

**ASSEMBLY BILL**

**No. 1184**

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**Introduced by Assembly Members Zettel and Pescetti  
(Coauthor: Assembly Member Strickland)**

February 25, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1184, as introduced, Zettel. Murder: special circumstances.

Existing law, as amended by initiative statute, provides that the penalty for a defendant guilty of murder in the first degree shall be death or imprisonment in the state prison for life without the possibility of parole where one or more special circumstances have been charged and found to be true.

This bill would include within the enumeration of special circumstances a murder where the defendant intentionally killed the victim who was protected under a restraining order or protective order against the defendant.

This bill would provide that its provisions shall become effective only when submitted to, and approved by, the voters.

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 190.2 of the Penal Code, as  
2 amended by Chapter 478 of the Statutes of 1995, is  
3 amended to read:

4 190.2. (a) The penalty for a defendant who is found  
5 guilty of murder in the first degree is death or  
6 imprisonment in the state prison for life without the  
7 possibility of parole if one or more of the following special  
8 circumstances has been found under Section 190.4 to be  
9 true:

10 (1) The murder was intentional and carried out for  
11 financial gain.

12 (2) The defendant was convicted previously of  
13 murder in the first or second degree. For the purpose of  
14 this paragraph, an offense committed in another  
15 jurisdiction, which if committed in California would be  
16 punishable as first or second degree murder, shall be  
17 deemed murder in the first or second degree.

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

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

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

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

37 (7) The victim was a peace officer, as defined in  
38 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,



1 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or  
2 830.12, who, while engaged in the course of the  
3 performance of his or her duties, was intentionally killed,  
4 and the defendant knew, or reasonably should have  
5 known, that the victim was a peace officer engaged in the  
6 performance of his or her duties; or the victim was a peace  
7 officer, as defined in the above-enumerated sections, or  
8 a former peace officer under any of those sections, and  
9 was intentionally killed in retaliation for the performance  
10 of his or her official duties.

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

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

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

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



1 was intentionally carried out in retaliation for, or to  
2 prevent the performance of, the victim’s official duties.

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

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

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

19 (15) The defendant intentionally killed the victim  
20 while lying in wait.

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

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

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

30 (B) Kidnapping in violation of Section 207, 209, or  
31 209.5.

32 (C) Rape in violation of Section 261.

33 (D) Sodomy in violation of Section 286.

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

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

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



1 (H) Arson in violation of subdivision (b) of Section  
2 451.

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

4 (J) Mayhem in violation of Section 203.

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

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

7 (18) The murder was intentional and involved the  
8 infliction of torture.

9 (19) The defendant intentionally killed the victim by  
10 the administration of poison.

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

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

22 *(22) The defendant intentionally killed the victim*  
23 *who was protected under a restraining order or*  
24 *protective order against the defendant.*

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

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



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

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

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

17 SEC. 2. This act affects an initiative statute and shall  
18 become effective only when submitted to, and approved  
19 by, the voters pursuant to subdivision (c) of Section 10 of  
20 Article II of the California Constitution.

