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Senate Bill (SB) 775 Information

SB 775 allows certain people convicted of aiding and abetting attempted murder or manslaughter to get a sentence reduction.

The text of SB 775 and a form petition are attached. Please read both carefully. **If you believe you are eligible for relief, you can fill out the attached petition to ask the trial court to consider resentencing you.**

BACKGROUND

SB 1437 was passed in 2018. It changed the laws about who could be convicted as an aider and abettor in a murder case. It also created a process for people who had murder convictions under the old laws to ask the court to be resentenced on a less serious felony. Penal Code section 1170.95 describes the resentencing procedure. Many people who were convicted of murder as an aider and abettor under the prior law have already filed section 1170.95 petitions.

SB 775 is a new law that passed in 2021. It clarifies that certain people who were convicted of aiding and abetting an attempted murder (under the natural and probable consequences doctrine), and certain people who were charged with murder but convicted of manslaughter, can ask the court to be resentenced on a less serious felony.

WHO CAN PETITION TO BE RESENTENCED UNDER SB 775

Starting January 1, 2022, people who were convicted of aiding and abetting attempted murder (under the natural and probable consequences doctrine), and aiders and abettors charged with murder but convicted of manslaughter, can petition the court to have their convictions vacated and to be resentenced on a less serious felony.

Not everybody convicted of attempted murder or manslaughter is eligible to be resentenced.

This document does not constitute legal advice and is general information.

AIDING AND ABETTING AND NATURAL AND PROBABLE CONSEQUENCES

According to the law, someone aids and abets a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

For example, in a murder case, an aider and abettor is a person who is not the actual killer but who helped the actual killer by knowing of the killer's plan to commit a fatal act, intending to help the killer commit the fatal act, and doing something to help the actual killer commit the fatal act. An aider and abettor can help an actual killer by doing things like encouraging him, providing him with weapons, or helping him plan the killing.

In attempted murder cases, an aider and abettor is someone who had the intent to kill like the person who attempted the murder.

The natural and probable consequences doctrine punishes crime when two or more people intend to commit a certain crime, but instead one of the participants commits a different or additional crime.

Under the old law, a person could be convicted of attempted murder even though he did not intend to kill but only intended to help the attempted murderer commit another crime. The natural and probable consequences doctrine allowed the aider and abettor in that situation to be convicted of the attempted murder because the other crime he intended to aid and abet could lead to the attempted murder.

Aiders and abettors who never had intent to kill but were convicted of attempted murder because of the natural and probable consequences doctrine may be eligible for SB 775 relief and should consider filing the attached petition

FILING THE PETITION

If you read through the statute and believe you are eligible, check the boxes and send the petition to the trial court in the county where you were convicted. The form allows you to ask for a lawyer to represent you in a resentencing proceeding. You are not required to use this form. If you use this form to file for relief you must: (1) send the original completed form to the court that sentenced you, (2) send a copy to the district attorney of the county that convicted you, (3) send a copy to the private attorney or the public defender who represented you, and (4) keep a copy for your records.

Attached are addresses for the public defenders across California. This may be helpful for the proof of service. If you no longer have the legal documents from your case with the address for the court or the district attorney in your case, you should check with the law library at your prison.

This document does not constitute legal advice and is general information.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible to apply for relief.

Q: What happens after I file a petition?

A: Penal Code section 1170.95, included in the SB 775 language attached, lays out how courts are supposed to consider the petitions.

If you requested a lawyer, the court must appoint one for you. The district attorney will then be ordered to file a response brief within 60 days. After that, your attorney is allowed to file a reply brief in 30 days. These deadlines can be extended if the judge finds good cause. Sometimes it takes a while to find documents in old cases so don't be surprised if the deadlines are extended.

Once the briefing is complete, the judge should hold a hearing to decide if you made a *prima facie* showing that you are eligible for relief. If the judge finds you have made a *prima facie* showing that you may have been convicted under the outdated laws, the judge will issue an order to show cause. There will then be another hearing, 60 days after the order to show cause. At that hearing the prosecutor will have to prove beyond a reasonable doubt that you could still be found guilty of murder (in a manslaughter case) or attempted murder under today's law.

If the prosecutor cannot show beyond a reasonable doubt that you could still be found guilty, then you are entitled to be resentenced

If you are denied relief at the *prima facie* stage or at the resentencing phase you are allowed to file a notice of appeal on a standard felony notice of appeal form available in law libraries (CR-120). You must do so within 60 days of the denial.

Q: When should I file the petition? What if I don't file in January?

A: It is best to file the Penal Code section 1170.95 petition after January 1, 2022. If you file a petition before January 1, 2022, the court may wait to rule on the petition since the changes are not effective until January 1, 2022. The court may also reject the petition. If the petition is rejected because it was filed before January 1, be sure to refile it again after January 1, 2022.

There is no deadline to file a section 1170.95 petition, so you do not need to worry about missing a deadline to file the initial petition.

This document does not constitute legal advice and is general information.

Q: If I filed a SB 1437 petition on my attempted murder or manslaughter conviction and my petition was denied in the trial court or the Court of Appeal, should I file again?

A: If you already filed a SB 1437 petition and have an appointed or paid attorney in the superior court, Court of Appeal, or the Supreme Court you should consult your attorney before filing a new petition.

If your original case is still being considered in the Court of Appeal or held in the Supreme Court, the trial court may not be able to consider your new petition.

If you previously filed a SB 1437 petition to reduce your attempted murder or manslaughter conviction and your petition was denied because the law did not apply to you at that time and your case is now final – meaning you have nothing pending in the Court of Appeal or the Supreme Court – you should file a new petition.

Q: Should I file a petition if I don't know whether I'm eligible?

A: You should not file a petition for resentencing unless you believe that you are eligible. The law requires that you provide a declaration to initiate resentencing under this law and a declaration requires your signature under penalty of perjury. However, if you read through the petition and think you are eligible you can file the declaration and request an attorney. An appointed attorney will look at your case and see if you are eligible for relief.

Senate Bill No. 775

CHAPTER 551

An act to amend Section 1170.95 of the Penal Code, relating to murder.

[Approved by Governor October 5, 2021. Filed with Secretary
of State October 5, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 775, Becker. Felony murder: resentencing.

Existing law authorizes a person who has been convicted of felony murder or murder under the natural and probable consequences theory to file a petition for the court to vacate the person's sentence and resentence them when specified conditions apply, including that the complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.

This bill would expand the authorization to allow a person who was convicted of murder under any theory under which malice is imputed to a person based solely on that person's participation in a crime, attempted murder under the natural and probable consequences doctrine, or who was convicted of manslaughter when the prosecution was allowed to proceed on a theory of felony murder or murder under the natural and probable consequences doctrine, to apply to have their sentence vacated and be resentenced if, among other things, the complaint, information, or indictment was filed to allow the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, or attempted murder under the natural and probable consequences doctrine.

Existing law requires the court to review the petition and determine that the petitioner has made a prima facie showing that the petitioner falls within the resentencing provisions. Existing law requires the court to appoint counsel to represent the petitioner if the petitioner requests counsel. Existing law requires the court to issue an order to show cause if the petitioner has made a prima facie showing that they are entitled to relief.

This bill would require a court to hold a prima facie hearing to determine whether the petitioner has made a prima facie case for relief. The bill would require the court to appoint counsel, upon the petitioner's request, when receiving a petition in which the required information is set forth or readily ascertainable by the court. The bill would require a court that declines to make an order to show cause to provide a statement fully setting forth its reasons for doing so.

Existing law requires the court to hold a hearing to determine if the petitioner is entitled to relief under these provisions.

This bill would specify that a finding that there is substantial evidence to support a conviction for murder, attempted murder, or manslaughter is insufficient to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing.

This bill would authorize a person convicted of murder, attempted murder, or manslaughter whose conviction is not final to challenge the validity of that conviction upon direct appeal.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that this legislation does all of the following:

(a) Clarifies that persons who were convicted of attempted murder or manslaughter under a theory of felony murder and the natural probable consequences doctrine are permitted the same relief as those persons convicted of murder under the same theories.

(b) Codifies the holdings of *People v. Lewis* (2021) 11 Cal.5th 952, 961-970, regarding petitioners' right to counsel and the standard for determining the existence of a prima facie case.

(c) Reaffirms that the proper burden of proof at a resentencing hearing under this section is proof beyond a reasonable doubt.

(d) Addresses what evidence a court may consider at a resentencing hearing (clarifying the discussion in *People v. Lewis*, supra, at pp. 970-972).

SEC. 2. Section 1170.95 of the Penal Code is amended to read:

1170.95. (a) A person convicted of felony murder or murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, attempted murder under the natural and probable consequences doctrine, or manslaughter may file a petition with the court that sentenced the petitioner to have the petitioner's murder, attempted murder, or manslaughter conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, or attempted murder under the natural and probable consequences doctrine.

(2) The petitioner was convicted of murder, attempted murder, or manslaughter following a trial or accepted a plea offer in lieu of a trial at which the petitioner could have been convicted of murder or attempted murder.

(3) The petitioner could not presently be convicted of murder or attempted murder because of changes to Section 188 or 189 made effective January 1, 2019.

(b) (1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

(A) A declaration by the petitioner that the petitioner is eligible for relief under this section, based on all the requirements of subdivision (a).

(B) The superior court case number and year of the petitioner's conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

(3) Upon receiving a petition in which the information required by this subdivision is set forth or a petition where any missing information can readily be ascertained by the court, if the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner.

(c) Within 60 days after service of a petition that meets the requirements set forth in subdivision (b), the prosecutor shall file and serve a response. The petitioner may file and serve a reply within 30 days after the prosecutor's response is served. These deadlines shall be extended for good cause. After the parties have had an opportunity to submit briefings, the court shall hold a hearing to determine whether the petitioner has made a prima facie case for relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause. If the court declines to make an order to show cause, it shall provide a statement fully setting forth its reasons for doing so.

(d) (1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the murder, attempted murder, or manslaughter conviction and to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. This deadline may be extended for good cause.

(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have the murder, attempted murder, or manslaughter conviction vacated and to be resentenced. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to

human life or was not a major participant in the felony, the court shall vacate the petitioner's conviction and resentence the petitioner.

(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is guilty of murder or attempted murder under California law as amended by the changes to Section 188 or 189 made effective January 1, 2019. The admission of evidence in the hearing shall be governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including witness testimony, stipulated evidence, and matters judicially noticed. The court may also consider the procedural history of the case recited in any prior appellate opinion. However, hearsay evidence that was admitted in a preliminary hearing pursuant to subdivision (b) of Section 872 shall be excluded from the hearing as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule. The prosecutor and the petitioner may also offer new or additional evidence to meet their respective burdens. A finding that there is substantial evidence to support a conviction for murder, attempted murder, or manslaughter is insufficient to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resented on the remaining charges.

(e) The petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes if the petitioner is entitled to relief pursuant to this section, murder or attempted murder was charged generically, and the target offense was not charged. Any applicable statute of limitations shall not be a bar to the court's redesignation of the offense for this purpose.

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

(g) A person convicted of murder, attempted murder, or manslaughter whose conviction is not final may challenge on direct appeal the validity of that conviction based on the changes made to Sections 188 and 189 by Senate Bill 1437 (Chapter 1015 of the Statutes of 2018).

(h) A person who is resented pursuant to this section shall be given credit for time served. The judge may order the petitioner to be subject to parole supervision for up to two years following the completion of the sentence.

Revised Penal Code Section 1170.95 Resentencing Petition (effective January 1, 2022)	<i>For Court Use Only</i>
Petitioner Name: CDCR #: Institution Name: Street Address: City, State, Zip Code: Attorney Name (if applicable): State Bar Number:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: _____	SUPERIOR COURT CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____ YEAR OF CONVICTION: _____	<i>For Court Use Only</i>
PETITION FOR RESENTENCING (Pen. Code § 1170.95)	Date: Time: Department:

NOT TO BE FILED BEFORE JANUARY 1, 2022

I _____, declare as follows:

- 1. A complaint, information, or indictment was filed against me that allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, or attempted murder under the natural and probable consequences doctrine. (Pen. Code, § 1170.95, subd. (a)(1).)
- 2. I was convicted of **murder**, **attempted murder**, or **manslaughter** following a trial or I accepted a plea offer in lieu of a trial at which I could have been convicted of murder or attempted murder. (Pen. Code, § 1170.95, subd. (a)(2).)
- 3. I could not presently be convicted of murder or attempted murder because of changes made to Penal Code §§ 188 and 189, effective January 1, 2019. (Pen. Code, § 1170.95, subd. (a)(3).)

Note: Boxes 1, 2 and 3 must all apply to you and be checked to be considered for resentencing pursuant to Penal Code section 1170.95.

- 4. Having presented a facially sufficient petition, I request that this Court appoint counsel to represent me. (Pen. Code, § 1170.95, subd. (b)(1)(C), *People v. Lewis* (2021) 11 Cal.5th 952, 957.)

5. I have mailed a copy of this Petition to the following:

Office of the District Attorney

County of _____

[Street Address]

[City, State, Zip]

Office of the Public Defender

County of _____

[Street Address]

[City, State, Zip]

OR

[Trial Attorney Name]

[Firm Name]

[Street Address]

[City, State, Zip]

I declare under penalty of perjury that the above is true except as to that stated on information or belief or that which is legal conclusion and as to those, I believe them to be true.

DATE: _____ **CITY:** _____ **STATE:** _____

SIGNATURE: _____ **PRINTED NAME:** _____

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