In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **JUAQUIN GARCIA SOTO,** **Defendant and Appellant.**

Case No. S236164

Sixth Appellate District, Case No. H041615
Monterey County Superior Court, Case No. SSC120180A
The Honorable Carrie M. Panetta, Judge

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JEFFREY M. LAURENCE
Senior Assistant Attorney General
SETH K. SCHALIT
Supervising Deputy Attorney General
AMIT KURLEKAR
Deputy Attorney General
State Bar No. 244230
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5559
Fax: (415) 703-1234
Email: Amit.Kurlekar@doj.ca.gov
Attorneys for Respondent

Pursuant to Evidence Code sections 452, subdivision (c), and 459, subdivision (a), and rule 8.252(a) of the California Rules of Court, respondent requests that this court take judicial notice of the following documents, which are taken from the legislative history of the 1996 amendments to former Penal Code section 22, and are therefore relevant to determining the intent of the Legislature in enacting those amendments.

1. Senate Bill No. 121 (1995-1996 Reg. Sess.), attached as Exhibit A;

2. Senate Amendment to Senate Bill No. 121 (1995-1996 Reg. Sess.) Mar. 23, 1995, attached as Exhibit B;

3. Senate Committee on Criminal Procedure, Analysis of Senate Bill No. 121 (1995-1996 Reg. Sess.) as amended Mar. 23, 1995, attached as Exhibit C;

4. Senate Amendment to Senate Bill No. 121 (1995-1996 Reg. Sess.) Apr. 3, 1995, attached as Exhibit D;

5. Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill No. 121 (1995-1996 Reg. Sess.) as amended Apr. 3, 1995, attached as Exhibit E;

6. Senate Bill No. 121, 3d reading (1995-1996 Reg. Sess.) May 23, 1995, attached as Exhibit F;

7. Assembly Committee on Public Safety, Analysis of Senate Bill No. 121 (1995-1996 Reg. Sess.) as amended Apr. 3, 1995, attached as Exhibit G;

8. Office of Criminal Justice Planning, Enrolled Bill Report on Senate Bill No. 121 (1995-1996 Reg. Sess.) prepared for Governor Wilson (Sept. 11, 1995), attached as Exhibit H;

9. California Highway Patrol, Enrolled Bill Report on Senate Bil. No. 121 (1995-1996 Reg. Sess.) prepared for Governor Wilson (Sept. 15, 1995), attached as Exhibit I;

10. American Civil Liberties Union California Legislative Office Legislative Director Francisco Lobaco, letter to Senate Public Safety Committee re Senate Bill No. 121 (1995-1996 Reg. Sess.) July 5, 1995, attached as Exhibit J;

11. California Attorneys for Criminal Justice, letter to bill author Sen. Mike Thompson (1995-1996 Reg. Sess.) June 14, 1995, attached as Exhibit K;

12. Sen. Thompson, sponsor of Senate Bill No. 121 (1995-1996 Reg. Sess.), letter to Governor, Sept. 13, 1995, attached as Exhibit L;

13. California Department of Finance, Enrolled Bill Report on Senate Bill No. 121 (1995-1996 Reg. Sess.) prepared for Governor Wilson (Sept. 11, 1995), attached as Exhibit M;

14. California Department of Finance, Analysis of Senate Bill No. 121 (1995-1996 Reg. Sess.) Apr. 21, 1995, attached as Exhibit N.

Dated: February 15, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JEFFREY M. LAURENCE
Senior Assistant Attorney General
SETH K. SCHALIT
Supervising Deputy Attorney General

AMIT KURLEKAR
Deputy Attorney General
Attorneys for Respondent

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Exhibit A

SENATE BILL No. 121

Introduced by Senators Thompson, Petris and Russell

January 19, 1995

An act to amend Section 22 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 121, as introduced, Thompson. Criminal procedure: voluntary intoxication defense.

Existing law provides that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. Under existing law, as held by the California Supreme Court in People v. Whitfield, 7 Cal. 4th 437, the phrase "when a specific intent crime is charged" includes murder even where the prosecution relies on a theory of implied malice.

This bill would provide that notwithstanding the above provisions, evidence of voluntary intoxication is not admissible in a criminal action where the defendant is charged with murder in the 2nd degree and the prosecution seeks to establish the existence of malice aforethought on an implied malice theory if the defendant has been previously convicted of driving under the influence of alcohol or drugs within 7 years of the charged offense or has been previously convicted of causing great bodily injury while driving under the influence of alcohol or drugs.

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

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

SECTION 1. Section 22 of the Penal Code is amended to read:

22. (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his *or her* having been in ~~such~~ *that* condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act.

(b) *(1)* Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

(2) Notwithstanding paragraph (1), evidence of voluntary intoxication is not admissible in a criminal action where the defendant is charged with murder in the second degree and the prosecution seeks to establish the existence of malice aforethought on an implied malice theory if the defendant has been previously convicted of driving under the influence of alcohol or drugs within seven years of the charged offense or has been previously convicted of causing great bodily injury while driving under the influence of alcohol or drugs.

(c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

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Exhibit B

AMENDED IN SENATE MARCH 23, 1995

AMENDED IN SENATE MARCH 13, 1995

SENATE BILL No. 121

Introduced by Senators Thompson, Petris, and Russell

January 19, 1995

An act to amend Section 22 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 121, as amended, M. Thompson. Criminal procedure: voluntary intoxication defense.

Existing law provides that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. Under existing law, as held by the California Supreme Court in People v. Whitfield, 7 Cal. 4th 437, the phrase "when a specific intent crime is charged" includes murder even where the prosecution relies on a theory of implied malice.

This bill would provide ~~that notwithstanding the above provisions, evidence of voluntary intoxication is not admissible by a defendant to negate his or her capacity to form any mental state for the offense charged where he or she is charged with murder in the 2nd degree while driving under the influence of alcohol or drugs and has been previously convicted of driving under the influence of alcohol or drugs,~~ *instead, that evidence of voluntary intoxication is admissible*

solely on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with a homicide, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

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

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

~~SECTION 1.~~ ~~Section 22 of the Penal Code is amended~~

SECTION 1. Section 22 of the Penal Code is amended to read:

22. (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation or malice aforethought, with which the accused committed the act.

(b) Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, *or, when charged with a homicide, whether the defendant* premeditated, deliberated, or harbored *express* malice aforethought~~, when a specific intent crime is charged~~.

(c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

~~to read:~~

~~22. (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act.~~

~~(b) (1) Evidence of voluntary intoxication is admissible solely on the issue of whether or not the~~

~~defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.~~

~~(2) Notwithstanding paragraph (1), evidence of voluntary intoxication is not admissible by a defendant to negate his or her capacity to form any mental state for the offense charged where he or she is charged with murder in the second degree while driving under the influence of alcohol or drugs and has been previously convicted of driving under the influence of alcohol or drugs.~~

~~(c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.~~

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Exhibit C

SENATE COMMITTEE ON CRIMINAL PROCEDURE

Senator Milton Marks, Chair
1995-96 Regular Session

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SB 121 (Thompson)
As amended March 23, 1995
Hearing date: March 28, 1995
Penal Code
MLK:ll

CRIMINAL PROCEDURE: VOLUNTARY INTOXICATION DEFENSE

HISTORY

Source: Author

Prior Legislation: None

Support: None

Opposition: California Attorneys for Criminal Justice; American Civil Liberties Union

KEY ISSUE

WHEN A DEFENDANT HAS BEEN CHARGED WITH A HOMICIDE, SHOULD EVIDENCE OF VOLUNTARY INTOXICATION BE ADMISSIBLE ON THE ISSUE OF WHETHER THE DEFENDANT HARBORED EXPRESS MALICE AFORETHOUGHT BUT NOT IMPLIED MALICE AFORETHOUGHT?

(More)

PURPOSE

Under existing law voluntary intoxication, while not admissible to negate the capacity to form the requisite intent in a general intent crime, is admissible to negate the capacity to form the requisite intent in a specific intent crime. (Penal Code Sections 22 and 28). Under Penal Code section 22, voluntary intoxication is admissible to show the defendant did not have malice aforethought even when the prosecution uses a theory of implied malice. (People v. Whitfield, (1994) 7 Cal. 4th 437.)

This bill makes voluntary intoxication admissible on the issue of whether the defendant harbored express malice aforethought but not implied malice aforethought.
The purpose of this bill is to make voluntary intoxication inadmissible to on the issue of whether a defendant had implied malice aforethought.

COMMENTS

1. Background.

In the early 1980's, the Legislature acted to eliminate the diminished capacity defense for general intent crimes by amending Penal Code section 22 and enacting Penal Code section 28. The defense of voluntary intoxication, however, is still allowed when a specific intent crime is charged to show whether the defendant actually formed the required specific intent, premeditated, deliberated, or harbored malice aforethought. Thus, under existing law, voluntary intoxication is not admissible to negate a defendant's ***capacity*** to form a mental state but is admissible with regard to whether he/she ***actually*** formed a specific mental state.

2. People v. Whitfield.

In People v. Whitfield (1994) 7 Cal. 4th 437, the defendant was charged with murder, driving under the influence within seven years of having suffered three prior convictions for a similar offense and driving with a blood-alcohol level of .08% with three priors in seven years. The trial court instructed the jury, under Penal Code section 22, to consider the defendant's degree of intoxication in determining whether he harbored malice aforethought, even though the district attorney was attempting to prove murder based on implied malice. The defendant was convicted of all counts fixing the degree of murder as second degree.

The Supreme Court held that the trial court did not err in instructing the jury that the defendant's degree of voluntary intoxication should be considered in determining whether the defendant harbored implied malice aforethought. The court discussed the legislative intent

(More)

behind the enactment of Penal Code section 28, which eliminated the diminished capacity defense, and the amendments to section 22. The court emphasized that the Legislature did not distinguish between express and implied malice aforethought, as it could have done, and thus it is presumed that voluntary intoxication can be admissible to show whether the defendant actually harbored either type of malice aforethought.

> Thus, while the Legislature, in conformity with its abolition of the concept of *diminished capacity*, rendered evidence of voluntary intoxication inadmissible to negate the defendant's *capacity* to form any mental state, including malice aforethought, it at the same time explicitly retained the existing rule that evidence of voluntary intoxication was admissible with regard to whether a defendant *actually* harbored malice aforethought. Further, the 1981 amendment made no distinction between express and implied malice, and approach consistent with the well-established rule, recognized by this court ... that evidence of voluntary intoxication is admissible with regard to whether a defendant harbored either express or implied malice. (Whitfield, supra, 7 Cal. 4th at 447, emphasis in the original.)

3. Express v. implied malice aforethought.

Penal Code section 188 defines express malice as "... a deliberate intention unlawfully to take away the life of a fellow creature." The same code section states there is implied malice "when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart."

4. Voluntary intoxication will not be admissible on the issue of implied malice.

This bill distinguishes express malice from implied malice. Voluntary intoxication will be admissible solely on the issue of whether or not the defendant actually formed a required specific intent or when charged with a homicide, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

By expressly limiting the admissibility of voluntary intoxication to the issue of express malice, the author is making it inadmissible when a theory of implied malice is used.

5. Opposition.

CACJ opposes this bill because "to deny the defendants the right to present evidence of involuntary intoxication in order to show the effects of such intoxication on the actual mental state of the defendant would ... contradict the long established rule that a defendant may not be convicted of murder unless he or she actually harbored malice, express or implied."

(More)

CACJ also notes that allowing the evidence of intoxication with regard to defendant's mental state does not mean that the defendant can not be found to have the requisite mental state. "[T]he defendant in Whitfield, whom evidence showed to have been unconscious at the time of the accident, was nonetheless found to have acted with implied malice and was convicted of second degree murder."

6. Technical amendment.

The bill as written states "when charged with a homicide.." voluntary intoxication is admissible as to the issue of whether the defendant premeditated, deliberated or harbored express malice. The bill should read "murder" instead of "homicide." Only murder requires these states of mind, other forms of homicide do not.

SHOULD THIS BE DONE?

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Exhibit D

AMENDED IN SENATE APRIL 3, 1995

AMENDED IN SENATE MARCH 23, 1995

AMENDED IN SENATE MARCH 13, 1995

SENATE BILL No. 121

Introduced by Senators Thompson, Petris, and Russell
(Coauthor: Senator Kopp)

January 19, 1995

An act to amend Section 22 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 121, as amended, M. Thompson. Criminal procedure: voluntary intoxication defense.

Existing law provides that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. Under existing law, as held by the California Supreme Court in People v. Whitfield, 7 Cal. 4th 437, the phrase "when a specific intent crime is charged" includes murder even where the prosecution relies on a theory of implied malice.

This bill would provide, instead, that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with ~~a homicide~~ *murder*, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

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

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

SECTION 1. Section 22 of the Penal Code is amended to read:

22. (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his *or her* having been in ~~such~~ *that* condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act.

(b) Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with ~~a homicide~~ *murder*, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

(c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

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Exhibit E

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 121
Author: Thompson (D), et al
Amended: 4/3/95
Vote: 21

SENATE CRIMINAL PROCEDURE COMMITTEE: 4-3, 3/28/95
AYES: Beverly, Campbell, Kopp, Boatwright
NOES: Polanco, Watson, Marks

SENATE APPROPRIATIONS COMMITTEE: 12-0, 5/15/95
AYES: Johnston, Alquist, Calderon, Greene, Kelley, Killea, Leonard, Leslie, Lewis, Mello, Mountjoy, Polanco
NOES: Dills

SUBJECT: Criminal procedure

SOURCE: Author

DIGEST: This bill provides that when a defendant has been charged with a murder, evidence of voluntary intoxication shall be admissible on the issue of whether the defendant harbored express malice aforethought but not implied malice aforethought.

ANALYSIS:
Under existing law, voluntary intoxication, while not admissible to negate the capacity to form the requisite intent in a general intent crime, is admissible to negate the capacity to form the requisite intent in a specific intent crime (Penal Code Sections 22 and 28). Under Penal Code Section 22, voluntary intoxication is admissible to show the defendant did not have malice aforethought even when the prosecution uses a theory of implied malice (People v Whitfield, (1994) 7 Cal. 4th 437).

CONTINUED

This bill makes voluntary intoxication admissible on the issue of whether the defendant harbored express malice aforethought but not implied malice aforethought.
The purpose of this bill is to make voluntary intoxication inadmissible to on the issue of whether a defendant had implied malice aforethought when charged with murder.

In the early 1980's, the Legislature acted to eliminate the diminished capacity defense for general intent crimes by amending Penal Code Section 22 and enacting Penal Code Section 28. The defense of voluntary intoxication, however, is still allowed when a specific intent crime is charged to show whether the defendant actually formed the required specific intent, premeditated, deliberated, or harbored malice aforethought. Thus, under existing law, voluntary intoxication is not admissible to negate a defendant's capacity to form a mental state but is admissible with regard to whether he/she actually formed a specific mental state.

This bill distinguishes express malice from implied malice. Voluntary intoxication will be admissible solely on the issue of whether or not the defendant actually formed a required specific intent or when charged with a murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/18/95)

California District Attorneys Association
Peace Officers Research Association of California
California Organization of Police and Sheriffs
California Police Chiefs Association

OPPOSITION: (Verified 5/18/95)

California Attorneys for Criminal Justice (CACJ)
American Civil Liberties Union

ARGUMENTS IN SUPPORT: The concept of this bill is "strongly supported" by all support organizations. They argue that defendants charged

CONTINUED

with second degree murder when driving under the influence should be prohibited from eliciting a defense of voluntary intoxication.

ARGUMENTS IN OPPOSITION: CACJ opposes this bill because "to deny the defendants the right to present evidence of voluntary intoxication in order to show the effects of such intoxication on the actual mental state of the defendant would ... contradict the long established rule that a defendant may not be convicted of murder unless he or she actually harbored malice, express or implied."

CACJ also notes that allowing the evidence of intoxication with regard to defendant's mental state does not mean that the defendant can not be found to have the requisite mental state. "[T]he defendant in Whitfield, whom evidence showed to have been unconscious at the time of the accident, was nonetheless found to have acted with implied malice and was convicted of second degree murder."

RJG:ctl 5/19/95 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

Exhibit F

SENATE THIRD READING

SB 121 (Thompson) - As Amended: April 3, 1995

SENATE VOTE: 34-2

ASSEMBLY ACTIONS:

COMMITTEE:	PUB. S.	VOTE:	5-3	COMMITTEE:	APPR.	VOTE:	15-1
Ayes:	Setencich, Boland, Bowler, Rainey, Rogan			Ayes:	Poochigian, V. Brown, Aguiar, Baca, Bordonaro, Brewer, Burton, Bustamante, Frusetta, Goldsmith, K. Murray, Olberg, Rogan, Takasugi, Setencich		
Nays:	Villaraigosa, Kuehl, K. Murray			Nays:	Villaraigosa		

DIGEST

Under existing law:

1) Murder is the unlawful killing of a human being or a fetus with malice aforethought. Without malice, an unlawful killing is manslaughter. Murder is classified as either first degree or second degree.

2) Malice aforethought may be express or implied. Malice is express when there is manifested an intention unlawfully to kill a human being. Malice is implied when:

   a) The killing resulted from an intentional act,

   b) The natural consequences of the act are dangerous to human life, and

   c) The act was deliberately performed with the knowledge of the danger to, and with conscious disregard for, human life.

   When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed. The word "aforethought" does not imply deliberation or the lapse of considerable time. It only means that the required mental state must precede rather than follow the act.

3) Voluntary intoxication, while not admissible to negate the capacity to form the requisite intent in a general intent crime, is admissible to negate the capacity to form the requisite intent in a specific intent crime. Under Penal Code Section 22, voluntary intoxication is admissible to show the defendant did not have malice aforethought even when the prosecution uses a theory of implied malice.

This bill makes voluntary intoxication admissible on the issue of whether the defendant harbored express malice aforethought but not implied malice aforethought. Thus, voluntary intoxication defenses would be inadmissible to on the issue of whether a defendant had implied malice aforethought. This resolves the legal dichotomy that now exists, which allows voluntary conduct (intoxication), which makes the existence of a mental state more likely, to also be a defense to the same mental element.

FISCAL EFFECT

According to the Assembly Appropriations Committee analysis, the Department of Finance indicates no fiscal effect on any state department.

COMMENTS

1) According to the author:

> Last year, the California Supreme Court held on a 4-3 ruling that current California Law allows defendants in second-degree murder cases to use their own voluntary intoxication as a defense. As a result of People v. Whitfield, individuals who kill and are charged with second-degree murder can now use their own voluntary intoxication to disprove their culpability for their actions, i.e., "I was too high on heroin to know what I was doing" or "I was too drunk to have formed the intent needed to constitute murder when I slammed into that car."

2) The decisive problem with People v. Whitfield (1994) 7 Cal. 4th 437, is that it contradicts the specific intent doctrine it purports to serve. California law provides that aggravated drunk driving can increase a defendant's liability for a vehicular homicide to a second-degree murder. Post-Whitfield, however, intoxication, if sufficiently severe, can simultaneously mitigate liability to involuntary or vehicular manslaughter by negating implied malice. Allowing the same fact to both aggravate and mitigate liability is contradictory and confusing to juries. Justice Mosk noted this problem is his dissenting opinion in Whitfield. In effect, Whitfield created a strained interpretation of California homicide law and created a needless loophole that is suspiciously close to the legislatively discredited diminished capacity defense.

3) This bill expressly limits the admissibility of voluntary intoxication to the issue of express malice, making it inadmissible when a theory of implied malice is used. Stops voluntary intoxication from being used as a quasi-diminished capacity defense by distinguishing between express and implied malice on this issue. Voluntary intoxication will still be admissible on the issue of whether or not the defendant actually formed a required specific intent, or when charged with a homicide, whether the defendant premeditated, deliberated or harbored express malice aforethought.

Analysis prepared by: David R. Shaw / apubs / 445-3268

Exhibit G

Date of Hearing: July 11, 1995
Counsel: David R. Shaw

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

SB 121 (Thompson) - As Amended: April 3, 1995

ISSUE: SHOULD A DEFENDANT CHARGED WITH MURDER BE ALLOWED TO PRESENT EVIDENCE OF VOLUNTARY INTOXICATION AS A DEFENSE TO THE ISSUE OF WHETHER HE OR SHE HARBORED IMPLIED MALICE AFORETHOUGHT?

Under current law:

1) Murder is the unlawful killing of a human being or a fetus with malice aforethought. Malice may be express or implied. Without malice, an unlawful killing is manslaughter. Murder is classified as either first degree or second degree. First-degree murders are murders committed by means of destructive devices, explosives, knowing use of armor piercing bullets, lying in wait, torture, or any other kind of willful, deliberate, and premeditated killing, or murders committed during the commission of a list of enumerated felonies (felony-murder). All other kinds of murder are second-degree murders. (Penal Code Section 187, et seq.)

2) Malice aforethought may be express or implied. Malice is express when there is manifested an intention unlawfully to kill a human being. Malice is implied when:

   a) The killing resulted from an intentional act,

   b) The natural consequences of the act are dangerous to human life, and

   c) The act was deliberately performed with the knowledge of the danger to, and with conscious disregard for, human life.

   When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed. The word "aforethought" does not imply deliberation or the lapse of considerable time. It only means that the required mental state must precede rather than follow the act. (California Jury Instruction-Criminal 8.11, and Penal Code Section 188.)

3) Voluntary intoxication, while not admissible to negate the capacity to form the requisite intent in a general intent crime, is admissible to negate the capacity to form the requisite intent in a specific intent crime. (Penal Code Sections 22 and 28.) Under Penal Code Section 22, voluntary intoxication is admissible to show the defendant did not have malice aforethought even when the prosecution uses a theory of implied malice. (People v. Whitfield, (1994) 7 Cal. 4th 437.)

This bill makes voluntary intoxication admissible on the issue of whether the defendant harbored express malice aforethought but not implied malice aforethought. Thus, voluntary intoxication defenses would be inadmissible to on the issue of whether a defendant had implied malice aforethought. This

resolves the legal dichotomy that now exists, which allows voluntary conduct (intoxication), which makes the existence of a mental state more likely, to also be a defense to the same mental element.

COMMENTS

1) Purpose. According to the author:

> Last year, the California Supreme Court held on a 4-3 ruling that current California Law allows defendants in second-degree murder cases to use their own voluntary intoxication as a defense. As a result of People v. Whitfield, individuals who kill and are charged with second-degree murder can now use their own voluntary intoxication to disprove their culpability for their actions, i.e., "I was too high on heroin to know what I was doing" or "I was too drunk to have formed the intent needed to constitute murder when I slammed into that car."
>
> In Whitfield, a Riverside man with an extensive history of DUIs was charged with second-degree murder after drinking five 16-oz. cans of malt liquor and careening his car into an innocent bystander.
>
> In the mid-1980's, the Legislature acted to eliminate (in most cases) the use of diminished capacity defenses by enacting Penal Code Section 22, which states:
>
> > "No act committed or omitted by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation or malice aforethought, with which the accused committed the act. Evidence of voluntary intoxication is admissible solely on the issue of whether the defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged."

Prior to Whitfield, lower courts had held that second-degree murder was not a specific intent crime; in fact, historically it had not been. More than a century ago, the U.S. Supreme Court held that "voluntary intoxication affords no excuse, justification, or extenuation of a crime committed under it's influence. U.S. v. Drew.

Under California law, a prosecutor must prove that a defendant possessed malice aforethought in order to gain a murder conviction. In first-degree murder cases, a prosecutor can gain a conviction only if he/she can prove that the defendant possessed express malice. Express malice is "a deliberate intention to unlawfully take away the life of a fellow human."

A lesser test is used in second-degree murder cases, when a prosecutor can gain a conviction by proving implied malice. Implied malice has been interpreted by the courts to be "an intentional act, the natural consequences of which are dangerous to life, which act deliberately performed by a person who knows that his conduct endangers the life of

another and acts with conscious disregard for life."

2) Background. In the early 1980's, the Legislature acted to eliminate the diminished capacity defense for general intent crimes by amending Penal Code Section 22 and enacting Penal Code Section 28.

The defense of voluntary intoxication, however, is still allowed when a specific intent crime is charged to show whether the defendant actually formed the required specific intent, premeditation, deliberation, or harbored malice aforethought. Thus, under existing law, voluntary intoxication is not admissible to negate a defendant's capacity to form a mental state but is admissible with regard to whether he/she actually formed a specific mental state.

3) People v. Whitfield. In People v. Whitfield (1994) 7 Cal. 4th 437, the defendant was charged with murder, driving under the influence within seven years of having suffered three prior convictions for a similar offense, and driving with a blood-alcohol level of 0.08% with three priors in seven years. The trial court instructed the jury, under Penal Code Section 22, to consider the defendant's degree of intoxication in determining whether he harbored malice aforethought, even though the district attorney was attempting to prove murder based on implied malice. The defendant was convicted of all counts fixing the degree of murder as second degree.

The Supreme Court held that the trial court did not err in instructing the jury that the defendant's degree of voluntary intoxication should be considered in determining whether the defendant harbored implied malice aforethought. The court discussed the legislative intent behind the enactment of Penal Code Section 28, which eliminated the diminished capacity defense, and the amendments to Section 22. The court emphasized that the Legislature did not distinguish between express and implied malice aforethought, as it could have done, and thus it is presumed that voluntary intoxication can be admissible to show whether the defendant actually harbored either type of malice aforethought. Thus, while the Legislature, in conformity with its abolition of the concept of diminished capacity, rendered evidence of voluntary intoxication inadmissible to negate the defendant's capacity to form any mental state, including malice aforethought, it at the same time explicitly retained the existing rule that evidence of voluntary intoxication was admissible with regard to whether a defendant actually harbored malice aforethought. Further, the 1981 amendment made no distinction between express and implied malice, and approach consistent with the well-established rule, recognized by this court...that evidence of voluntary intoxication is admissible with regard to whether a defendant harbored either express or implied malice. (Whitfield, supra, 7 Cal. 4th at 447, emphasis in the original.)

4) The Whitfield Dilemma. The decisive problem with Whitfield is that it contradicts the specific intent doctrine it purports to serve. California law provides that aggravated drunk driving can increase a defendant's liability for a vehicular homicide to a second-degree murder. Post Whitfield, however, intoxication, if sufficiently severe, can simultaneously mitigate liability to involuntary or vehicular manslaughter by negating implied malice. Allowing the same fact to both aggravate and mitigate liability is contradictory and confusing to juries. Justice Mosk noted this problem is his dissenting opinion in Whitfield. In effect,

Whitfield created a strained interpretation of California homicide law and created a needless loophole that is suspiciously close to the legislatively discredited diminished capacity defense.

5) Potential Effect. Expressly limits the admissibility of voluntary intoxication to the issue of express malice, making it inadmissible when a theory of implied malice is used. Stops voluntary intoxication from being used as a quasi-diminished capacity defense by distinguishing between express and implied malice on this issue. Voluntary intoxication will still be admissible on the issue of whether or not the defendant actually formed a required specific intent, or when charged with a homicide, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

6) The Opposition. California Attorneys for Criminal Justice believes that "to deny defendants the right to present evidence of voluntary intoxication in order to show the effects of such intoxication on the actual mental state of the defendant would ... blur the line between second degree murder with implied malice and the separate offense of gross vehicular manslaughter.

The American Civil Liberties Union believes that such a change in evidentary standard eliminates the necessity of proving one of the crucial elements of the crime: specific intent.

SOURCE: The Author

SUPPORT: California District Attorneys Association

OPPOSITION: American Civil Liberties Union
California Attorneys for Criminal Justice

Analysis prepared by: David R. Shaw / apubs / 445-3268

Exhibit H

STATE OF CALIFORNIA — OFFICE OF CRIMINAL JUSTICE PLANNING

OCJP 855 (4/92)

ENROLLED BILL REPORT

Department	*Author*	*Bill Number*
OFFICE OF CRIMINAL JUSTICE PLANNING	Thompson	SB 121

Bill Summary

This bill will provide that evidence of voluntary intoxication is admissible solely on the issue of whether or not a defendant actually formed a required specific intent, or, when charged with a murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

Summary of Recommendation

OCJP recommends the Governor SIGN SB 121. This bill would address a recent decision of the California Supreme Court in People v. Whitfield, (1994) 7 Cal.4th 437, in which the court held that voluntary intoxication is admissible by the defense to demonstrate that a defendant, charged with murder, did not harbor implied malice aforethought. This bill would explicitly limit the applicability of a voluntary intoxication defense to the issue of express malice, and not implied malice. Differentiating between express and implied malice would further the Legislature's intent of eliminating diminished capacity defenses.

Background

Last year, the California Supreme Court held in a 4-3 ruling that, in murder cases, defendants may introduce evidence of voluntary intoxication on the issue of malice aforethought, implied or express. In the Whitfield case the defendant was charged with an open murder (no degree specified). The defendant was driving under the influence (DUI) and killed another driver in a head-on collision. Because the defendant had prior driving under the influence convictions, the prosecution relied upon a theory of implied malice because of his previous DUI convictions, and resulting knowledge of the danger posed to others by such conduct. The defendant was convicted of second degree murder under the implied malice theory. However, the case presented the issue of whether it is appropriate for a defendant, who is voluntarily intoxicated, to proffer evidence of his intoxication to demonstrate the absence of implied malice. The Supreme Court held that it was proper.

Recommendation

SIGN

Legislative Analyst	*Date*	*Deputy Director*	*Date*
[signature]	9/06/95	[signature]	9-11-95
Executive Director			*Date*
[signature]			9-11-95

Specific Findings

Penal Code § 22 (a) provides that no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such a condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation or malice aforethought, with which the accused committed the act.

Penal Code § 22 (b) specifies that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

Penal Code § 22 (c) provides that voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

Penal Code § 187 defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought.

Penal Code § 188 provides that such malice may be express or implied. It is express where there is manifested a deliberate intention unlawfully to take away the life of another. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

Case law, as established by Whitfield, provides that the phrase "when a specific intent crime is charged" includes murder even where the prosecution relies on a theory of implied malice.

SB 121 would amend Penal Code § 22 (b) to provide that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

Analysis

This bill seeks to clarify existing statutory law which has been made necessary by the Whitfield ruling. Otherwise, voluntary intoxication would be admissible to negate implied malice aforethought. Although such evidence would not necessarily result in a defendant's acquittal for murder, it could reduce the offense to involuntary manslaughter.

Malice is express when there is an intentional manifestation to unlawfully kill another human being. Malice is implied when (1) the killing resulted from an intentional act; (2) the natural consequences of the act are dangerous to human life, and; (3) the act was deliberately performed with the knowledge of the danger to, and with conscious disregard for, human life. Once malice has been proven to exist, regardless of whether it is implied or express, no other mental state need be established to prove malice aforethought.

Voluntary intoxication is admissible to show that a defendant could not have deliberated, or knowingly sought to unlawfully take another's life. However, it should be inadmissible to establish that a defendant did not have malice aforethought when the prosecution uses a theory of implied malice.

This measure is consistent with other theories of current law. In that implied malice is malice inferred from the defendant's conduct rather than by proof of an actual intent to kill, it is logicial to prohibit the introduction of voluntary intoxication where the prosecution is relying upon that theory. Current law already bars the introduction of voluntary intoxication as a defense, except in specific intent crimes. Murder, based upon implied malice, is more akin to a general intent crime, e.g., it is not necessary to prove that the defendant had the precise purpose to kill.

Fiscal Findings

No appropriation. SB 121 would not create a State-mandated local program.

Support

Author (sponsor)
California District Attorneys Association

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice

Vote

- 3/28/95 Passed Senate Criminal Procedure Committee (4-3)
- 5/15/95 Passed Senate Appropriations Committee (12-0)
- 5/23/95 Passed Senate Floor (34-2)
- 7/11/95 Passed Assembly Public Safety Committee (5-3)
- 8/23/95 Passed Assembly Appropriations Committee (15-1)
- 9/06/95 Passed Assembly Floor (66-3)

Recommendation

The Office of Criminal Justice Planning recommends the Governor SIGN SB 121.

Exhibit I

ENROLLED BILL REPORT *Business, T sportation and Housing Agency*

DEPARTMENT	AUTHOR	BILL NUMBER
California Highway Patrol	**Thompson, D-Napa Valley, et al**	**SB 121**
SPONSOR	RELATED BILLS	AMENDED DATE
Author	*None*	*4/3/95*
SUBJECT		
Criminal Procedure: voluntary intoxication defense		

1. SUMMARY

This bill would prohibit a defendant from using voluntary intoxication as a defense to negate implied malice aforethought in a murder case.

2. ANALYSIS

A. Policy

Under existing law (Penal Code Section 22 and 28), a defendant is able to use voluntary intoxication to negate the charge of malice aforethought in a murder case. Under Penal Code Section 22, voluntary intoxication is admissible to show the defendant did not have malice aforethought even when the prosecution uses a theory of implied malice (People V Whitfield, (1994) 7 Cal. 4th 437). Successful use of this defense would likely result in a conviction of voluntary manslaughter while intoxicated with incarceration ranging from 16 months to 10 years. Prohibiting a defendant from using such a defense would presumably result in a conviction of second degree murder with incarceration ranging from 15 years to life.

Penal Code Section 188 defines expess malice as "..a deliberate intention unlawfully to take away the life of a fellow creature." The same code section states there is implied malice "when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart."

B. Fiscal

This bill would have no fiscal impact on the Department.

3. SPONSOR/HISTORY

The author is the sponsor of this bill.

In the early 1980s, the Legislature acted to eliminate the diminished capacity defense for general intent crimes by amending Penal Code Section 22 and enacting Penal Code Section 28. The defense of

ASSEMBLY VOTE			SENATE VOTE		
FLOOR	AYE 66	NO 3	FLOOR	AYE 34	NO 2
POLICY COMMITTEE	5	NO 3	POLICY COMMITTEE	AYE 4	NO 3
RECOMMENDATION	SIGN				
DEPARTMENT	DATE 9/14/95		AGENCY		DATE 9-15-95

voluntary intoxication, however, is still allowed when a specific intent crime is charged to show whether the defendant actually formed the required specific intent, premeditated, deliberated, or harbored malice aforethought. Thus, under existing law, voluntary intoxication is not admissible to negate a defendant's capacity to form a mental state but is admissible with regard to whether he or she actually formed a specific mental state.

This bill distinguishes express malice from implied malice. Voluntary intoxication will be admissible solely on the issue of whether or not the defendant actually formed a required specific intent or when charged with a murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

4. PRO AND CON

Arguments in Support of the Bill

Defense attorneys have been successful in introducing into evidence that a person was not capable of establishing specific intent to commit the purported crime due to their level of intoxication. Based on this tactic, defense lawyers have also been successful in having a charge or conviction reduced; i.e., from murder to manslaughter. This bill would provide that the defendant, through voluntary intoxication, cannot negate his or her capacity to form any mental state for the offense charged.

The following organizations support SB 121: California District Attorneys Association; Peace Officers Research Association of California; California Organization of Police and Sheriffs; California Police Chiefs Association.

Arguments in Opposition to the Bill

The California Attorneys for Criminal Justice (CACJ) relates that "to deny the defendants the right to present evidence of voluntary intoxication in order to show the effects of such intoxication on the actual mental state of the defendant would....contradict the long established rule that a defendant may not be convicted of murder unless he or she actually harbored malice, express or implied."

CACJ also notes that allowing the evidence of intoxication with regard to the defendant's mental state does not mean the defendant can not be found to have the requisite mental state. "The defendant in Whitfield, whom evidence showed to have been unconscious at the time of the accident, was nonetheless found to have acted with implied malice and was convicted of second degree murder."

The California Attorneys for Criminal Justice and the American Civil Liberties Union are opposed to this bill.

5. RECOMMENDATION

The Department recommends that the Governor **SIGN** AB 121. Acts committed by a person while in a state of intoxication are no less criminal than if he or she were not in such a condition. Defendants charged with second degree murder while driving under the influence of any intoxicating liquor, drug, or other substance should be prohibited from eliciting a defense of voluntary intoxication.

FOR FURTHER INFORMATION, PLEASE CONTACT:
Lieutenant Stan Perez
Office of Special Representative
(916) 657-7249 (Office), (916) 676-2564 (Home), (916) 553-3586 (Pager)

Exhibit J

AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Egri, *Legislative Assistant*

1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

July 5, 1995

Members, Public Safety Committee
State Capitol
Sacramento, California 95814

Re: SB 121 -- Oppose

Dear Members:

The ACLU regrets to inform you of our opposition to SB 121 which disallows evidence of voluntary intoxication to negate the requisite mental state for second degree murder when the defendant has been previously convicted of driving under the influence.

This legislation would prohibit a defendant from introducing evidence of voluntary intoxication to show that the defendant did not form the requisite mental state necessary for specific intent crimes including second degree murder which require a finding of implied malice. We are opposed to such a change in the evidentiary standard because it eliminates the necessity of proving one of the crucial elements of the crime: specific intent to commit a crime.

If you or your staff wish to discuss this matter further, please contact our office.

Very truly yours,

Francisco Lobaco

FRANCISCO LOBACO
Legislative Director

V. Small Navarro

VALERIE SMALL NAVARRO
Legislative Advocate

cc: Hon. Mike Thompson (Room 3056)
Consultant, Public Safety Committee

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
1202 Kettner Blvd • Suite 6200
San Diego • CA 92101
(619) 232-2121

Exhibit K

California Attorneys for Criminal Justice CACJ

Senator Mike Thompson
State Capitol - Room 3056
Sacramento, CA 95814

June 14, 1995 Re: SB 121

Dear Senator Thompson:

CACJ wishes to inform you of our opposition to SB 121, regarding the admissibility of evidence of voluntary intoxication in certain cases.

This bill in its amended form would make evidence of voluntary intoxication inadmissible in a murder case except with regard to the issue of whether the defendant premeditated, deliberated, or harbored express malice aforethought. Thus in a second degree murder case which relied upon a theory of implied malice, evidence of voluntary intoxication would be inadmissible with regard to the issue of whether the defendant acted with conscious disregard for human life. This bill would thus reverse the holding in People v. Whitfield (1994) 7 Cal.4th 437. In Whitfield, the California Supreme Court held that evidence of voluntary intoxication, while inadmissible to negate the defendant's capacity to form the requisite mental state for second degree murder, was admissible to show that the defendant did not actually have the requisite mental state. (In Whitfield, the prosecution relied on a theory of implied malice, and therefore had to show that the defendant acted with conscious disregard for life.)

To deny defendants the right to present evidence of involuntary intoxication in order to show the effects of such intoxication on the actual mental state of the defendant at the time of the killing would, as the court noted in Whitfield, blur the line between second degree murder with implied malice and the separate offense of gross vehicular manslaughter (Penal Code Section 191.5). 7 Cal. 4th 453. It would contradict the long established rule that a defendant may not be convicted of murder unless he or she actually harbored malice, express or implied. Id. Moreover, both state and federal courts have recognized the constitutional right of the defendant to present all evidence of significant probative value to his or her defense.

Allowing in evidence of intoxication with regard to the defendant's mental state does not mean that a defendant who was intoxicated at the time of the killing cannot be found to have had the requisite malice and convicted of murder. Indeed, the defendant in Whitfield, whom evidence showed to have been unconscious at the time of the accident, was nonetheless found to have acted with implied malice and was convicted

of second degree murder. Thus any change in Penal Code Section 22 is unnecessary.

If you or your staff wish to discuss this further, please contact me at my office.

Very truly yours,

Katherine Sher
Legislative Advocate

cc: Members and consultants,
Assembly Public Safety Committee

Exhibit L

SB 121

STANDING COMMITTEES:
CHAIR:
REVENUE AND TAXATION
VICE CHAIR:
NATURAL RESOURCES AND WILDLIFE
MEMBER:
AGRICULTURE AND WATER RESOURCES
BUDGET AND FISCAL REVIEW
GOVERNMENTAL ORGANIZATION
HEALTH AND HUMAN SERVICES
TOXICS AND PUBLIC SAFETY
VETERANS AFFAIRS
SELECT COMMITTEES:
CHAIR:
CALIFORNIA'S WINE INDUSTRY
MEMBER
DEFENSE BASE CLOSURES
ECONOMIC DEVELOPMENT AND TECHNOLOGY
MARITIME INDUSTRY
VOTING PRACTICES AND PROCEDURES
SPECIAL COMMITTEES:
CHAIR:
DEVELOPMENTAL DISABILITIES

California State Senate

SENATOR
MIKE THOMPSON
SECOND SENATORIAL DISTRICT

SUBCOMMITTEES:
CHAIR:
BUDGET NO. 3 ON HEALTH, HUMAN SERVICES AND LABOR
RIVER PROTECTION AND RESTORATION
RURAL HEALTH CARE
WATER MARKETING
MEMBER:
AGING
OFFSHORE OIL AND GAS DEVELOPMENT
RURAL ECONOMIC ISSUES AND FAIRS
SACRAMENTO/SAN JOAQUIN DELTA PROTECTION
JOINT COMMITTEES:
CHAIR:
LEGISLATIVE BUDGET
VICE CHAIR:
FISHERIES AND AQUACULTURE
MEMBER:
FAIRS ALLOCATION AND CLASSIFICATION
SCHOOL FACILITIES
RURAL CAUCUS:
CHAIR

September 13, 1995

The Honorable Pete Wilson, Governor
State of California
Governor's Office
State Capitol

Dear Governor Wilson:

I am writing to respectfully request that you sign my Senate Bill 121 which would establish that voluntary intoxication caused by either alcohol or drugs is not an excuse for murder.

Last year in People v. Whitfield the California Supreme Court held on a 4-3 ruling that voluntary intoxication could be used as a defense to implied malice murder. This resulted from a strained interpretation of California law, and created a needless loophole that is suspiciously close to the legislatively discredited diminished capacity defense.

Whitfield was a second degree drunk driving murder case in which the defendant claimed that he was so intoxicated that he did not have the implied malice necessary to support his murder conviction. In spite of the fact that defendant's voluntary intoxication helped provide the basis for the implied malice finding, the Whitfield court held that this same intoxication could also negate defendant's implied malice.

The Court's interpretation of current statute and the legislative history was strained at best. California law has long provided that sufficiently aggravated drunk driving can increase a defendant's liability for vehicular homicide to second degree murder. After Whitfield, however, intoxication, if sufficiently severe, can simultaneously mitigate liability to involuntary or vehicular manslaughter by negating implied malice. Allowing the same fact to both aggravate and mitigate liability only confuses juries.

Moreover, as a result, a grossly intoxicated defendant can now receive a longer prison sentence than a legally intoxicated, but not stuporous, defendant.

Because implied-malice murder is now considered a specific intent crime, juries must now find that a defendant carried out a

STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-3375
(916) 323-6958 FAX

50 D STREET, SUITE 120A
SANTA ROSA, CA 95404
(707) 576-2771
(707) 576-2773 FAX

317 3RD STREET, SUITE 6
EUREKA, CA 95501
(707) 445-6508
(707) 445-6511 FAX

1040 MAIN STREET, SUITE 101
NAPA, CA 94559
(707) 224-1990
(707) 224-1992 FAX

goal-oriented behavior, meaning that the defendant had precise purpose to kill when performing the lethal act. As a result, its nearly impossible to prosecute drunk drivers for murder no matter how wanton their acts, for an avowed purpose to kill is seldom present in drunk driving homicides.

SB 121 seeks to return common sense to the law by bringing it back to its pre-Whitfield state by explicitly establishing that second degree murder based on implied malice is not a specific intent crime, thereby precluding the use of the voluntary intoxication defense in those cases.

SB 121 is supported by the Attorney General, the California District Attorney's Association, the Doris Tate Victim's Bureau, and every statewide law enforcement organization.

Thank you for your consideration of this important public safety legislation.

Sincerely,

MIKE THOMPSON
Senator, 2nd District

MT:sw

Exhibit M

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: April 3, 1995
RECOMMENDATION: Defer to Business and Transportation Agency

BILL NUMBER: SB 121
AUTHOR: M. Thompson, et al.

ASSEMBLY: 66/3
SENATE: 34/2

BILL SUMMARY

This bill would preclude the condition of voluntary intoxication being used as a means to mitigate the severity of a criminal act.

FISCAL SUMMARY

This bill would have no fiscal impact on any state department or program. The Judicial Council indicates there would be no impact on the trial courts; the bill is a policy issue only.

COMMENTS

Under existing law, voluntary intoxication is admissible to show a defendant did not have express malice, even when the prosecution uses a theory of implied malice.

This bill would make voluntary intoxication admissible on the issue of whether the defendant harbored express malice but not implied malice. Penal Code Section 188 defines **express** malice as "...a deliberate intention unlawfully to take away the life of a fellow creature." The same code section states that there is **implied** malice "when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart." Basically, the difference between express and implied malice is that first degree murder results from expressed malice (holding a gun to someone's head and pulling the trigger). Implied malice is associated with second degree murder (shooting a gun into a building, but not intentionally picking out one person to kill).

A representative of the author's office indicates that this bill is not a sentence enhancement. It may or may not result in a longer sentence, but it would be impossible to determine what a prosecutor would choose to do in any particular case. By limiting evidence of the defense, including certain expert witnesses on intoxication, it is possible that a case would take a shorter time.

This bill may deter the public from drinking and driving. The defense of "not knowing what the person was doing" when getting behind the wheel while intoxicated, or doing bodily harm after taking drugs, would no longer be a valid defense during a trial.

Analyst/Principal	Date	Deputy Director	Date
(0556) P. Reyes		Diane M. Cummins	

M Palmer 9/11/95

Department Deputy Director — Date

Diane M. Cummins 9/11/95

Exhibit N

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 3, 1995
POSITION: Neutral

BILL NUMBER: SB 121
AUTHOR: M. Thompson, et al.

BILL SUMMARY

This bill would preclude the condition of voluntary intoxication being used as a means to mitigate the severity of a criminal act.

FISCAL SUMMARY

This bill would have no fiscal impact on any state department or program. The Judicial Council indicates there would be no impact on the trial courts; the bill is a policy issue only.

COMMENTS

Under existing law, voluntary intoxication is admissible to show the defendant did not have express malice, even when the prosecution uses a theory of implied malice.

This bill would make voluntary intoxication admissible on the issue of whether the defendant harbored express malice but not implied malice. Penal Code Section 188 defines **express** malice as "...a deliberate intention unlawfully to take away the life of a fellow creature." The same code section states that there is **implied** malice "when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart." Basically, the difference between express and implied malice is that first degree murder results from expressed malice (holding a gun to someone's head and pulling the trigger). Implied malice is associated with second degree murder (you shoot a gun into a building, but did not intentionally pick out one person to kill).

A representative of the author's office indicates that this bill is not a sentence enhancement. It may or may not result in a longer sentence, but it would be impossible to determine what a prosecutor would choose to do in any particular case. By limiting evidence of the defense, including certain expert witness on intoxication, it is possible that a case would take a shorter time. This bill eliminates the defense of "not knowing what the person was doing" when getting behind the wheel while intoxicated or doing bodily harm after taking drugs.

Analyst/Principal	Date	Deputy Director	Date
(0556) P. Reyes		Diane M. Cummins	
M. Palma 4/21/95			
Department Deputy Director			Date

Governor's Office: By: Date: Position Noted_____ Position Approved_____ Position Disapproved_____

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Juaquin Soto** No.: **S236164**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage fully prepaid that same day in the ordinary course of business.

On February 17, 2017, I served the attached **Respondent's Answer Brief on the Merits and Respondent's Request for Judicial Notice** by placing true copies enclosed in sealed envelopes in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Sixth District Appellate Program
Attn: Executive Director
95 South Market Street, Suite 570
San Jose, CA 95113

Monterey Superior Court
Salinas Division
240 Church Street, Suite 318
Salinas, CA 93901

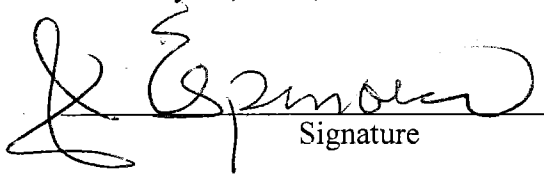
Stephen B. Bedrick
Attorney at Law
1970 Broadway, Suite 1200
Oakland, CA 94612 (2 copies)

Sixth Appellate District
California Court of Appeal
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

The Honorable Dean D. Flippo
District Attorney
Monterey District Attorney's Office
P O. Box 1131
Salinas, CA 93902

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 17, 2017, at San Francisco, California.

J. Espinosa
Declarant



Signature

SF2016400967; 20933332.doc