

ASSEMBLY BILL

No. 633

Introduced by Assembly Member Ammiano

February 25, 2009

An act to amend Section 190.4 of the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as introduced, Ammiano. Death penalty.

Existing law, as amended by the Briggs Initiative at the November 7, 1978, statewide general election, provides that in any case in which the defendant has been found guilty of first degree murder by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the remaining alleged special circumstances. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court is required to dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

This bill would instead provide that in any case in which the defendant has been found guilty of first degree murder by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court

shall dismiss the jury and impose a punishment of confinement in state prison for a term of 25 years.

This bill would provide for the submission of its provisions to the voters for approval.

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 190.4 of the Penal Code is amended to
2 read:

3 190.4. (a) Whenever special circumstances as enumerated in
4 Section 190.2 are alleged and the trier of fact finds the defendant
5 guilty of first degree murder, the trier of fact shall also make a
6 special finding on the truth of each alleged special circumstance.
7 The determination of the truth of any or all of the special
8 circumstances shall be made by the trier of fact on the evidence
9 presented at the trial or at the hearing held pursuant to Subdivision
10 (b) of Section 190.1.

11 In case of a reasonable doubt as to whether a special
12 circumstance is true, the defendant is entitled to a finding that is
13 not true. The trier of fact shall make a special finding that each
14 special circumstance charged is either true or not true. Whenever
15 a special circumstance requires proof of the commission or
16 attempted commission of a crime, such crime shall be charged and
17 proved pursuant to the general law applying to the trial and
18 conviction of the crime.

19 If the defendant was convicted by the court sitting without a
20 jury, the trier of fact shall be a jury unless a jury is waived by the
21 defendant and by the people, in which case the trier of fact shall
22 be the court. If the defendant was convicted by a plea of guilty,
23 the trier of fact shall be a jury unless a jury is waived by the
24 defendant and by the people.

25 If the trier of fact finds that any one or more of the special
26 circumstances enumerated in Section 190.2 as charged is true,
27 there shall be a separate penalty hearing, and neither the finding
28 that any of the remaining special circumstances charged is not
29 true, nor if the trier of fact is a jury, the inability of the jury to
30 agree on the issue of the truth or untruth of any of the remaining

1 special circumstances charged, shall prevent the holding of a
2 separate penalty hearing.

3 In any case in which the defendant has been found guilty by a
4 jury, and the jury has been unable to reach an unanimous verdict
5 that one or more of the special circumstances charged are true, and
6 does not reach a unanimous verdict that all the special
7 circumstances charged are not true, the court shall dismiss the jury
8 and shall order a new jury impaneled to try the issues, but the issue
9 of guilt shall not be tried by such jury, nor shall such jury retry the
10 issue of the truth of any of the special circumstances which were
11 found by an unanimous verdict of the previous jury to be untrue.
12 If such new jury is unable to reach the unanimous verdict that one
13 or more of the special circumstances it is trying are true, the court
14 shall dismiss the jury and in the court's discretion shall either order
15 a new jury impaneled to try the issues the previous jury was unable
16 to reach the unanimous verdict on, or impose a punishment of
17 confinement in state prison for a term of 25 years.

18 (b) If defendant was convicted by the court sitting without a
19 jury the trier of fact at the penalty hearing shall be a jury unless a
20 jury is waived by the defendant and the people, in which case the
21 trier of fact shall be the court. If the defendant was convicted by
22 a plea of guilty, the trier of fact shall be a jury unless a jury is
23 waived by the defendant and the people.

24 If the trier of fact is a jury and has been unable to reach a
25 unanimous verdict as to what the penalty shall be, the court shall
26 dismiss the jury and shall order a new jury impaneled to try the
27 issue as to what the penalty shall be. If such new jury is unable to
28 reach a unanimous verdict as to what the penalty shall be, the court
29 in its discretion shall either order a new jury or impose a
30 punishment of confinement in state prison for a term of life without
31 the possibility of parole.

32 (c) If the trier of fact which convicted the defendant of a crime
33 for which he may be subject to the death penalty was a jury, the
34 same jury shall consider any plea of not guilty by reason of insanity
35 pursuant to Section 1026, the truth of any special circumstances
36 which may be alleged, and the penalty to be applied, unless for
37 good cause shown the court discharges that jury in which case a
38 new jury shall be drawn. The court shall state facts in support of
39 the finding of good cause upon the record and cause them to be
40 entered into the minutes.

1 (d) In any case in which the defendant may be subject to the
2 death penalty, evidence presented at any prior phase of the trial,
3 including any proceeding under a plea of not guilty by reason of
4 insanity pursuant to Section 1026 shall be considered an any
5 subsequent phase of the trial, if the trier of fact of the prior phase
6 is the same trier of fact at the subsequent phase.

7 (e) In every case in which the trier of fact has returned a verdict
8 or finding imposing the death penalty, the defendant shall be
9 deemed to have made an application for modification of such
10 verdict or finding pursuant to Subdivision 7 of Section 11. In ruling
11 on the application, the judge shall review the evidence, consider,
12 take into account, and be guided by the aggravating and mitigating
13 circumstances referred to in Section 190.3, and shall make a
14 determination as to whether the jury’s findings and verdicts that
15 the aggravating circumstances outweigh the mitigating
16 circumstances are contrary to law or the evidence presented. The
17 judge shall state on the record the reasons for his findings.

18 The judge shall set forth the reasons for his ruling on the
19 application and direct that they be entered on the Clerk’s minutes.
20 The denial of the modification of the death penalty verdict pursuant
21 to subdivision (7) of Section 1181 shall be reviewed on the
22 defendant’s automatic appeal pursuant to subdivision (b) of Section
23 1239. The granting of the application shall be reviewed on the
24 People’s appeal pursuant to paragraph (6).

25 SEC. 2. Section 1 of this act affects an initiative statute and
26 shall become effective only when submitted to, and approved by,
27 the voters of California, pursuant to subdivision (c) of Section 10
28 of Article II of the California Constitution.