

ASSEMBLY BILL

No. 2745

Introduced by Assembly Member Berryhill

February 22, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2745, as introduced, Berryhill. Murder: special circumstances.

Existing law, as added by Proposition 7, the Briggs Initiative, approved by the voters on November 7, 1978, provides the procedure for determining whether a person convicted of murder in the first degree will be punished by death or by imprisonment in the state prison for life without the possibility of parole, as specified.

This bill would make a technical, nonsubstantive change to that provision.

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

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

- 1 SECTION 1. Section 190.2 of the Penal Code is amended to
2 read:
3 190.2. (a) The penalty for a defendant who is found guilty of
4 murder in the first degree is death or imprisonment in the state
5 prison for life without the possibility of parole if one or more of
6 the following special circumstances has been found ~~under Section~~
7 ~~190.4~~ to be true *under Section 190.4*:
8 (1) The murder was intentional and carried out for financial
9 gain.

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

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

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

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

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

22 (7) The victim was a peace officer, as defined in Section 830.1,
23 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36,
24 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while
25 engaged in the course of the performance of his or her duties, was
26 intentionally killed, and the defendant knew, or reasonably should
27 have known, that the victim was a peace officer engaged in the
28 performance of his or her duties; or the victim was a peace officer,
29 as defined in the above-enumerated sections, or a former peace
30 officer under any of those sections, and was intentionally killed
31 in retaliation for the performance of his or her official duties.

32 (8) The victim was a federal law enforcement officer or agent
33 who, while engaged in the course of the performance of his or her
34 duties, was intentionally killed, and the defendant knew, or
35 reasonably should have known, that the victim was a federal law
36 enforcement officer or agent engaged in the performance of his or
37 her duties; or the victim was a federal law enforcement officer or
38 agent, and was intentionally killed in retaliation for the performance
39 of his or her official duties.

1 (9) The victim was a firefighter, as defined in Section 245.1,
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 firefighter
5 engaged in the performance of his or her duties.

6 (10) The victim was a witness to a crime who was intentionally
7 killed for the purpose of preventing his or her testimony in any
8 criminal or juvenile proceeding, and the killing was not committed
9 during the commission or attempted commission, of the crime to
10 which he or she was a witness; or the victim was a witness to a
11 crime and was intentionally killed in retaliation for his or her
12 testimony in any criminal or juvenile proceeding. As used in this
13 paragraph, “juvenile proceeding” means a proceeding brought
14 pursuant to Section 602 or 707 of the Welfare and Institutions
15 Code.

16 (11) The victim was a prosecutor or assistant prosecutor or a
17 former prosecutor or assistant prosecutor of any local or state
18 prosecutor’s office in this or any other state, or of a federal
19 prosecutor’s office, and the murder was intentionally carried out
20 in retaliation for, or to prevent the performance of, the victim’s
21 official duties.

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

26 (13) The victim was an elected or appointed official or former
27 official of the federal government, or of any local or state
28 government of this or any other state, and the killing was
29 intentionally carried out in retaliation for, or to prevent the
30 performance of, the victim’s official duties.

31 (14) The murder was especially heinous, atrocious, or cruel,
32 manifesting exceptional depravity. As used in this section, the
33 phrase “especially heinous, atrocious, or cruel, manifesting
34 exceptional depravity” means a conscienceless or pitiless crime
35 that is unnecessarily torturous to the victim.

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

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

- 1 (17) The murder was committed while the defendant was
2 engaged in, or was an accomplice in, the commission of, attempted
3 commission of, or the immediate flight after committing, or
4 attempting to commit, the following felonies:
- 5 (A) Robbery in violation of Section 211 or 212.5.
 - 6 (B) Kidnapping in violation of Section 207, 209, or 209.5.
 - 7 (C) Rape in violation of Section 261.
 - 8 (D) Sodomy in violation of Section 286.
 - 9 (E) The performance of a lewd or lascivious act upon the person
10 of a child under the age of 14 years in violation of Section 288.
 - 11 (F) Oral copulation in violation of Section 288a.
 - 12 (G) Burglary in the first or second degree in violation of Section
13 460.
 - 14 (H) Arson in violation of subdivision (b) of Section 451.
 - 15 (I) Train wrecking in violation of Section 219.
 - 16 (J) Mayhem in violation of Section 203.
 - 17 (K) Rape by instrument in violation of Section 289.
 - 18 (L) Carjacking, as defined in Section 215.
 - 19 (M) To prove the special circumstances of kidnapping in
20 subparagraph (B), or arson in subparagraph (H), if there is specific
21 intent to kill, it is only required that there be proof of the elements
22 of those felonies. If so established, those two special circumstances
23 are proven even if the felony of kidnapping or arson is committed
24 primarily or solely for the purpose of facilitating the murder.
- 25 (18) The murder was intentional and involved the infliction of
26 torture.
- 27 (19) The defendant intentionally killed the victim by the
28 administration of poison.
- 29 (20) The victim was a juror in any court of record in the local,
30 state, or federal system in this or any other state, and the murder
31 was intentionally carried out in retaliation for, or to prevent the
32 performance of, the victim's official duties.
- 33 (21) The murder was intentional and perpetrated by means of
34 discharging a firearm from a motor vehicle, intentionally at another
35 person or persons outside the vehicle with the intent to inflict death.
36 For purposes of this paragraph, "motor vehicle" means any vehicle
37 as defined in Section 415 of the Vehicle Code.
- 38 (22) The defendant intentionally killed the victim while the
39 defendant was an active participant in a criminal street gang, as

1 defined in subdivision (f) of Section 186.22, and the murder was
2 carried out to further the activities of the criminal street gang.

3 (b) Unless an intent to kill is specifically required under
4 subdivision (a) for a special circumstance enumerated therein, an
5 actual killer, as to whom the special circumstance has been found
6 to be true under Section 190.4, need not have had any intent to kill
7 at the time of the commission of the offense which is the basis of
8 the special circumstance in order to suffer death or confinement
9 in the state prison for life without the possibility of parole.

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

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

27 The penalty shall be determined as provided in this section and
28 Sections 190.1, 190.3, 190.4, and 190.5.

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