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June 21, 2023

The Honorable Reginald Jones-Sawyer, Chair
Assembly Public Safety Committee
1020 N Street (LOB), Room 111
Sacramento, California 95814

RE: SENATE BILL 94 (CORTESE) – OPPOSE

Dear Assemblyman Jones-Sawyer:

On behalf of the San Diego County District Attorney's Office, I regret to inform you that we are opposed to Senate Bill 94. This bill would permit some of the most violent and dangerous California murderers to elude the punishment of life without parole for which they were originally sentenced. These violent killers would be eligible to be resentenced for their horrific murders *simply due to the passage of time*. SB 94 would allow some of "the worst of the worst" to receive a new sentencing hearing after they served twenty-five years in prison for a murder with special circumstances that occurred before June 5, 1990. At the new sentencing hearing, these offenders would be able to be resentenced to avoid their life without parole sentence.

SB 94 is written so that violent murderers who killed their victims before June 5, 1990 and have served 25 years in prison, would *automatically* receive a lesser sentence rather serve their sentence of life without parole. The bill severely *limits a sentencing judge's discretion* to deny the petition for resentencing. SB 94 stacks the deck in favor of these violent murderers by mandating that judge's afford great weight to mitigating evidence offered by the convicted murderer. SB 94 is written so that the scales of justice are tipped in favor of the defendant. Mitigating evidence that benefits the defendant would not be treated the same as aggravating evidence that negatively impacts the defendant's petition for release. Evidence offered by the killer to reduce their sentence would be given greater weight by SB 94. Specifically, SB 94 mandates that the resentencing court afford great weight to evidence that the convicted murderer suffered intimate partner violence, sexual violence or human trafficking; experienced childhood trauma, suffered military-related trauma connected to the offense, suffered cognitive impairment, intellectual disability or mental illness, was a youth at the time of the offense, has a reduced risk of committing future violence, or is serving a sentence that violates the Racial Justice Act. Proof of any of these circumstances would weigh greatly in favor of dismissing the special circumstance finding attached to the murder conviction.

SB 94 ties the hands of the resentencing judge, forcing them to dismiss a special circumstance unless the court could meet the nearly impossible burden of finding the convicted murderer is currently "an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section

1170.18.” SB 94’s opaque statutory reference requires a judge to dismiss the special circumstance if the *slightest* evidence of a mitigating circumstance exists and the judge cannot find that the convicted murderer will commit a new sexually violent offense, homicide, solicitation to commit murder, assault with a machinegun on a police officer, possession of a weapon of mass destruction or any serious or violent felony punishable by life imprisonment or death. SB 94 severely limits judicial discretion in favor of reducing sentences for California’s most dangerous convicted murderers.

SB 94 would be a gift of lenity to some of the “worst of the worst” of California’s murderers currently incarcerated in the Department of Corrections and Rehabilitation. For some of these killers, SB 94 would reduce their sentence and move them from California’s prison system to our neighborhoods and communities. Here are some of the actual killers who would receive the benefit of a retroactive expansion of mitigating circumstances that would be applied at their resentencing:

- **David Alan Weeding**

On May 20, 1988, Weeding knocked on the door of Vickie P.’s apartment, claiming to be sent by management to check for leaks. Vickie led Weeding to the bedroom to show him a leak in the ceiling. Vickie turned and the two began to leave the room. As Vickie reached the living room, Weeding grabbed her arm and began to attack her. Vickie was wrestled to the ground and the defendant held a knife to her throat. The defendant cut off Vicki’s shirt and bra and then forced her to pull off her shorts. Weeding digitally penetrated Vickie. As this was occurring, Vickie’s husband, Stephan entered the apartment. Weeding grabbed the knife from the floor and charged Stephan. Vickie ran outside for help while Stephan struggled with Weeding. Weeding stabbed Stephan in the back and chest several times, killing him.

Weeding was convicted of murder with special circumstances, attempted rape and first degree burglary. He was sentenced to life without the possibility of parole. He is currently in the custody of the California Department of Corrections.

SB 94 would provide Weeding the right to be resentenced

- **Arthur Burbridge**

On September 21, 1978, Claire L.’s body was found in a hotel room. Her ankles were tied together with nylon stockings. There was blue bandana around her neck long with another nylon stocking partially around her neck. The cause of death was asphyxiation. The hotel room was ransacked. Claire’s checkbook was on the bed. The check was paid to the order of “God, she was a good f-ck.” Imprinted on the signature line were the words: “God gives, God taketh away.”

On September 27, 1978, Shirley B.’s body was found on the side of the road. A piece of plastic clothesline was tied around her neck. The cause of death was asphyxiation. Shirley’s body had drag marks on her back indicating that she had been dragged head first to the side of the road where her body was covered with a blanket.

On October 1, 1978, twenty-year old Camp Pendleton Marine Arthur Burbridge was arrested driving Shirley B's car. The investigation revealed that he had been using Shirley's credit card. His fingerprints were found in Claire's hotel room. His writing exemplar matched the writing in Clair's checkbook.

When interviewed, Burbridge admitted to both murders. He described each in great detail and explained the rationale for his actions. He explained that he killed each woman because they reminded him of his mother, whom he loathed. He described breaking into the first victim's motel room after she had been rude to him. He admitted raping her and taking all of her money after strangling her.

Burbridge pled guilty to two counts of murder and admitted an enhancement for use of a weapon. He admitted the special circumstances of robbery and rape for both murders. He was sentenced to life without parole.

SB 94 would authorize both of these individuals who were convicted of murder with special circumstances to petition for recall and resentencing. The proposed amendments which would create an exception for individuals convicted of "a sexual offense committed in conjunction with the homicide" do not extend to convictions for attempted rape or findings of a special circumstance for rape during the commission of a murder. These sexually violent killers would receive the benefit of SB 94's mandate that the re-sentencing judge consider and afford *great weight* to evidence offered to prove mitigation such as being a victim of intimate partner violence, sexual violence or human trafficking; suffering from childhood trauma, offense-related military trauma; diagnosis of cognitive impairment, intellectual disability or mental illness; being under the age of 26 years; serving a sentence that violated the Racial Justice Act; and a reduced risk for future violence due to age, time served, or diminished physical condition. Under the express language of SB 94, the existence of any of these mitigating circumstances would weigh greatly in favor of dismissing of the special circumstance.

The Legislature should consider the consequences of its "radical" resentencing approach. In a recent appellate opinion, Justice Yegan wrote the following in a concurring opinion about the wisdom of the Legislature's affinity for resentencing in the context of a Penal Code section 1172.6 petition:

"Years ago, I predicted that the courts would be deluged with resentencing requests and resentencing appeals. I was correct. The Legislature and the Governor did not truly consider the judicial impact of the retroactive sea changes in the murder sentencing laws. Our criminal courts were, and are, already over-burdened and no additional resources were given to the judiciary to effect these radical changes in the law. The new laws impact thousands of persons convicted of murder long ago and serving, at a minimum, fifteen years to life. The Superior Court and the Court of Appeals are now spending an inordinate amount of time and resources as a result of these changes. This is to the detriment of other appeals from recent judgments."

(People v. Arreguin (2023) 68 Cal. App. 5th 58)


SB 94 imposes excessive burdens on the court system. If a petition under SB 94 is litigated and is denied, SB 94 authorizes petitioners to bring another petition in three years. SB 94 allows petitioners to bring the same petition a total of three times. The right to bring three re-sentencing petitions would require family members of murdered victims to continue to re-live the trauma and uncertainty associated with a pending sentencing for the killer of one's loved one. SB 94 destroys the notion of finality of judgment and drains the resources of the criminal justice system.

The California Constitution affords victims of crime "the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this state..." SB 94's resentencing scheme that is triggered by the completion of the murderer's twenty-fifth year of incarceration, violates the crime victim's constitutional right to "prompt and final conclusion of the case and any related post-judgment proceedings." Likewise, the possibility of successive petitions for resentencing every two years deprives victims of a prompt and final conclusion of the case and any related post-judgment proceedings.

The People of the State of California prohibited the dismissal of special circumstances in 1990 via Proposition 115. However, SB 94 seeks to avoid this prohibition by only applying its provisions to murders that occurred prior to June 5, 1990-the date the voters passed Proposition 115. This is in direct conflict with the will of California voters. Rather than drafting a bill that directly conflicts with the will of the voters, this type of change should go back to the voters. As it stands, we must oppose.

We greatly appreciate your consideration of our concerns. If you would like to discuss amendments to the bill, please contact our Chief Deputy District Attorney Patrick Espinoza at Patrick.Espinoza@sdcdca.org or (619) 531-4233.

Sincerely,

A handwritten signature in black ink that reads "Summer Stephan". The signature is written in a cursive, flowing style.

Summer Stephan

San Diego County District Attorney