murder and, instead, make those people eligible for conviction only for the underlying offense, for which a different sentence applies. Thus, the proposed measure constitutes an amendment of Proposition 7 because it changes the scope and definition of murder on which the voters relied when enacting Section 190 by initiative in 1978. As such, the proposed measure requires the approval of the electors to become effective, in compliance with Section 10 of Article II of the California Constitution.

If you wish further assistance with this measure, please contact the undersigned deputy.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

Sharon L Everett

By
Sharon L. Everett
Deputy Legislative Counsel

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