

**Introduced by Senator Hayden**

February 25, 1999

---

An act to add Section 189.1 to the Penal Code, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

SB 878, as amended, Hayden. Felony murder.

Existing law, defines first degree murder to include any killing that is committed during the perpetration or attempted perpetration of a specified felony offense. First degree murder is punishable by confinement in the state prison for a term of 25 years to life, and 2nd degree murder is punishable by confinement in the state prison for a term of 15 years to life. The California and United States Constitution prohibit punishment that is disproportionate to the offense under specified criteria.

This bill would require the court in ~~every~~ *a* case where ~~the~~ *more than one* defendant ~~is~~ *was* convicted of felony murder, to determine prior to imposing a sentence of first degree murder *on a defendant who did not physically or directly commit the murder*, whether imposition of a sentence of first degree murder is proportionate to the offense committed and to the defendant's culpability in committing that offense by considering specified criteria and to state its reasons on the record. If the court determines that a sentence for first degree murder would be disproportionate, the bill would require the court to reduce the degree of the crime and to impose a

sentence for 2nd degree murder. By increasing the duties of local officials, 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 189.1 is added to the Penal Code,  
2 to read:

3 189.1. (a) In ~~every~~ *a* case where ~~the more than one~~  
4 ~~defendant is~~ *was* convicted of felony murder, the court  
5 shall determine, prior to imposing sentence *on a*  
6 *defendant who did not physically or directly commit the*  
7 *murder*, whether the imposition of a sentence of first  
8 degree murder is proportionate to the offense committed  
9 by the defendant and to the defendant's culpability in  
10 committing the offense. The court shall state its reasons  
11 on the record and shall make its determination by  
12 considering the following factors:

13 (1) The nature of the offense in the abstract and the  
14 totality of the actual circumstances surrounding the  
15 commission of the offense, including the defendant's  
16 motive, the way the crime was committed, the extent of  
17 the defendant's involvement, and the consequences of  
18 the defendant's acts.

19 (2) The nature of the offender including the  
20 defendant's age, prior criminal record, personal  
21 characteristics, and state of mind.



1 (b) If the court determines pursuant to subdivision (a)  
2 that a sentence of first degree murder would be  
3 disproportionate to the offense committed by the  
4 defendant or to the defendant's culpability in committing  
5 the offense, the court shall reduce the degree of the  
6 offense to second degree murder and impose a sentence  
7 for second degree murder.

8 SEC. 2. Notwithstanding Section 17610 of the  
9 Government Code, if the Commission on State Mandates  
10 determines that this act contains costs mandated by the  
11 state, reimbursement to local agencies and school  
12 districts for those costs shall be made pursuant to Part 7  
13 (commencing with Section 17500) of Division 4 of Title  
14 2 of the Government Code. If the statewide cost of the  
15 claim for reimbursement does not exceed one million  
16 dollars (\$1,000,000), reimbursement shall be made from  
17 the State Mandates Claims Fund.

