

AMENDED IN ASSEMBLY APRIL 9, 2007  
AMENDED IN ASSEMBLY MARCH 26, 2007  
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 780**

---

---

**Introduced by Assembly Member Silva**

February 22, 2007

---

---

An act to amend Section ~~190.2~~ 664 of the Penal Code, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

AB 780, as amended, Silva. ~~Murder: special circumstances. Attempted murder.~~

*Existing law provides that an attempt to commit willful, deliberate, and premeditated murder, as defined, is punishable by imprisonment in the state prison for life with the possibility of parole. Existing law further provides that an attempted murder of a peace officer, firefighter, custodial officer, custody assistant, or nonsworn employee of a sheriff's office whose job entails control of inmates as defined, committed under specified circumstances, is punishable by imprisonment in the state prison for life with the possibility of parole, or by 15 years to life if it is also proven that the attempt was willful, deliberate, and premeditated.*

*This bill would provide that the elements defining the crime of attempted murder of the above officers, and the penalties therefor, shall also apply to the attempted murder of a person authorized to exercise the powers of arrest of a peace officer or a public officer, as defined. By expanding the scope of an existing crime, 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.*

~~Existing law, added by Proposition 7 of the November 7, 1978, statewide general election, and further amended by initiative statutes, provides that the penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole, if one or more special circumstances are found, including that the victim was a peace officer who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer so engaged, or the victim was a peace officer or former peace officer and was killed in retaliation for the performance of his or her official duties.~~

~~This bill would add various persons to these provisions, including officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, as specified, and persons who may exercise the powers of arrest of a peace officer during the course and scope of their employment if they have successfully completed a course in the exercise of those powers such as inspectors, supervisors, or security officers for transit districts, county parole officers, and illegal dumping enforcement officers, federal criminal investigators and law enforcement officers, and public officers, as specified.~~

~~The bill would provide that it shall become effective only when submitted to, and approved by, the voters of California.~~

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

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

- 1     SECTION 1. Section 664 of the Penal Code is amended to
- 2     read:
- 3     664. Every person who attempts to commit any crime, but fails,
- 4     or is prevented or intercepted in its perpetration, shall be punished
- 5     where no provision is made by law for the punishment of those
- 6     attempts, as follows:

1 (a) If the crime attempted is punishable by imprisonment in the  
2 state prison, the person guilty of the attempt shall be punished by  
3 imprisonment in the state prison for one-half the term of  
4 imprisonment prescribed upon a conviction of the offense  
5 attempted. However, if the crime attempted is willful, deliberate,  
6 and premeditated murder, as defined in Section 189, the person  
7 guilty of that attempt shall be punished by imprisonment in the  
8 state prison for life with the possibility of parole. If the crime  
9 attempted is any other one in which the maximum sentence is life  
10 imprisonment or death, the person guilty of the attempt shall be  
11 punished by imprisonment in the state prison for five, seven, or  
12 nine years. The additional term provided in this section for  
13 attempted willful, deliberate, and premeditated murder shall not  
14 be imposed unless the fact that the attempted murder was willful,  
15 deliberate, and premeditated is charged in the accusatory pleading  
16 and admitted or found to be true by the trier of fact.

17 (b) If the crime attempted is punishable by imprisonment in a  
18 county jail, the person guilty of the attempt shall be punished by  
19 imprisonment in a county jail for a term not exceeding one-half  
20 the term of imprisonment prescribed upon a conviction of the  
21 offense attempted.

22 (c) If the offense so attempted is punishable by a fine, the  
23 offender convicted of that attempt shall be punished by a fine not  
24 exceeding one-half the largest fine which may be imposed upon  
25 a conviction of the offense attempted.

26 (d) If a crime is divided into degrees, an attempt to commit the  
27 crime may be of any of those degrees, and the punishment for the  
28 attempt shall be determined as provided by this section.

29 (e) Notwithstanding subdivision (a), if attempted murder is  
30 committed upon a peace officer or firefighter, as those terms are  
31 defined in paragraphs (7) and (9) of subdivision (a) of Section  
32 190.2, a custodial officer, as that term is defined in subdivision (a)  
33 of Section 831 or subdivision (a) of Section 831.5, a custody  
34 assistant, as that term is defined in subdivision (a) of Section 831.7,  
35 *a person authorized to exercise the powers of arrest of a peace*  
36 *officer as defined in Section 830.7 or 830.9, or a public officer as*  
37 *defined in Section 836.5, or a nonsworn uniformed employee of a*  
38 *sheriff's department whose job entails the care or control of inmates*  
39 *in a detention facility, as defined in subdivision (c) of Section*  
40 *289.6, and the person who commits the offense knows or*

1 reasonably should know that the victim is a peace officer,  
2 firefighter, custodial officer, custody assistant, *or a person*  
3 *authorized to exercise the powers of arrest of a peace officer as*  
4 *defined in Section 830.7 or 830.9, or a public officer as defined*  
5 *in Section 836.5, or nonsworn uniformed employee of a sheriff's*  
6 department engaged in the performance of his or her duties, the  
7 person guilty of the attempt shall be punished by imprisonment in  
8 the state prison for life with the possibility of parole.

9 This subdivision shall apply if it is proven that a direct but  
10 ineffectual act was committed by one person toward killing another  
11 human being and the person committing the act harbored express  
12 malice aforethought, namely, a specific intent to unlawfully kill  
13 another human being. The Legislature finds and declares that this  
14 paragraph is declaratory of existing law.

15 (f) Notwithstanding subdivision (a), if the elements of  
16 subdivision (e) are proven in an attempted murder and it is also  
17 charged and admitted or found to be true by the trier of fact that  
18 the attempted murder was willful, deliberate, and premeditated,  
19 the person guilty of the attempt shall be punished by imprisonment  
20 in the state prison for 15 years to life. Article 2.5 (commencing  
21 with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply  
22 to reduce this minimum term of 15 years in state prison, and the  
23 person shall not be released prior to serving 15 years' confinement.

24 *SEC. 2. No reimbursement is required by this act pursuant to*  
25 *Section 6 of Article XIII B of the California Constitution because*  
26 *the only costs that may be incurred by a local agency or school*  
27 *district will be incurred because this act creates a new crime or*  
28 *infraction, eliminates a crime or infraction, or changes the penalty*  
29 *for a crime or infraction, within the meaning of Section 17556 of*  
30 *the Government Code, or changes the definition of a crime within*  
31 *the meaning of Section 6 of Article XIII B of the California*  
32 *Constitution.*

33 ~~SECTION 1. Section 190.2 of the Penal Code is amended to~~  
34 ~~read:~~

35 ~~190.2. (a) The penalty for a defendant who is found guilty of~~  
36 ~~murder in the first degree is death or imprisonment in the state~~  
37 ~~prison for life without the possibility of parole if one or more of~~  
38 ~~the following special circumstances has been found under Section~~  
39 ~~190.4 to be true:~~

1 ~~(1) The murder was intentional and carried out for financial~~  
2 ~~gain.~~

3 ~~(2) The defendant was convicted previously of murder in the~~  
4 ~~first or second degree. For the purpose of this paragraph, an offense~~  
5 ~~committed in another jurisdiction, which if committed in California~~  
6 ~~would be punishable as first or second degree murder, shall be~~  
7 ~~deemed murder in the first or second degree.~~

8 ~~(3) The defendant, in this proceeding, has been convicted of~~  
9 ~~more than one offense of murder in the first or second degree.~~

10 ~~(4) The murder was committed by means of a destructive device,~~  
11 ~~bomb, or explosive planted, hidden, or concealed in any place,~~  
12 ~~area, dwelling, building, or structure, and the defendant knew, or~~  
13 ~~reasonably should have known, that his or her act or acts would~~  
14 ~~create a great risk of death to one or more human beings.~~

15 ~~(5) The murder was committed for the purpose of avoiding or~~  
16 ~~preventing a lawful arrest, or perfecting or attempting to perfect,~~  
17 ~~an escape from lawful custody.~~

18 ~~(6) The murder was committed by means of a destructive device,~~  
19 ~~bomb, or explosive that the defendant mailed or delivered,~~  
20 ~~attempted to mail or deliver, or caused to be mailed or delivered,~~  
21 ~~and the defendant knew, or reasonably should have known, that~~  
22 ~~his or her act or acts would create a great risk of death to one or~~  
23 ~~more human beings.~~

24 ~~(7) The victim was a peace officer, as defined in Section 830.1,~~  
25 ~~830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36,~~  
26 ~~830.37, 830.38, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, or~~  
27 ~~a person authorized to exercise the powers of arrest of a peace~~  
28 ~~officer as defined in Section 830.7 or 830.9, or a public officer as~~  
29 ~~defined in Section 836.5 who, while engaged in the course of the~~  
30 ~~performance of his or her duties, was intentionally killed, and the~~  
31 ~~defendant knew, or reasonably should have known, that the victim~~  
32 ~~was a peace officer, a person authorized to exercise the powers of~~  
33 ~~arrest of a peace officer, or a public officer engaged in the~~  
34 ~~performance of his or her duties; or the victim was a peace officer,~~  
35 ~~a person authorized to exercise the powers of arrest of a peace~~  
36 ~~officer, or a public officer as defined in the above-enumerated~~  
37 ~~sections, or a former peace officer, person authorized to exercise~~  
38 ~~the powers of arrest of a peace officer, or public officer under any~~  
39 ~~of those sections, and was intentionally killed in retaliation for the~~  
40 ~~performance of his or her official duties.~~

1     ~~(8) The victim was a federal law enforcement officer or agent~~  
2     ~~who, while engaged in the course of the performance of his or her~~  
3     ~~duties, was intentionally killed, and the defendant knew, or~~  
4     ~~reasonably should have known, that the victim was a federal law~~  
5     ~~enforcement officer or agent engaged in the performance of his or~~  
6     ~~her duties; or the victim was a federal law enforcement officer or~~  
7     ~~agent, and was intentionally killed in retaliation for the performance~~  
8     ~~of his or her official duties.~~

9     ~~(9) The victim was a firefighter, as defined in Section 245.1,~~  
10    ~~who, while engaged in the course of the performance of his or her~~  
11    ~~duties, was intentionally killed, and the defendant knew, or~~  
12    ~~reasonably should have known, that the victim was a firefighter~~  
13    ~~engaged in the performance of his or her duties.~~

14    ~~(10) The victim was a witness to a crime who was intentionally~~  
15    ~~killed for the purpose of preventing his or her testimony in any~~  
16    ~~criminal or juvenile proceeding, and the killing was not committed~~  
17    ~~during the commission or attempted commission, of the crime to~~  
18    ~~which he or she was a witness; or the victim was a witness to a~~  
19    ~~crime and was intentionally killed in retaliation for his or her~~  
20    ~~testimony in any criminal or juvenile proceeding. As used in this~~  
21    ~~paragraph, “juvenile proceeding” means a proceeding brought~~  
22    ~~pursuant to Section 602 or 707 of the Welfare and Institutions~~  
23    ~~Code.~~

24    ~~(11) The victim was a prosecutor or assistant prosecutor or a~~  
25    ~~former prosecutor or assistant prosecutor of any local or state~~  
26    ~~prosecutor’s office in this or any other state, or of a federal~~  
27    ~~prosecutor’s office, and the murder was intentionally carried out~~  
28    ~~in retaliation for, or to prevent the performance of, the victim’s~~  
29    ~~official duties.~~

30    ~~(12) The victim was a judge or former judge of any court of~~  
31    ~~record in the local, state, or federal system in this or any other~~  
32    ~~state, and the murder was intentionally carried out in retaliation~~  
33    ~~for, or to prevent the performance of, the victim’s official duties.~~

34    ~~(13) The victim was an elected or appointed official or former~~  
35    ~~official of the federal government, or of any local or state~~  
36    ~~government of this or any other state, and the killing was~~  
37    ~~intentionally carried out in retaliation for, or to prevent the~~  
38    ~~performance of, the victim’s official duties.~~

39    ~~(14) The murder was especially heinous, atrocious, or cruel,~~  
40    ~~manifesting exceptional depravity. As used in this section, the~~

1 phrase “especially heinous, atrocious, or cruel, manifesting  
2 exceptional depravity” means a conscienceless or pitiless crime  
3 that is unnecessarily torturous to the victim.

4 (15) The defendant intentionally killed the victim by means of  
5 lying in wait.

6 (16) The victim was intentionally killed because of his or her  
7 race, color, religion, nationality, or country of origin.

8 (17) The murder was committed while the defendant was  
9 engaged in, or was an accomplice in, the commission of, attempted  
10 commission of, or the immediate flight after committing, or  
11 attempting to commit, the following felonies:

12 (A) Robbery in violation of Section 211 or 212.5.

13 (B) Kidnapping in violation of Section 207, 209, or 209.5.

14 (C) Rape in violation of Section 261.

15 (D) Sodomy in violation of Section 286.

16 (E) The performance of a lewd or lascivious act upon the person  
17 of a child under the age of 14 years in violation of Section 288.

18 (F) Oral copulation in violation of Section 288a.

19 (G) Burglary in the first or second degree in violation of Section  
20 460.

21 (H) Arson in violation of subdivision (b) of Section 451.

22 (I) Train wrecking in violation of Section 219.

23 (J) Mayhem in violation of Section 203.

24 (K) Rape by instrument in violation of Section 289.

25 (L) Carjacking, as defined in Section 215.

26 (M) To prove the special circumstances of kidnapping in  
27 subparagraph (B), or arson in subparagraph (H), if there is specific  
28 intent to kill, it is only required that there be proof of the elements  
29 of those felonies. If so established, those two special circumstances  
30 are proven even if the felony of kidnapping or arson is committed  
31 primarily or solely for the purpose of facilitating the murder.

32 (18) The murder was intentional and involved the infliction of  
33 torture.

34 (19) The defendant intentionally killed the victim by the  
35 administration of poison.

36 (20) The victim was a juror in any court of record in the local,  
37 state, or federal system in this or any other state, and the murder  
38 was intentionally carried out in retaliation for, or to prevent the  
39 performance of, the victim’s official duties.

1 ~~(21) The murder was intentional and perpetrated by means of~~  
2 ~~discharging a firearm from a motor vehicle, intentionally at another~~  
3 ~~person or persons outside the vehicle with the intent to inflict death.~~  
4 ~~For purposes of this paragraph, “motor vehicle” means any vehicle~~  
5 ~~as defined in Section 415 of the Vehicle Code.~~

6 ~~(22) The defendant intentionally killed the victim while the~~  
7 ~~defendant was an active participant in a criminal street gang, as~~  
8 ~~defined in subdivision (f) of Section 186.22, and the murder was~~  
9 ~~carried out to further the activities of the criminal street gang.~~

10 ~~(b) Unless an intent to kill is specifically required under~~  
11 ~~subdivision (a) for a special circumstance enumerated therein, an~~  
12 ~~actual killer, as to whom the special circumstance has been found~~  
13 ~~to be true under Section 190.4, need not have had any intent to kill~~  
14 ~~at the time of the commission of the offense which is the basis of~~  
15 ~~the special circumstance in order to suffer death or confinement~~  
16 ~~in the state prison for life without the possibility of parole.~~

17 ~~(c) Every person, not the actual killer, who, with the intent to~~  
18 ~~kill, aids, abets, counsels, commands, induces, solicits, requests,~~  
19 ~~or assists any actor in the commission of murder in the first degree~~  
20 ~~shall be punished by death or imprisonment in the state prison for~~  
21 ~~life without the possibility of parole if one or more of the special~~  
22 ~~circumstances enumerated in subdivision (a) has been found to be~~  
23 ~~true under Section 190.4.~~

24 ~~(d) Notwithstanding subdivision (c), every person, not the actual~~  
25 ~~killer, who, with reckless indifference to human life and as a major~~  
26 ~~participant, aids, abets, counsels, commands, induces, solicits,~~  
27 ~~requests, or assists in the commission of a felony enumerated in~~  
28 ~~paragraph (17) of subdivision (a) which results in the death of~~  
29 ~~some person or persons, and who is found guilty of murder in the~~  
30 ~~first degree therefor, shall be punished by death or imprisonment~~  
31 ~~in the state prison for life without the possibility of parole if a~~  
32 ~~special circumstance enumerated in paragraph (17) of subdivision~~  
33 ~~(a) has been found to be true under Section 190.4.~~

34 ~~The penalty shall be determined as provided in this section and~~  
35 ~~Sections 190.1, 190.3, 190.4, and 190.5.~~

36 ~~SEC. 2. Section 1 of this act affects an initiative statute and~~  
37 ~~shall become effective only when submitted to, and approved by,~~

1 ~~the voters of California, pursuant to subdivision (c) of Section 10~~  
2 ~~of Article II of the California Constitution.~~

O