

ASSEMBLY BILL

No. 2098

Introduced by Assembly Member Levine

February 20, 2014

An act to amend Section 190.3 of the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as introduced, Levine. Death penalty: sentencing: mitigating circumstances.

Existing law, as added by the Briggs Initiative, a measure approved by the voters at the November 7, 1978, statewide general election, among other things, provides that persons convicted of first degree murder are subject to death or life in prison without the possibility of parole if any specified special circumstance is found to be true. Existing law also provides that in determining the penalty, the trier of fact is required to take into account certain mitigating and aggravating factors, if relevant, including, but not limited to, the presence or absence of any prior felony conviction, and whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

This bill would add whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service, as a mitigating factor.

The California Constitution authorizes the Legislature to amend or repeal an initiative statute by another statute that becomes effective when approved by the electors.

This bill would provide that its provisions will become effective only upon approval of the voters, and would provide for the submission of this measure to the voters for approval at a statewide election.

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. Section 190.3 of the Penal Code is amended to
2 read:

3 190.3. If the defendant has been found guilty of murder in the
4 first degree, and a special circumstance has been charged and found
5 to be true, or if the defendant may be subject to the death penalty
6 after having been found guilty of violating subdivision (a) of
7 Section 1672 of the Military and Veterans Code or Sections 37,
8 128, 219, or 4500 of this code, the trier of fact shall determine
9 whether the penalty shall be death or confinement in state prison
10 for a term of life without the possibility of parole. In the
11 proceedings on the question of penalty, evidence may be presented
12 by both the people and the defendant as to any matter relevant to
13 aggravation, mitigation, and sentence, including, but not limited
14 to, the nature and circumstances of the present offense, any prior
15 felony conviction or convictions whether or not ~~such that~~
16 conviction or *those* convictions involved a crime of violence, the
17 presence or absence of other criminal activity by the defendant
18 ~~which that~~ involved the use or attempted use of force or violence
19 or ~~which that~~ involved the express or implied threat to use force
20 or violence, and the defendant’s character, background, history,
21 mental condition, and physical condition.

22 However, ~~no~~ evidence shall *not* be admitted regarding other
23 criminal activity by the defendant ~~which that~~ did not involve the
24 use or attempted use of force or violence or ~~which that~~ did not
25 involve the express or implied threat to use force or violence. As
26 used in this section, criminal activity does not require a conviction.

27 However, in no event shall evidence of prior criminal activity
28 be admitted for an offense for which the defendant was prosecuted
29 and acquitted. The restriction on the use of this evidence is intended
30 to apply only to proceedings pursuant to this section and is not
31 intended to affect statutory or decisional law allowing ~~such that~~
32 evidence to be used in any other proceedings.

1 Except for evidence in proof of the offense or special
2 circumstances ~~which~~ *that* subject a defendant to the death penalty,
3 ~~no~~ evidence ~~may~~ *shall not* be presented by the prosecution in
4 aggravation unless notice of the evidence to be introduced has
5 been given to the defendant within a reasonable period of time as
6 determined by the court, prior to trial. Evidence may be introduced
7 without ~~such~~ *that* notice in rebuttal to evidence introduced by the
8 defendant in mitigation.

9 The trier of fact shall be instructed that a sentence of confinement
10 to state prison for a term of life without the possibility of parole
11 may in future after sentence is imposed, be commuted or modified
12 to a sentence that includes the possibility of parole by the Governor
13 of the State of California.

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

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

19 (b) The presence or absence of criminal activity by the defendant
20 ~~which~~ *that* involved the use or attempted use of force or violence
21 or the express or implied threat to use force or violence.

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

23 (d) Whether or not the offense was committed while the
24 defendant was under the influence of extreme mental or emotional
25 disturbance.

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

28 (f) Whether or not the offense was committed under
29 circumstances ~~which~~ *that* the defendant reasonably believed to be
30 a moral justification or extenuation for his *or her* conduct.

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

33 (h) Whether or not at the time of the offense the capacity of the
34 defendant to appreciate the criminality of his *or her* conduct or to
35 conform his *or her* conduct to the requirements of law was
36 impaired as a result of mental disease or defect, or the affects of
37 intoxication.

38 (i) The age of the defendant at the time of the crime.

1 (j) Whether or not the defendant was an accomplice to the
2 offense and his *or her* participation in the commission of the
3 offense was relatively minor.

4 (k) *Whether the defendant was, or currently is, a member of the*
5 *United States military and whether the defendant may be suffering*
6 *from sexual trauma, traumatic brain injury, post-traumatic stress*
7 *disorder, substance abuse, or mental health problems as a result*
8 *of that service.*

9 ~~(k)~~

10 (l) Any other circumstance ~~which~~ *that* extenuates the gravity
11 of the crime even though it is not a legal excuse for the crime.

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

22 SEC. 2. Section 1 of this act amends the Briggs Initiative of
23 1978, Proposition 7, an initiative statute, and shall become effective
24 only when submitted to and approved by the voters. The Secretary
25 of State shall submit Section 1 of this act for approval by the voters
26 at a statewide election in accordance with Section 9040 of the
27 Elections Code.

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