

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

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.~~
An act to amend Section 679.02 of the Penal Code, relating to victims of crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2745, as amended, Berryhill. ~~Murder: special circumstances.~~
Crime victims' rights: capital crime victim.

Existing law sets forth certain rights of victims and witnesses to crimes, including, upon request of the victim or the victim's next of kin, if the crime was a homicide, to be notified of the inmate's placement in a reentry or work furlough program or of the inmate's escape.

This bill would create various rights for capital crime victims, as defined, to include relatives and legal guardians of the victim in capital cases with respect to capital postconviction proceedings, as defined. The bill would provide that a capital crime victim may assert his or her rights in any state court in which a capital postconviction proceeding is pending and authorizes a capital crime victim to file a motion to assert his or her rights under certain circumstances. All motions and their dispositions would be required to be reported by the Attorney General to the Judicial Council and the Legislature on an annual basis. The bill would authorize the Judicial Council to establish necessary Rules of Court for implementation of these new provisions.

~~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~~ yes. State-mandated local program: no.

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

1 SECTION 1. Section 679.02 of the Penal Code is amended to
2 read:

3 679.02. (a) The following are hereby established as the
4 statutory rights of victims and witnesses of crimes:

5 (1) To be notified as soon as feasible that a court proceeding to
6 which he or she has been subpoenaed as a witness will not proceed
7 as scheduled, provided the prosecuting attorney determines that
8 the witness' attendance is not required.

9 (2) Upon request of the victim or a witness, to be informed by
10 the prosecuting attorney of the final disposition of the case, as
11 provided by Section 11116.10.

12 (3) For the victim, the victim's parents or guardian if the victim
13 is a minor, or the next of kin of the victim if the victim has died,
14 to be notified of all sentencing proceedings, and of the right to
15 appear, to reasonably express his or her views, have those views
16 preserved by audio or video means as provided in Section 1191.16,
17 and to have the court consider his or her statements, as provided
18 by Sections 1191.1 and 1191.15.

19 (4) For the victim, the victim's parents or guardian if the victim
20 is a minor, or the next of kin of the victim if the victim has died,
21 to be notified of all juvenile disposition hearings in which the
22 alleged act would have been a felony if committed by an adult,
23 and of the right to attend and to express his or her views, as
24 provided by Section 656.2 of the Welfare and Institutions Code.

25 (5) Upon request by the victim or the next of kin of the victim
26 if the victim has died, to be notified of any parole eligibility hearing
27 and of the right to appear, either personally as provided by Section
28 3043 of this code, or by other means as provided by Sections
29 3043.2 and 3043.25 of this code, to reasonably express his or her
30 views, and to have his or her statements considered, as provided

1 by Section 3043 of this code and by Section 1767 of the Welfare
2 and Institutions Code.

3 (6) Upon request by the victim or the next of kin of the victim
4 if the crime was a homicide, to be notified of an inmate's placement
5 in a reentry or work furlough program, or notified of the inmate's
6 escape as provided by Section 11155.

7 (7) To be notified that he or she may be entitled to witness fees
8 and mileage, as provided by Section 1329.1.

9 (8) For the victim, to be provided with information concerning
10 the victim's right to civil recovery and the opportunity to be
11 compensated from the Restitution Fund pursuant to Chapter 5
12 (commencing with Section ~~13959~~ 13950) of Part 4 of Division 3
13 of Title 2 of the Government Code and Section 1191.2 of this code.

14 (9) To the expeditious return of his or her property which has
15 allegedly been stolen or embezzled, when it is no longer needed
16 as evidence, as provided by Chapter 12 (commencing with Section
17 1407) and Chapter 13 (commencing with Section 1417) of Title
18 10 of Part 2.

19 (10) To an expeditious disposition of the criminal action.

20 (11) To be notified, if applicable, in accordance with Sections
21 679.03 and 3058.8 if the defendant is to be placed on parole.

22 (12) To be notified by the district attorney's office where the
23 case involves a violent felony, as defined in subdivision (c) of
24 Section 667.5, or in the event of a homicide, the victim's next of
25 kin, of a pending pretrial disposition before a change of plea is
26 entered before a judge.

27 (A) A victim of any felony may request to be notified, by the
28 district attorney's office, of a pretrial disposition.

29 (B) If it is not possible to notify the victim of the pretrial
30 disposition before the change of plea is entered, the district
31 attorney's office or the county probation department shall notify
32 the victim as soon as possible.

33 (C) The victim may be notified by any reasonable means
34 available.

35 Nothing in this paragraph is intended to affect the right of the
36 people and the defendant to an expeditious disposition as provided
37 in Section 1050.

38 (13) For the victim, to be notified by the district attorney's office
39 of the right to request, upon a form provided by the district

1 attorney's office, and receive a notice pursuant to paragraph (14),
2 if the defendant is convicted of any of the following offenses:

3 (A) Assault with intent to commit rape, sodomy, oral copulation,
4 or any violation of Section 264.1, 288, or 289, in violation of
5 Section 220.

6 (B) A violation of Section 207 or 209 committed with the intent
7 to commit a violation of Section 261, 262, 286, 288, 288a, or 289.

8 (C) Rape, in violation of Section 261.

9 (D) Oral copulation, in violation of Section 288a.

10 (E) Sodomy, in violation of Section 286.

11 (F) A violation of Section 288.

12 (G) A violation of Section 289.

13 (14) When a victim has requested notification pursuant to
14 paragraph (13), the sheriff shall inform the victim that the person
15 who was convicted of the offense has been ordered to be placed
16 on probation, and give the victim notice of the proposed date upon
17 which the person will be released from the custody of the sheriff.

18 (b) The rights set forth in subdivision (a) shall be set forth in
19 the information and educational materials prepared pursuant to
20 Section 13897.1. The information and educational materials shall
21 be distributed to local law enforcement agencies and local victims'
22 programs by the Victims' Legal Resource Center established
23 pursuant to Chapter 11 (commencing with Section 13897) of Title
24 6 of Part 4.

25 (c) Local law enforcement agencies shall make available copies
26 of the materials described in subdivision (b) to victims and
27 witnesses.

28 (d) (1) *In addition to the rights enumerated above, a capital*
29 *crime victim shall have all of the following rights:*

30 (A) *The right not to be excluded from any public court*
31 *proceedings in any capital postconviction proceeding, unless the*
32 *court, after receiving clear and convincing evidence, determines*
33 *the testimony by the capital crime victim would be materially*
34 *altered if the capital crime victim heard other testimony at that*
35 *proceeding.*

36 (B) *The right to capital postconviction proceedings free from*
37 *unreasonable delay.*

38 (C) *The right to be treated with fairness and respect for the*
39 *capital crime victim's dignity and privacy.*

1 (D) *The right to accurate and timely notice of any public capital*
2 *postconviction proceedings.*

3 (E) *The right to accurate and timely notice of the initiation of*
4 *any capital postconviction proceedings.*

5 (F) *The right to be advised of his or her rights in federal habeas*
6 *corpus proceedings.*

7 (2) *For purposes of this subdivision, a “capital crime victim”*
8 *means any of the following persons, except the defendant:*

9 (A) *Those persons who are related by blood, adoption, or*
10 *marriage, within the second degree of consanguinity or affinity of*
11 *the victim in a capital case.*

12 (B) *The legal guardian or lawful representative of the victim in*
13 *a capital case.*

14 (C) *The victim of any other crime which was jointly tried in*
15 *conjunction with the trial of a capital case or of any other crime*
16 *which was alleged as a special circumstance under paragraph (2)*
17 *or (3) of subdivision (a) of Section 190.2 or introduced as evidence*
18 *pursuant to subdivision (b) or (c) of Section 190.3.*

19 (3) *For purposes of this subdivision, “capital case” means a*
20 *proceeding in which the defendant was sentenced to death pursuant*
21 *to Chapter 1 (commencing with Section 187) of Title 8 of Part 1.*

22 (4) *For purposes of this subdivision, “capital postconviction*
23 *proceeding” means an automatic appeal pursuant to Section 1239,*
24 *a state habeas corpus proceeding in which a capital defendant is*
25 *seeking relief from a judgment of death, a reference hearing*
26 *relating to a proceeding in which a capital defendant is seeking*
27 *relief from a judgment of death, or any other postconviction*
28 *proceeding relating to a judgment of death.*

29 (5) (A) *A capital crime victim may assert his or her rights in*
30 *any state court in which a capital postconviction proceeding is*
31 *pending. The court shall take up and deal with the matter forthwith.*
32 *If relief is denied, the capital crime victim may petition the Supreme*
33 *Court for relief.*

34 (B) *If the capital postconviction proceeding is pending in the*
35 *Supreme Court, the capital crime victim may file a motion asserting*
36 *his or her rights. The court shall take up and deal with the matter*
37 *forthwith. If the motion is denied, the capital crime victim may file*
38 *a complaint with the Commission on Judicial Performance.*

1 (C) A capital crime victim may assert his or her rights in a
2 capital postconviction proceeding pursuant to Section 190.8 in
3 either the court of judgment or the Supreme Court.

4 (D) All motions and their dispositions filed pursuant to this
5 paragraph shall be reported by the Attorney General to the Judicial
6 Council and the Legislature on an annual basis.

7 (6) The Judicial Council may establish necessary Rules of Court
8 for implementation of this subdivision by June 30, 2009.

9 (d)

10 (e) Nothing in this section is intended to affect the rights and
11 services provided to victims and witnesses by the local assistance
12 centers for victims and witnesses.

13 SECTION 1. ~~Section 190.2 of the Penal Code is amended to~~
14 ~~read:~~

15 ~~190.2. (a) The penalty for a defendant who is found guilty of~~
16 ~~murder in the first degree is death or imprisonment in the state~~
17 ~~prison for life without the possibility of parole if one or more of~~
18 ~~the following special circumstances has been found to be true~~
19 ~~under Section 190.4:~~

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

22 ~~(2) The defendant was convicted previously of murder in the~~
23 ~~first or second degree. For the purpose of this paragraph, an offense~~
24 ~~committed in another jurisdiction, which if committed in California~~
25 ~~would be punishable as first or second degree murder, shall be~~
26 ~~deemed murder in the first or second degree.~~

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

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

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

37 ~~(6) The murder was committed by means of a destructive device,~~
38 ~~bomb, or explosive that the defendant mailed or delivered,~~
39 ~~attempted to mail or deliver, or caused to be mailed or delivered,~~
40 ~~and the defendant knew, or reasonably should have known, that~~

1 his or her act or acts would create a great risk of death to one or
2 more human beings.

3 (7) ~~The victim was a peace officer, as defined in Section 830.1,
4 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36,
5 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while
6 engaged in the course of the performance of his or her duties, was
7 intentionally killed, and the defendant knew, or reasonably should
8 have known, that the victim was a peace officer engaged in the
9 performance of his or her duties; or the victim was a peace officer,
10 as defined in the above-enumerated sections, or a former peace
11 officer under any of those sections, and was intentionally killed
12 in retaliation for the performance of his or her official duties.~~

13 (8) ~~The victim was a federal law enforcement officer or agent
14 who, while engaged in the course of the performance of his or her
15 duties, was intentionally killed, and the defendant knew, or
16 reasonably should have known, that the victim was a federal law
17 enforcement officer or agent engaged in the performance of his or
18 her duties; or the victim was a federal law enforcement officer or
19 agent, and was intentionally killed in retaliation for the performance
20 of his or her official duties.~~

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

26 (10) ~~The victim was a witness to a crime who was intentionally
27 killed for the purpose of preventing his or her testimony in any
28 criminal or juvenile proceeding, and the killing was not committed
29 during the commission or attempted commission, of the crime to
30 which he or she was a witness; or the victim was a witness to a
31 crime and was intentionally killed in retaliation for his or her
32 testimony in any criminal or juvenile proceeding. As used in this
33 paragraph, “juvenile proceeding” means a proceeding brought
34 pursuant to Section 602 or 707 of the Welfare and Institutions
35 Code.~~

36 (11) ~~The victim was a prosecutor or assistant prosecutor or a
37 former prosecutor or assistant prosecutor of any local or state
38 prosecutor’s office in this or any other state, or of a federal
39 prosecutor’s office, and the murder was intentionally carried out~~

1 in retaliation for, or to prevent the performance of, the victim's
2 official duties:

3 (12) The victim was a judge or former judge of any court of
4 record in the local, state, or federal system in this or any other
5 state, and the murder was intentionally carried out in retaliation
6 for, or to prevent the performance of, the victim's official duties.

7 (13) The victim was an elected or appointed official or former
8 official of the federal government, or of any local or state
9 government of this or any other state, and the killing was
10 intentionally carried out in retaliation for, or to prevent the
11 performance of, the victim's official duties.

12 (14) The murder was especially heinous, atrocious, or cruel,
13 manifesting exceptional depravity. As used in this section, the
14 phrase "especially heinous, atrocious, or cruel, manifesting
15 exceptional depravity" means a conscienceless or pitiless crime
16 that is unnecessarily torturous to the victim.

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

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

21 (17) The murder was committed while the defendant was
22 engaged in, or was an accomplice in, the commission of, attempted
23 commission of, or the immediate flight after committing, or
24 attempting to commit, the following felonies:

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

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

27 (C) Rape in violation of Section 261.

28 (D) Sodomy in violation of Section 286.

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

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

32 (G) Burglary in the first or second degree in violation of Section
33 460.

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

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

36 (J) Mayhem in violation of Section 203.

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

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

39 (M) To prove the special circumstances of kidnapping in
40 subparagraph (B), or arson in subparagraph (H), if there is specific

1 intent to kill, it is only required that there be proof of the elements
2 of those felonies. If so established, those two special circumstances
3 are proven even if the felony of kidnapping or arson is committed
4 primarily or solely for the purpose of facilitating the murder.

5 ~~(18) The murder was intentional and involved the infliction of~~
6 ~~torture.~~

7 ~~(19) The defendant intentionally killed the victim by the~~
8 ~~administration of poison.~~

9 ~~(20) The victim was a juror in any court of record in the local,~~
10 ~~state, or federal system in this or any other state, and the murder~~
11 ~~was intentionally carried out in retaliation for, or to prevent the~~
12 ~~performance of, the victim's official duties.~~

13 ~~(21) The murder was intentional and perpetrated by means of~~
14 ~~discharging a firearm from a motor vehicle, intentionally at another~~
15 ~~person or persons outside the vehicle with the intent to inflict death.~~
16 ~~For purposes of this paragraph, "motor vehicle" means any vehicle~~
17 ~~as defined in Section 415 of the Vehicle Code.~~

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

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

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

36 ~~(d) Notwithstanding subdivision (c), every person, not the actual~~
37 ~~killer, who, with reckless indifference to human life and as a major~~
38 ~~participant, aids, abets, counsels, commands, induces, solicits,~~
39 ~~requests, or assists in the commission of a felony enumerated in~~
40 ~~paragraph (17) of subdivision (a) which results in the death of~~

1 ~~some person or persons, and who is found guilty of murder in the~~
2 ~~first degree therefor, shall be punished by death or imprisonment~~
3 ~~in the state prison for life without the possibility of parole if a~~
4 ~~special circumstance enumerated in paragraph (17) of subdivision~~
5 ~~(a) has been found to be true under Section 190.4.~~

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