

Dortell Williams
H45771 / A5-140
P.O. Box 4430
Lancaster, CA 93539

Macio Lindsey
K34593 / A5-150
P.O. Box 4430
Lancaster, CA 93539

November 2020

PROPOSAL TO READDRESS THE SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE

Introduction / proposal

This proposal seeks to address a "related, but distinct area" of the sentence of life without the possibility of parole (LWOP), as pertains to persons who committed their offenses between the ages of 18 and 25 years. Specifically, this proposal seeks to enact legislation that would codify California Penal Code, §3051, and Penal Code §1170, subdivision (d)(2) with language that specifies that persons sentenced to LWOP, who were between the ages of 18 and 25 "shall be afforded an automatic maturity review" to "evaluate whether, despite the magnitude of [the] offense, the person has attained the level of insight and maturity that warrants []" a parole hearing upon year 25 of incarceration (In re Eugene Jones on Habeas Corpus (11/2019), First App. Ct, Div. 4, p. 4, see dissenting opinion).

Historical review

On November 7, 1978, California voters approved Proposition 7, "the Briggs Initiative." Proposition 7 increased the punishment for first degree murder from a term of life imprisonment with parole eligibility after seven years to a term of 25 years to life. (Prop. 7, §§1-2.) (The minimum eligibility parole date is 19 years for first degree murder under Proposition 7 (California Code of Regulations 15, Div. 2; heretofore CCR)). Proposition 7 also increased the punishment for second degree murder from a term of five, six, or seven years to a term of 15 years to life (Ballot Pamp. Gen. Elec. (Nov. 7, 1978) Text of Proposed Law, Prop. 7. §2.p.33; In re Olivia (1989) 207 Cal.App.3d 439, 442.) (The minimum parole eligibility for second degree murder is now 9 years (CCR 15, Div. 2.) Moreover, Proposition 7 amended section 190.2 to expand the special circumstances under which a person convicted of first degree murder may be punished by death or LWOP. (Id., §§5-6.) The initiative also added several special circumstances to section 190.2 (see subds. (a)(8), (9), (11)-(16)), expanded the list of felonies subject to the felony-murder special circumstance, and deleted the requirements that a felony murder be willful, deliberate, and premeditated, (see People v. Weidert (1985) 39 Cal.3 836, 844. Proposition 7 did not authorize the Legislature to amend or repeal its provisions without voter approval.)

Proposition 115, known as the "Crime Victims Justice Reform Act," amended section 189, among other statutory and constitutional provisions. It amended section 189 to add kidnapping, train wrecking, and certain sex offenses to the list of predicate offenses giving rise to first degree felony-murder liability. (Prop. 115, §9.) Proposition 115 authorized the Legislature to amend its provisions, but only by two-thirds vote of each house. (Prop. 115, as approved by voters, Primary Elec. (Nov. 7, 1990).)

In 2018, the Legislature passed and the Governor signed into law Senate Bill No. 1437, now codified as Penal Code 1170.95, legislation that prospectively amends the meas rea requirements for the offense of murder and restricted the circumstances under which a person can be liable for murder under the felony-murder rule or the

natural and probable consequences doctrine. (Stats.

2018, ch. 1015.) Senate Bill 1437 also established a procedure permitting certain qualifying persons who were previously convicted of felony murder or murder under natural and probable consequences doctrine to petition the courts that sentenced them to vacate their murder convictions and obtain resentencing on any remaining counts. (Id., § 3.) The Legislature passed Senate Bill 1437 by two-thirds vote in the Senate and a less-than-two-thirds majority in the Assembly.

On March 8, 2019, the People filed an opposition to Petitioner's petition for Recall and Resentencing (P.O. 1170.95) (People v. Jose Alberto Reyes, Jr. (2019, Sup. Ct, BA27361) on the grounds that Senate Bill 1437, and specifically section 1170.95 is unconstitutional, requested the Attorney General file an amicus curiae brief on the issues presented. In its brief, the Attorney General urged the court to deny the People's petition on the grounds that Senate Bill 1437 did not amend Proposition 7 or Proposition 115. The People contend that it (1) illegally amends Proposition 7 and Proposition 115; (2) infringes on the finality of judgments in criminal cases, including victims' rights to finality in criminal cases (aka Marcy's Law); and (3) violates the separation of powers doctrine by infringing upon core judicial and gubernatorial powers (Ibid, p. 2). (These arguments were rejected in People v. Lamoureux (Nov. 19, 2019, D075794) __Cal. App. 5th__.)

The Superior Court found that SB 1437 is not unconstitutional. During its review the Superior Court requested the Attorney General to file an amicus curiae on the issues presented. In its brief, the Attorney General urged the court to deny the People's petition on the grounds that Senate Bill 1437 did not amend Proposition 7 or Proposition 115. The Superior Court further found that Proposition 7 or Proposition 115; does not infringe on victims' rights or Marsy's Law; and does not violate the separation of powers doctrine by directing the courts to reopen final judgments or by infringing upon the Governor's pardon and commutation power (Ibid., p. 3). Therefore, the Superior Court found Senate Bill 1437 was not an invalid legislative amendment. The court stated in pertinent part as follows: "The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment without electors' approval."

Likewise, the Fourth Appellate Court in the cases of People v. Gooden (2019) (D075787) and People v. Dominguez (2019) (D075790), 4th App. Ct, District 1, p. 2) that Senate Bill 1437 did not amend Proposition 115 because it did not "in any way modif[y]" the predicate offenses on which first degree felony-murder may be based.

Moreover, the trial court found that Senate Bill 1437 did not amend Proposition 7 because it did "not reduce sentences for first or second degree murder." The trial court further found that Senate Bill 1437 did not amend Proposition 115 because it did not change the underlining offense on which first degree felony-murder liability may be based (People v. Gooden (2019) Super. Ct No. CR61365) and People v. Dominguez (2019) (Super. Ct. No. CR105918).

Indeed, "the purpose of California's constitutional limitation on the Legislature's powers to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent" (People v. Kelly (2010) 47 Cal.4th 1008, 1025 (Kelly), citing Proposition 103 Enforcement Project v. Ouackenbush (1998) 64 Cal.App.4th 1473, 1484 (Prop. 103 Enforcement) (internal quotation marks omitted.) But "despite the strict bar on the Legislature's authority to amend initiative statutes, judicial decisions have observed that this body is not thereby precluded from enacting laws addressing the general subject matter of an initiative. More to

the point, the Legislature remains free to address a "related but distinct area" of the statute (Kelly, supra, 47 Cal.App.4th at p. 1025).

Rationale

Analogous to Senate Bill 1437, the instant proposal does not seek to amend or repeal Proposition 7 or Proposition 115. This proposal is resolute to leave intact Proposition 7 and Proposition 115 in their entirety. Should a person commit a crime that falls under the requisite special circumstances, the person would be subject to the full weight of Proposition 7, including the harsher minimum of 25 full years, unlike first degree murder which permits a minimum 19 years prior to parole review. Loyalty to the voter's intent is thereby preserved; however, this proposal seeks to address a "related, but distinct area" of these voter initiatives by way of a mandatory maturity review under Penal Code §3051 and Penal Code 1170, subdivision (d) (2), which would include LWOP offenders who committed their offenses between the ages of 18 to 25.

Penal Code 1170, subdivision (d) (2) "distinguishes between offenders under and over 18 years of age, section 3051 distinguishes both between those who committed their offenses under 18 years of age and those between 18 and 25 years of age, and between offenders 18 to 25 years of age sentenced to prison terms with the possibility of parole and those in the same age group who have been sentenced to life without the possibility of parole. Penal Code §3051, subdivision (a) (1) provides for a youth offender parole hearing for "any prisoner who was 25 years of age or younger ... at the time of his controlling offense," and subdivision (h) "shall not apply to cases in which ... an individual is sentenced to life without the possibility of parole for a controlling offense that was committed after the person attained 18 years of age" (In re Jones (2019) 1st. App. Crt, Div 4, pp. 1-2.) Recent amendments to section 3051 recognize that the maturity process does not end at 18 and in many cases extends to at least 25 years of age.

In 2015, the Legislature amended section 3051 to provide relief for most offenders who committed their offenses before reaching the age of 23. (Stats. 215, ch. 471, §1.) The author relied on the evolving understanding of brain development, "Recent scientific evidence on adolescent and young adult development and neuroscience shows that certain areas of the brain – particularly those affecting judgment and decision-making – do not fully develop until the early- to mid-20s.

This proposal would fashion the California Penal Code in congruence with brain science by mandating maturity reviews of all persons 18 to 25 years of age on their 25th year of incarceration and were sentenced to life without the possibility of parole. This proposal does not in any way contravene the voter's intent, as life without the possibility of parole remains the harshest sentence under California law for first-degree murder, after the death penalty. This proposal affects a "related, but distinct area" of Proposition 7 and Proposition 115, but is particular in its effect and limited in its reach. We therefore believe that, like the many failed attacks on Senate Bill 1437, this proposal can survive constitutional scrutiny. Furthermore, as with Senate Bill 1437, we believe this proposal could be enacted with less than a two-thirds majority vote, in spite the fact that Proposition 7 did not authorize the Legislature to amend or repeal its provisions without voter approval. Again, this proposal only affects a "related, but distinct area" of Proposition 7, but leaves the voter initiative completely undisturbed, proving a tenable outlet prison depopulation in the interest of justice.