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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.

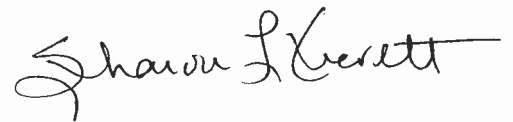
The California Constitution authorizes the Legislature to amend or repeal an initiative statute only by a statute that becomes effective when approved by the electors, unless the initiative statute permits amendment or repeal without their approval (see subd. (c), Sec. 10, Art. II, Cal. Const.). A legislative 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



By  
Sharon L. Everett  
Deputy Legislative Counsel

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