

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

**SENATE BILL**

**No. 490**

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**Introduced by Senator Hancock  
(Coauthor: Senator Anderson)**

February 17, 2011

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*An act to amend Sections 830.2, 830.5, 830.11, 6126, 6126.2, 6127.3, 6127.4, 6131, and 6132 of, and to repeal Sections 6051 and 6126.1 of, the Penal Code, relating to corrections. An act to amend Sections 190, 190.2, and 190.4 of, and to repeal Sections 190.1 and 190.3 of, the Penal Code, relating to the death penalty.*

LEGISLATIVE COUNSEL'S DIGEST

SB 490, as amended, Hancock. ~~Corrections: Office of the Inspector General. Death penalty.~~

*Existing law, as added and amended by various initiatives, including Proposition 7, approved by the voters at the November 7, 1978, statewide general election, provides for imposition of the death penalty for murder in the first degree if certain special circumstances are proved. Proposition 7 may only be amended by the Legislature by a statute that becomes effective only when approved by the electors.*

*This bill would abolish the death penalty, and provide instead for imprisonment in the state prison for life without the possibility of parole. The bill would halt executions unless the voters fail to approve this bill and would provide that where a defendant or inmate was sentenced to death prior to the date of the enactment of the bill, upon voter approval*

*of this bill, the defendant's or inmate's sentence would automatically be converted to life imprisonment without the possibility of parole. The bill would state findings and declarations of the Legislature regarding the death penalty. The bill would provide that it would only become effective if certain of its provisions are submitted to and approved by the electors at the next statewide general election.*

~~(1) Existing law creates the independent Office of the Inspector General and provides that it is not a subdivision of any other government entity. The Inspector General and certain other employees of the office are peace officers provided that the primary duty of these peace officers is conducting audits of investigatory practices and other audits, as well as conducting investigations, of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and the Board of Parole Hearings.~~

~~This bill would remove the Inspector General and the other employees from peace officer status. The bill would authorize the Inspector General and certain other employees to exercise the powers of arrest and serving warrants, as provided.~~

~~(2) Existing law requires the Inspector General to, among other things, review departmental policy and procedures, conduct audits of investigatory practices and other audits, be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process, and conduct investigations of the department, and audit each warden of an institution one year after his or her appointment and each correctional institution at least once every 4 years. Existing law establishes within the Office of the Inspector General a Bureau of Independent Review (BIR). Existing law requires the Inspector General to evaluate and determine the qualifications of each candidate for warden or superintendent, as specified.~~

~~This bill would remove the requirement that the Inspector General review departmental policy and procedures, conduct audits of investigatory practices and other audits, and conduct investigations of the department, and instead provide that the Inspector General shall be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the department pursuant to provisions specifying the responsibilities of the Bureau of Independent Review. The bill would remove the requirement of the Inspector General to audit wardens. The bill would require the Inspector General to conduct an objective, clinically appropriate, and metric-oriented medical~~

inspection program to periodically review delivery of medical care at each state prison.

~~The bill would also make conforming changes.~~

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

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

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) It is the intent of the Legislature to replace the death penalty*  
4     *with permanent imprisonment.*

5     *(b) The death penalty costs three times as much as permanent*  
6     *imprisonment.*

7     *(c) A recent study published in the Loyola of Los Angeles Law*  
8     *Review found that California spends \$184 million a year on the*  
9     *death penalty.*

10    *(d) The same study found that Californians have spent more*  
11    *than \$4 billion on capital punishment since it was reinstated in*  
12    *1978, or about \$308 million for each of the 13 executions carried*  
13    *out since reinstatement.*

14    *(e) The millions of dollars spent on the death penalty could be*  
15    *used to make our communities safer by funding other public safety*  
16    *programs.*

17    *SEC. 2. Section 190 of the Penal Code is amended to read:*

18    190. (a) (1) Every person guilty of murder in the first degree  
19 shall be punished by ~~death~~, imprisonment in the state prison for  
20 life without the possibility of parole, or imprisonment in the state  
21 prison for a term of 25 years to life. The penalty to be applied shall  
22 be determined as provided in Sections ~~190.1~~, 190.2, ~~190.3~~, 190.4,  
23 and 190.5.

24    *Except*

25    (2) *Except* as provided in subdivision (b), (c), or (d), every  
26 person guilty of murder in the second degree shall be punished by  
27 imprisonment in the state prison for a term of 15 years to life.

28    (b) *Except* as provided in subdivision (c), every person guilty  
29 of murder in the second degree shall be punished by imprisonment  
30 in the state prison for a term of 25 years to life if the victim was a  
31 peace officer, as defined in subdivision (a) of Section 830.1,  
32 subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of

1 Section 830.33, or Section 830.5, who was killed while engaged  
2 in the performance of his or her duties, and the defendant knew,  
3 or reasonably should have known, that the victim was a peace  
4 officer engaged in the performance of his or her duties.

5 (c) Every person guilty of murder in the second degree shall be  
6 punished by imprisonment in the state prison for a term of life  
7 without the possibility of parole if the victim was a peace officer,  
8 as defined in subdivision (a) of Section 830.1, subdivision (a), (b),  
9 or (c) of Section 830.2, subdivision (a) of Section 830.33, or  
10 Section 830.5, who was killed while engaged in the performance  
11 of his or her duties, and the defendant knew, or reasonably should  
12 have known, that the victim was a peace officer engaged in the  
13 performance of his or her duties, and any of the following facts  
14 has been charged and found true:

15 (1) The defendant specifically intended to kill the peace officer.

16 (2) The defendant specifically intended to inflict great bodily  
17 injury, as defined in Section 12022.7, on a peace officer.

18 (3) The defendant personally used a dangerous or deadly weapon  
19 in the commission of the offense, in violation of subdivision (b)  
20 of Section 12022.

21 (4) The defendant personally used a firearm in the commission  
22 of the offense, in violation of Section 12022.5.

23 (d) Every person guilty of murder in the second degree shall be  
24 punished by imprisonment in the state prison for a term of 20 years  
25 to life if the killing was perpetrated by means of shooting a firearm  
26 from a motor vehicle, intentionally at another person outside of  
27 the vehicle with the intent to inflict great bodily injury.

28 (e) Article 2.5 (commencing with Section 2930) of Chapter 7  
29 of Title 1 of Part 3 shall not apply to reduce any minimum term  
30 of a sentence imposed pursuant to this section. A person sentenced  
31 pursuant to this section shall not be released on parole prior to  
32 serving the minimum term of confinement prescribed by this  
33 section.

34 *SEC. 3. Section 190.1 of the Penal Code is repealed.*

35 ~~190.1. A case in which the death penalty may be imposed~~  
36 ~~pursuant to this chapter shall be tried in separate phases as follows:~~

37 ~~(a) The question of the defendant's guilt shall be first~~  
38 ~~determined. If the trier of fact finds the defendant guilty of first~~  
39 ~~degree murder, it shall at the same time determine the truth of all~~  
40 ~~special circumstances charged as enumerated in Section 190.2~~

1 ~~except for a special circumstance charged pursuant to paragraph~~  
2 ~~(2) of subdivision (a) of Section 190.2 where it is alleged that the~~  
3 ~~defendant had been convicted in a prior proceeding of the offense~~  
4 ~~of murder in the first or second degree.~~

5 ~~(b) If the defendant is found guilty of first degree murder and~~  
6 ~~one of the special circumstances is charged pursuant to paragraph~~  
7 ~~(2) of subdivision (a) of Section 190.2 which charges that the~~  
8 ~~defendant had been convicted in a prior proceeding of the offense~~  
9 ~~of murder of the first or second degree, there shall thereupon be~~  
10 ~~further proceedings on the question of the truth of such special~~  
11 ~~circumstance.~~

12 ~~(c) If the defendant is found guilty of first degree murder and~~  
13 ~~one or more special circumstances as enumerated in Section 190.2~~  
14 ~~has been charged and found to be true, his sanity on any plea of~~  
15 ~~not guilty by reason of insanity under Section 1026 shall be~~  
16 ~~determined as provided in Section 190.4. If he is found to be sane,~~  
17 ~~there shall thereupon be further proceedings on the question of the~~  
18 ~~penalty to be imposed. Such proceedings shall be conducted in~~  
19 ~~accordance with the provisions of Section 190.3 and 190.4.~~

20 *SEC. 4. Section 190.2 of the Penal Code is amended to read:*

21 190.2. (a) The penalty for a defendant who is found guilty of  
22 murder in the first degree is ~~death or imprisonment in the state~~  
23 ~~prison for life without the possibility of parole if one or more of~~  
24 ~~the following special circumstances has been found under Section~~  
25 ~~190.4 to be true:~~

26 (1) The murder was intentional and carried out for financial  
27 gain.

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

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

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

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

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

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

20 (8) The victim was a federal law enforcement officer or agent  
21 who, while engaged in the course of the performance of his or her  
22 duties, was intentionally killed, and the defendant knew, or  
23 reasonably should have known, that the victim was a federal law  
24 enforcement officer or agent engaged in the performance of his or  
25 her duties; or the victim was a federal law enforcement officer or  
26 agent, and was intentionally killed in retaliation for the performance  
27 of his or her official duties.

28 (9) The victim was a firefighter, as defined in Section 245.1,  
29 who, while engaged in the course of the performance of his or her  
30 duties, was intentionally killed, and the defendant knew, or  
31 reasonably should have known, that the victim was a firefighter  
32 engaged in the performance of his or her duties.

33 (10) The victim was a witness to a crime who was intentionally  
34 killed for the purpose of preventing his or her testimony in any  
35 criminal or juvenile proceeding, and the killing was not committed  
36 during the commission or attempted commission, of the crime to  
37 which he or she was a witness; or the victim was a witness to a  
38 crime and was intentionally killed in retaliation for his or her  
39 testimony in any criminal or juvenile proceeding. As used in this  
40 paragraph, “juvenile proceeding” means a proceeding brought

1 pursuant to Section 602 or 707 of the Welfare and Institutions  
2 Code.

3 (11) The victim was a prosecutor or assistant prosecutor or a  
4 former prosecutor or assistant prosecutor of any local or state  
5 prosecutor's office in this or any other state, or of a federal  
6 prosecutor's office, and the murder was intentionally carried out  
7 in retaliation for, or to prevent the performance of, the victim's  
8 official duties.

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

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

18 (14) The murder was especially heinous, atrocious, or cruel,  
19 manifesting exceptional depravity. As used in this section, the  
20 phrase "especially heinous, atrocious, or cruel, manifesting  
21 exceptional depravity" means a conscienceless or pitiless crime  
22 that is unnecessarily torturous to the victim.

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

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

27 (17) The murder was committed while the defendant was  
28 engaged in, or was an accomplice in, the commission of, attempted  
29 commission of, or the immediate flight after committing, or  
30 attempting to commit, the following felonies:

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

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

33 (C) Rape in violation of Section 261.

34 (D) Sodomy in violation of Section 286.

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

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

38 (G) Burglary in the first or second degree in violation of Section  
39 460.

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

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

2 (J) Mayhem in violation of Section 203.

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

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

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

11 (18) The murder was intentional and involved the infliction of  
12 torture.

13 (19) The defendant intentionally killed the victim by the  
14 administration of poison.

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

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

24 (22) The defendant intentionally killed the victim while the  
25 defendant was an active participant in a criminal street gang, as  
26 defined in subdivision (f) of Section 186.22, and the murder was  
27 carried out to further the activities of the criminal street gang.

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

35 (c) Every person, not the actual killer, who, with the intent to  
36 kill, aids, abets, counsels, commands, induces, solicits, requests,  
37 or assists any actor in the commission of murder in the first degree  
38 shall be punished by ~~death~~ or imprisonment in the state prison for  
39 life without the possibility of parole if one or more of the special

1 circumstances enumerated in subdivision (a) has been found to be  
2 true under Section 190.4.

3 (d) (1) Notwithstanding subdivision (c), every person, not the  
4 actual killer, who, with reckless indifference to human life and as  
5 a major participant, aids, abets, counsels, commands, induces,  
6 solicits, requests, or assists in the commission of a felony  
7 enumerated in paragraph (17) of subdivision (a) which results in  
8 the death of some person or persons, and who is found guilty of  
9 murder in the first degree therefor, shall be punished by ~~death or~~  
10 imprisonment in the state prison for life without the possibility of  
11 parole if a special circumstance enumerated in paragraph (17) of  
12 subdivision (a) has been found to be true under Section 190.4.

13 The

14 (2) The penalty shall be determined as provided in this section  
15 and Sections 190.1, 190.3, 190.4, and 190.5.

16 SEC. 5. Section 190.3 of the Penal Code is repealed.

17 ~~190.3. If the defendant has been found guilty of murder in the~~  
18 ~~first degree, and a special circumstance has been charged and found~~  
19 ~~to be true, or if the defendant may be subject to the death penalty~~  
20 ~~after having been found guilty of violating subdivision (a) of~~  
21 ~~Section 1672 of the Military and Veterans Code or Sections 37,~~  
22 ~~128, 219, or 4500 of this code, the trier of fact shall determine~~  
23 ~~whether the penalty shall be death or confinement in state prison~~  
24 ~~for a term of life without the possibility of parole. In the~~  
25 ~~proceedings on the question of penalty, evidence may be presented~~  
26 ~~by both the people and the defendant as to any matter relevant to~~  
27 ~~aggravation, mitigation, and sentence including, but not limited~~  
28 ~~to, the nature and circumstances of the present offense, any prior~~  
29 ~~felony conviction or convictions whether or not such conviction~~  
30 ~~or convictions involved a crime of violence, the presence or~~  
31 ~~absence of other criminal activity by the defendant which involved~~  
32 ~~the use or attempted use of force or violence or which involved~~  
33 ~~the express or implied threat to use force or violence, and the~~  
34 ~~defendant's character, background, history, mental condition and~~  
35 ~~physical condition.~~

36 ~~However, no evidence shall be admitted regarding other criminal~~  
37 ~~activity by the defendant which did not involve the use or attempted~~  
38 ~~use of force or violence or which did not involve the express or~~  
39 ~~implied threat to use force or violence. As used in this section,~~  
40 ~~criminal activity does not require a conviction.~~

1     However, in no event shall evidence of prior criminal activity  
2     be admitted for an offense for which the defendant was prosecuted  
3     and acquitted. The restriction on the use of this evidence is intended  
4     to apply only to proceedings pursuant to this section and is not  
5     intended to affect statutory or decisional law allowing such  
6     evidence to be used in any other proceedings.

7     Except for evidence in proof of the offense or special  
8     circumstances which subject a defendant to the death penalty, no  
9     evidence may be presented by the prosecution in aggravation unless  
10    notice of the evidence to be introduced has been given to the  
11    defendant within a reasonable period of time as determined by the  
12    court, prior to trial. Evidence may be introduced without such  
13    notice in rebuttal to evidence introduced by the defendant in  
14    mitigation.

15    The trier of fact shall be instructed that a sentence of confinement  
16    to state prison for a term of life without the possibility of parole  
17    may in future after sentence is imposed, be commuted or modified  
18    to a sentence that includes the possibility of parole by the Governor  
19    of the State of California.

20    In determining the penalty, the trier of fact shall take into account  
21    any of the following factors if relevant:

22    (a) The circumstances of the crime of which the defendant was  
23    convicted in the present proceeding and the existence of any special  
24    circumstances found to be true pursuant to Section 190.1.

25    (b) The presence or absence of criminal activity by the defendant  
26    which involved the use or attempted use of force or violence or  
27    the express or implied threat to use force or violence.

28    (c) The presence or absence of any prior felony conviction.

29    (d) Whether or not the offense was committed while the  
30    defendant was under the influence of extreme mental or emotional  
31    disturbance.

32    (e) Whether or not the victim was a participant in the defendant's  
33    homicidal conduct or consented to the homicidal act.

34    (f) Whether or not the offense was committed under  
35    circumstances which the defendant reasonably believed to be a  
36    moral justification or extenuation for his conduct.

37    (g) Whether or not defendant acted under extreme duress or  
38    under the substantial domination of another person.

39    (h) Whether or not at the time of the offense the capacity of the  
40    defendant to appreciate the criminality of his conduct or to conform

1 his conduct to the requirements of law was impaired as a result of  
2 mental disease or defect, or the affects of intoxication:

- 3 (i) The age of the defendant at the time of the crime.
- 4 (j) Whether or not the defendant was an accomplice to the  
5 offense and his participation in the commission of the offense was  
6 relatively minor.
- 7 (k) Any other circumstance which extenuates the gravity of the  
8 crime even though it is not a legal excuse for the crime.

9 After having heard and received all of the evidence, and after  
10 having heard and considered the arguments of counsel, the trier  
11 of fact shall consider, take into account and be guided by the  
12 aggravating and mitigating circumstances referred to in this section,  
13 and shall impose a sentence of death if the trier of fact concludes  
14 that the aggravating circumstances outweigh the mitigating  
15 circumstances. If the trier of fact determines that the mitigating  
16 circumstances outweigh the aggravating circumstances the trier  
17 of fact shall impose a sentence of confinement in state prison for  
18 a term of life without the possibility of parole.

19 *SEC. 6. Section 190.4 of the Penal Code is amended to read:*

20 190.4. (a) (1) Whenever special circumstances as enumerated  
21 in Section 190.2 are alleged and the trier of fact finds the defendant  
22 guilty of first degree murder, the trier of fact shall also make a  
23 special finding on the truth of each alleged special circumstance.  
24 The determination of the truth of any or all of the special  
25 circumstances shall be made by the trier of fact on the evidence  
26 presented at the trial or at the hearing held pursuant to Subdivision  
27 (b) of Section 190.1.

28 *In*

29 (2) *In* case of a reasonable doubt as to whether a special  
30 circumstance is true, the defendant is entitled to a finding that is  
31 not true. The trier of fact shall make a special finding that each  
32 special circumstance charged is either true or not true. Whenever  
33 a special circumstance requires proof of the commission or  
34 attempted commission of a crime, such crime shall be charged and  
35 proved pursuant to the general law applying to the trial and  
36 conviction of the crime.

37 *If*

38 (3) *If* the defendant was convicted by the court sitting without  
39 a jury, the trier of fact shall be a jury unless a jury is waived by  
40 the defendant and by the people, in which case the trier of fact

1 shall be the court. If the defendant was convicted by a plea of  
2 guilty, the trier of fact shall be a jury unless a jury is waived by  
3 the defendant and by the people.

4 If

5 (4) *If the trier of fact finds that any one or more of the special*  
6 *circumstances enumerated in Section 190.2 as charged is true,*  
7 *there shall be a separate penalty hearing, and neither the finding*  
8 *that any of the remaining special circumstances charged is not*  
9 *true, nor if the trier of fact is a jury, the inability of the jury to*  
10 *agree on the issue of the truth or untruth of any of the remaining*  
11 *special circumstances charged, shall prevent the holding of a*  
12 *separate penalty hearing the defendant shall be punished by*  
13 *imprisonment in state prison for life without the possibility of*  
14 *parole.*

15 In any case in which the defendant has been found guilty by a  
16 jury, and the jury has been unable to reach an unanimous verdict  
17 that one or more of the special circumstances charged are true, and  
18 does not reach a unanimous verdict that all the special  
19 circumstances charged are not true, the court shall dismiss the jury  
20 and shall order a new jury impaneled to try the issues, but the issue  
21 of guilt shall not be tried by such jury, nor shall such jury retry the  
22 issue of the truth of any of the special circumstances which were  
23 found by an unanimous verdict of the previous jury to be untrue.  
24 If such new jury is unable to reach the unanimous verdict that one  
25 or more of the special circumstances it is trying are true, the court  
26 shall dismiss the jury and in the court's discretion shall either order  
27 a new jury impaneled to try the issues the previous jury was unable  
28 to reach the unanimous verdict on, or impose a punishment of  
29 confinement in state prison for a term of 25 years.

30 (b) ~~If defendant was convicted by the court sitting without a~~  
31 ~~jury the trier of fact at the penalty hearing shall be a jury unless a~~  
32 ~~jury is waived by the defendant and the people, in which case the~~  
33 ~~trier of fact shall be the court. If the defendant was convicted by~~  
34 ~~a plea of guilty, the trier of fact shall be a jury unless a jury is~~  
35 ~~waived by the defendant and the people.~~

36 ~~If the trier of fact is a jury and has been unable to reach a~~  
37 ~~unanimous verdict as to what the penalty shall be, the court shall~~  
38 ~~dismiss the jury and shall order a new jury impaneled to try the~~  
39 ~~issue as to what the penalty shall be. If such new jury is unable to~~  
40 ~~reach a unanimous verdict as to what the penalty shall be, the court~~

1 ~~in its discretion shall either order a new jury or impose a~~  
2 ~~punishment of confinement in state prison for a term of life without~~  
3 ~~the possibility of parole.~~

4 (e)

5 (b) If the trier of fact which convicted the defendant of a crime  
6 for which he *or she* may be subject to ~~the death penalty~~  
7 ~~imprisonment in state prison for life without the possibility of~~  
8 ~~parole~~ was a jury, the same jury shall consider any plea of not  
9 guilty by reason of insanity pursuant to Section 1026, the truth of  
10 any special circumstances which may be alleged, ~~and the penalty~~  
11 ~~to be applied~~, unless for good cause shown the court discharges  
12 that jury in which case a new jury shall be drawn. The court shall  
13 state facts in support of the finding of good cause upon the record  
14 and cause them to be entered into the minutes.

15 (d) ~~In any case in which the defendant may be subject to the~~  
16 ~~death penalty, evidence presented at any prior phase of the trial,~~  
17 ~~including any proceeding under a plea of not guilty by reason of~~  
18 ~~insanity pursuant to Section 1026 shall be considered an any~~  
19 ~~subsequent phase of the trial, if the trier of fact of the prior phase~~  
20 ~~is the same trier of fact at the subsequent phase.~~

21 (e) ~~In every case in which the trier of fact has returned a verdict~~  
22 ~~or finding imposing the death penalty, the defendant shall be~~  
23 ~~deemed to have made an application for modification of such~~  
24 ~~verdict or finding pursuant to Subdivision 7 of Section 11. In ruling~~  
25 ~~on the application, the judge shall review the evidence, consider,~~  
26 ~~take into account, and be guided by the aggravating and mitigating~~  
27 ~~circumstances referred to in Section 190.3, and shall make a~~  
28 ~~determination as to whether the jury's findings and verdicts that~~  
29 ~~the aggravating circumstances outweigh the mitigating~~  
30 ~~circumstances are contrary to law or the evidence presented. The~~  
31 ~~judge shall state on the record the reasons for his findings.~~

32 ~~The judge shall set forth the reasons for his ruling on the~~  
33 ~~application and direct that they be entered on the Clerk's minutes.~~  
34 ~~The denial of the modification of the death penalty verdict pursuant~~  
35 ~~to subdivision (7) of Section 1181 shall be reviewed on the~~  
36 ~~defendant's automatic appeal pursuant to subdivision (b) of Section~~  
37 ~~1239. The granting of the application shall be reviewed on the~~  
38 ~~People's appeal pursuant to paragraph (6).~~

1     *SEC. 7. (a) The State of California shall not carry out any*  
2 *execution following the enactment of this act unless the voters fail*  
3 *to appeal Sections 2 to 6, inclusive, of this act.*

4     *(b) In any case where a defendant or inmate was sentenced to*  
5 *death prior to the date of the enactment of this act, upon voter*  
6 *approval of this act, the sentence of each defendant or inmate shall*  
7 *automatically be converted to life imprisonment without the*  
8 *possibility of parole under the terms and conditions of this act.*

9     *SEC. 8. The provisions of this act are severable. If any*  
10 *provision of this measure or its application is held invalid, that*  
11 *invalidity shall not affect other provisions or applications that can*  
12 *be given effect without the invalid provision or application.*

13     *SEC. 9. Sections 2 to 6, inclusive, amend or repeal provisions*  
14 *of law added or amended by initiatives, and shall only be effective*  
15 *if submitted to and approved by the electors at the next statewide*  
16 *general election.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Senate, May 31, 2011. (JR11)**