

AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2044

Introduced by Assembly Member Rod Pacheco

February 18, 2000

~~An act to amend Section 602.5 of the Penal Code, relating to trespass.~~ *An act to add Section 189.2 to the Penal Code, relating to methamphetamines.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2044, as amended, Rod Pacheco. ~~Trespass:—dwelling houses~~ *Methamphetamines: manufacture.*

Existing law defines murder as the unlawful killing of a human being with malice aforethought, and as either first degree or 2nd degree, depending on the circumstances. Existing law provides that the possession of specified chemicals with the intent to manufacture methamphetamine is a felony. The Fourth Appellate District Court of Appeals in People v. James (1998) 62 Cal.App.4th 244, 257-270, held that the manufacture of methamphetamine is an inherently dangerous felony. The California Supreme Court in People v. Ford (1964) 60 Cal.2d 772, 795, held that, where a death occurs in the commission of an inherently dangerous felony, the mental state present in the commission of that felony may be substituted for the malice element so that the death may be prosecuted as a 2nd degree murder.

This bill would provide that the manufacture of methamphetamine constitutes an inherently dangerous

felony, as defined, and that any death that occurs in the commission of that felony may be prosecuted as 2nd degree murder. This bill would state that these provisions are declaratory of existing law.

~~(1) Existing law provides that every person other than a public officer or employee acting within the course and scope of his employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other such place without consent of the owner, his agent, or the person in lawful possession thereof, is guilty of a misdemeanor.~~

~~This bill would provide that every person who enters or remains in a noncommercial dwelling house, apartment, or similar place in violation of these provisions in the course of fleeing from a peace officer in order to resist arrest or to escape custody, is punishable by imprisonment in a county jail for up to one year, or in the state prison. This bill would also make technical, nonsubstantive changes to these provisions. By creating a new crime punishable as either a misdemeanor or felony, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

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

~~1 SECTION 1. Section 602.5 of the Penal Code is
2 amended to read:
3 602.5. (a) Every person other than a public officer or
4 employee acting within the course and scope of his or her
5 employment in performance of a duty imposed by law,
6 who enters or remains in any noncommercial dwelling
7 house, apartment, or other similar place without consent~~



1 of the owner, his or her agent, or the person in lawful
2 possession thereof, is guilty of a misdemeanor.

3 (b) Every person who violates subdivision (a) in the
4 course of fleeing from a peace officer in order to resist
5 arrest or to escape custody, is punishable by
6 imprisonment in a county jail for up to one year, or in the
7 state prison.

8 ~~SEC. 2. No reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because the only costs that may be incurred
11 by a local agency or school district will be incurred
12 because this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition
16 of a crime within the meaning of Section 6 of Article
17 XIII B of the California Constitution.~~

18 *SECTION 1. Section 189.2 is added to the Penal Code,
19 to read:*

20 *189.2. (a) The manufacture of methamphetamine
21 constitutes an inherently dangerous felony and any death
22 that occurs in the commission of that felony may be
23 prosecuted as second degree murder.*

24 *(b) When a death occurs in the commission of the
25 manufacture of methamphetamine, the mental state
26 present in the commission of the manufacture of
27 methamphetamine may be deemed equivalent to the
28 malice element of murder so that the death may be
29 prosecuted as second degree murder.*

30 *(c) For the purposes of this section, “inherently
31 dangerous felony” is one which, by its very nature, cannot
32 be committed without creating a substantial risk that
33 someone will be killed, or is an offense carrying a high
34 probability that death will result.*

35 *SEC. 2. (a) It is the intent of the Legislature in
36 enacting Section 1 of this act to codify the decision
37 reached in People v. James (1998) 62 Cal.App.4th 244,
38 257-270, in which the Fourth Appellate District Court of
39 Appeals held that the manufacture of*



1 *methamphetamines is an inherently dangerous felony for*
2 *purposes of the second degree felony-murder rule.*

3 *(b) Section 189.2 of the Penal Code, as added by*
4 *Section 1 of this act, shall not be construed as limiting the*
5 *ability of the courts to determine that an offense is an*
6 *inherently dangerous felony for the purposes of the*
7 *second degree felony-murder rule.*

8 *(c) It is not the intent of the Legislature that Section*
9 *189.2 of the Penal Code, as added by Section 1 of this act,*
10 *limit, exclude, or restrict the use of any other judicially*
11 *recognized inherently dangerous felony in a second*
12 *degree murder prosecution for a death which occurs in*
13 *the commission of that offense.*

