

Law

ive forces them to leave d apply to the nearest U.S. their home country. That ther uprooting their fami- documented family member ones for what could be also deprive the INS of the those fines and overburden seas.

se is that an er law ar bars from this country years even those illegal or residence under 245(i), en here illegally for a year Catch-22 is both irrational

son of this muddl is that is zeal to crack down on ation and with seeming the possible human con- acted as unjustly as any

arned anything, it's that al and politically driven st as much at fault as the e should extend Section ily, revisit a law that has d far too much hardship the reshaping of this migration enforcement he reasoned and compas- that has been shameful- the name of securing our

— Sacramento Bee

o deserve it least — those d are close to receiving a who have family ties and

d in this is that the INS ously slow in processing of green-card and citizen- is for years. Thus, a great its would find themselves due to INS inefficiency. ar will give the agency a dress its backlog — a has been known to take

se circumstances, one can longer extension will be ocasinating green-card rt the process and for the eadway on its timeliness

argue with the fact that a much of a deadline if it extended.

hverside Press-Enterprise

Jasmin. She has been d in the U.S. through the band's killer. And there is ation winding its way es which would grant Jas- residency status immedi-

otes are expected within onths. We hope U.S. Sens. and Dianne Feinstein take ing sure this bill is passed. ope Congress considers ws to make sure that any- ation has more options in

KNX Radio (Los Angeles)

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Have Gun, Will Punish

Danger Posed By Firearms Justifies Law Adding Years To Sentences

By Mitchell Kelter

In late September, Gov. Pete Wilson signed AB4, known as the "10-20-life" law, which imposes severe penalties for firearm use during crimes: an additional 10 years when the gun is brandished, 20 years if the gun is fired and 25 years to life imprisonment if the shot hits and seriously injures a victim.

Critics argue that the severity of the provisions will combine with the rest of California's sentencing scheme to produce anomalous outcomes.

For example, a premeditated intentional stabbing that results in death may yield a sentence of 25 years to life imprisonment. By contrast, an assault with a firearm that wounds the victim will be punishable by 27, 30 or 33 years of imprisonment and voluntary manslaughter with a firearm will be punishable by 23, 21 or 19 years to life. Some opponents have therefore charged that the new law is unjust.

Although AB4, like any law, will lead to the occasional unintended result, the measure is fundamentally sound. The new law recognizes punishment must be based not only on the subjective intent of the offender, but also on the objective effect of the offense.

Sentencing actually depends on a complex calculus involving three factors: the culpability of the actor (often described as mental state or intent), the danger posed by the criminal act and the harm that results. Arnold Loewy, "Culpability, Dangerousness and Harm: Balancing the Factors On Which Our Criminal Law Is Predicated," 66 N.C.L.Rev. 283 (1988).

The heightened danger posed by firearms justifies AB4.

A review of basic statutes reveals the interrelationship of the three factors. First, the greater the harm inflicted, the less culpability may be required. Aggravated battery requires an intent to inflict unlawful force against the victim and the harm of serious injury. Involuntary manslaughter does not require an intentional infliction of force (criminal negligence suffices), but it requires the greater harm of death. The net result is an identical sentence of two-to-four years.

Similarly, the greater the danger posed, the less harm may be required. Assault with a deadly weapon is punished the same as aggravated battery. The former

requires no injury whatsoever; the danger suffices for the two-to-four year sentence.

Finally, the greater the danger posed, the less culpability may be required. First-degree murder generally requires a premeditated, specific intent to kill. A reckless or even accidental killing may nevertheless qualify as first-degree murder when it creates special danger to the public. Such murders include those that use an explosive device, armor-piercing bullets or poison, and those that occur in the course of a dangerous felony like arson, kidnapping or robbery (the felony-murder rule).

Firearms pose the special danger worthy of additional punishment. Using a gun instead of another weapon facilitates a deadly assault by minimizing the risk of detection, resistance or flight. Firearms' especially lethal nature increases the likelihood the victim will die or suffer an incapacitating injury. Guns also accelerate the speed with which one may execute an intent to kill, once formed. See *People v Aguilar*, 32 Cal.App.3d 478, 486 (1973).

The worst aspect of firearms' spe-

cial danger is the threat they pose to bystanders. Whereas few unintended victims are at risk in "drive-by knifings," everyone is endangered by errant gunshots. Firearms, like bombs, have the special ability to kill many people in a matter of moments. In short, a firearm makes it more likely a criminal will attempt and complete a crime, more likely the crime will be fatal to its intended victim and more likely there will be unintended victims.

And the results of AB4 are actually not so anomalous. Massachusetts, for instance, punishes all types of murder, along with manslaughter committed with an explosive device, by life imprisonment. The additional danger balances the lesser degree of culpability.

Admittedly, explosive devices may endanger more people than most firearms. Bomb-homicides, however, are rare: Under 1 percent of U.S. homicides are committed with bombs; 70 percent involve firearms.

As with alcohol-related traffic fatalities, AB4 will save lives by singling out for punishment the factor that is common to so many deaths. The new legislation follows the

thinking of philosophers as diverse as Thomas Hobbes, Jeremy Bentham and Moses Maimonides, all of whom recognized that the most severe punishments should be reserved for the crimes that are most dangerous to the public.

More than a century ago, the California Supreme Court declared our laws "look rather to the maintenance of personal security and social order, than to an accurate discrimination as to the moral qualities of individual conduct." *People v. Blake*, 65 Cal. 275, 277 (1884). The 10-20-life law reflects a return to that fundamental ideal.

There may be occasions where criminals suffer extreme penalties. But as the Supreme Court declared regarding the similarly controversial felony-murder rule, "[T]he statute was adopted for the protection of the community and its residents, not for the benefit of the lawbreaker." *People v. Chavez*, 37 Cal.2d 656, 669 (1951).

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