

**Introduced by Senators Peace, Costa, Perata, and Rainey**

(Coauthors: Assembly Members Ashburn, Calderon,  
Frusetta, Leach, McClintock, Scott, and Soto)

December 7, 1998

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An act to amend Sections 188, 189, and 190.2 of the Penal Code, and to amend Section 3 of Chapter 629 of the Statutes of 1998, relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as introduced, Peace. Murder: special circumstances.

(1) Existing law defines the term malice, for purposes of murder, and provides that malice may be express or implied. Under existing law malice is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.

This bill would delete the term deliberate from this definition of express malice and provide that this definition is declaratory of existing law.

(2) Existing law, as amended by initiative statute, provides that any murder that is perpetrated by specified means or by any other kind of willful, deliberate, and premeditated killing, is murder of the first degree. The initiative statute provides that any amendment of its provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.

This bill additionally would provide that a murder committed with the intent to kill that is perpetrated by means of arson or kidnapping, or a murder perpetrated by a defendant who intentionally kills a victim who is under 14

years of age at the time of the murder, and the defendant knows or reasonably should know that the victim is under 14 years of age, constitutes murder in the first degree. Because it would amend an initiative statute, the bill would require a  $\frac{2}{3}$  vote.

(3) Existing law, as amended by initiative statute, provides that the penalty for a defendant found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole where one or more special circumstances has 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 under 14 years of age, and the defendant knew or reasonably should have known that the victim was under 14 years of age. The bill would provide that these provisions shall become effective only when submitted to, and approved by, the voters.

This bill would incorporate additional amendments to Section 190.2 of the Penal Code proposed by Chapter 629 of the Statutes of 1998, but not yet approved by the voters, to be operative only if both that chapter and this bill are approved by the voters. The bill also would amend Chapter 629 of the Statutes of 1998 to make conforming changes.

Vote:  $\frac{2}{3}$ . 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 188 of the Penal Code is  
2 amended to read:

3 188. Such malice may be express or implied. It is  
4 express when there is manifested ~~a—deliberate~~ *an*  
5 intention unlawfully to take away the life of a fellow  
6 creature. It is implied, when no considerable provocation  
7 appears, or when the circumstances attending the killing  
8 show an abandoned and malignant heart.

9 When it is shown that the killing resulted from the  
10 intentional doing of an act with express or implied malice  
11 as defined above, no other mental state need be shown to  
12 establish the mental state of malice aforethought. Neither

1 an awareness of the obligation to act within the general  
2 body of laws regulating society nor acting despite such  
3 awareness is included within the definition of malice.

4 SEC. 2. Section 189 of the Penal Code is amended to  
5 read:

6 189. (a) All murder which is perpetrated by means of  
7 a destructive device or explosive, knowing use of  
8 ammunition designed primarily to penetrate metal or  
9 armor, poison, lying in wait, torture, or by any other kind  
10 of willful, deliberate, and premeditated killing, or which  
11 is committed in the perpetration of, or attempt to  
12 perpetrate, arson, rape, carjacking, robbery, burglary,  
13 mayhem, kidnapping, train wrecking, or any act  
14 punishable under Section 286, 288, 288a, or 289, or any  
15 murder which is perpetrated by means of discharging a  
16 firearm from a motor vehicle, intentionally at another  
17 person outside of the vehicle with the intent to inflict  
18 death, *or any murder which is perpetrated by means of*  
19 *kidnapping or arson and the kidnapping or arson is done*  
20 *with the intent to kill the victim or victims of that*  
21 *kidnapping or arson, or any murder perpetrated by a*  
22 *defendant who intentionally kills a victim who is under 14*  
23 *years of age at the time of the murder, and the defendant*  
24 *knows or reasonably should know that the victim is under*  
25 *14 years of age, is murder of the first degree. All other*  
26 ~~kinds of murders are of the second degree.~~

27 (b) *All kinds of murders other than those listed in*  
28 *subdivision (a) are of the second degree.*

29 (c) As used in this section, “destructive device” means  
30 any destructive device as defined in Section 12301, and  
31 “explosive” means any explosive as defined in Section  
32 12000 of the Health and Safety Code.

33 (d) To prove the killing was “deliberate and  
34 premeditated,” it shall not be necessary to prove the  
35 defendant maturely and meaningfully reflected upon the  
36 gravity of his or her act.

37 SEC. 3. Section 190.2 of the Penal Code, as amended  
38 by Chapter 478 of the Statutes of 1995, is amended to read:

39 190.2. (a) The penalty for a defendant who is found  
40 guilty of murder in the first degree is death or

1 imprisonment in the state prison for life without the  
2 possibility of parole if one or more of the following special  
3 circumstances has been found under Section 190.4 to be  
4 true:

5 (1) The murder was intentional and carried out for  
6 financial gain.

7 (2) The defendant was convicted previously of  
8 murder in the first or second degree. For the purpose of  
9 this paragraph, an offense committed in another  
10 jurisdiction, which if committed in California would be  
11 punishable as first or second degree murder, shall be  
12 deemed murder in the first or second degree.

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

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

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

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

32 (7) The victim was a peace officer, as defined in  
33 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,  
34 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or  
35 830.12, who, while engaged in the course of the  
36 performance of his or her duties, was intentionally killed,  
37 and the defendant knew, or reasonably should have  
38 known, that the victim was a peace officer engaged in the  
39 performance of his or her duties; or the victim was a peace  
40 officer, as defined in the above-enumerated sections, or

1 a former peace officer under any of those sections, and  
2 was intentionally killed in retaliation for the performance  
3 of his or her official duties.

4 (8) The victim was a federal law enforcement officer  
5 or agent who, while engaged in the course of the  
6 performance of his or her duties, was intentionally killed,  
7 and the defendant knew, or reasonably should have  
8 known, that the victim was a federal law enforcement  
9 officer or agent engaged in the performance of his or her  
10 duties; or the victim was a federal law enforcement  
11 officer or agent, and was intentionally killed in retaliation  
12 for the performance of his or her official duties.

13 (9) The victim was a firefighter, as defined in Section  
14 245.1, who, while engaged in the course of the  
15 performance of his or her duties, was intentionally killed,  
16 and the defendant knew, or reasonably should have  
17 known, that the victim was a firefighter engaged in the  
18 performance of his or her duties.

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

30 (11) The victim was a prosecutor or assistant  
31 prosecutor or a former prosecutor or assistant prosecutor  
32 of any local or state prosecutor’s office in this or any other  
33 state, or of a federal prosecutor’s office, and the murder  
34 was intentionally carried out in retaliation for, or to  
35 prevent the performance of, the victim’s official duties.

36 (12) The victim was a judge or former judge of any  
37 court of record in the local, state, or federal system in this  
38 or any other state, and the murder was intentionally  
39 carried out in retaliation for, or to prevent the  
40 performance of, the victim’s official duties.

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

6 (14) The murder was especially heinous, atrocious, or  
7 cruel, manifesting exceptional depravity. As used in this  
8 section, the phrase "especially heinous, atrocious, or  
9 cruel, manifesting exceptional depravity" means a  
10 conscienceless or pitiless crime that is unnecessarily  
11 torturous to the victim.

12 (15) The defendant intentionally killed the victim  
13 while lying in wait.

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

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

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

23 (B) Kidnapping in violation of Section 207, 209, or  
24 209.5.

25 (C) Rape in violation of Section 261.

26 (D) Sodomy in violation of Section 286.

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

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

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

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

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

1 (19) The defendant intentionally killed the victim by  
2 the administration of poison.

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

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

14 (22) *The defendant intentionally killed the victim,*  
15 *who was under 14 years of age, and knew or reasonably*  
16 *should have known that the victim was under 14 years of*  
17 *age.*

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

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

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

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

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

9 SEC. 4. Section 190.2 of the Penal Code, as amended  
10 by Section 2 of Chapter 629 of the Statutes of 1998, is  
11 amended to read:

12 190.2. (a) The penalty for a defendant who is found  
13 guilty of murder in the first degree is death or  
14 imprisonment in the state prison for life without the  
15 possibility of parole if one or more of the following special  
16 circumstances has been found under Section 190.4 to be  
17 true:

18 (1) The murder was intentional and carried out for  
19 financial gain.

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

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

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

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

38 (6) The murder was committed by means of a  
39 destructive device, bomb, or explosive that the defendant  
40 mailed or delivered, attempted to mail or deliver, or



1 caused to be mailed or delivered, and the defendant  
2 knew, or reasonably should have known, that his or her  
3 act or acts would create a great risk of death to one or  
4 more human beings.

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

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

26 (9) The victim was a firefighter, as defined in Section  
27 245.1, who, while engaged in the course of the  
28 performance of his or her duties, was intentionally killed,  
29 and the defendant knew, or reasonably should have  
30 known, that the victim was a firefighter engaged in the  
31 performance of his or her duties.

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

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

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

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

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

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

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

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

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

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

36 (B) Kidnapping in violation of Section 207, 209, or  
37 209.5.

38 (C) Rape in violation of Section 261.

39 (D) Sodomy in violation of Section 286.



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

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

5 (G) Burglary in the first or second degree in violation  
6 of Section 460.

7 (H) Arson in violation of subdivision (b) of Section  
8 451.

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

10 (J) Mayhem in violation of Section 203.

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

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

13 (M) To prove the special circumstances of kidnapping  
14 in subparagraph (B), or arson in subparagraph (H), if  
15 there is specific intent to kill, it is only required that there  
16 be proof of the elements of those felonies. If so  
17 established, those two special circumstances are proven  
18 even if the felony of kidnapping or arson is committed  
19 primarily or solely for the purpose of facilitating the  
20 murder.

21 (18) The murder was intentional and involved the  
22 infliction of torture.

23 (19) The defendant intentionally killed the victim by  
24 the administration of poison.

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

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

36 (22) *The defendant intentionally killed the victim,*  
37 *who was under 14 years of age, and knew or reasonably*  
38 *should have known that the victim was under 14 years of*  
39 *age.*

1 (b) Unless an intent to kill is specifically required  
2 under subdivision (a) for a special circumstance  
3 enumerated therein, an actual killer, as to whom the  
4 special circumstance has been found to be true under  
5 Section 190.4, need not have had any intent to kill at the  
6 time of the commission of the offense which is the basis  
7 of the special circumstance in order to suffer death or  
8 confinement in the state prison for life without the  
9 possibility of parole.

10 (c) Every person, not the actual killer, who, with the  
11 intent to kill, aids, abets, counsels, commands, induces,  
12 solicits, requests, or assists any actor in the commission of  
13 murder in the first degree shall be punished by death or  
14 imprisonment in the state prison for life without the  
15 possibility of parole if one or more of the special  
16 circumstances enumerated in subdivision (a) has been  
17 found to be true under Section 190.4.

18 (d) Notwithstanding subdivision (c), every person,  
19 not the actual killer, who, with reckless indifference to  
20 human life and as a major participant, aids, abets,  
21 counsels, commands, induces, solicits, requests, or assists  
22 in the commission of a felony enumerated in paragraph  
23 (17) of subdivision (a) which results in the death of some  
24 person or persons, and who is found guilty of murder in  
25 the first degree therefor, shall be punished by death or  
26 imprisonment in the state prison for life without the  
27 possibility of parole if a special circumstance enumerated  
28 in paragraph (17) of subdivision (a) has been found to be  
29 true under Section 190.4.

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

32 SEC. 5. Section 3 of Chapter 629 of the Statutes of 1998  
33 is amended to read:

34 Sec. 3. Section 4 2 of this act affects an initiative  
35 statute and shall become effective, *subject to the*  
36 *conditions set forth in Section 8 of SB \_\_\_\_ of the*  
37 *1999–2000 Regular Session*, only when submitted to, and  
38 approved by, the voters of California, pursuant to  
39 subdivision (c) of Section 10 of Article II of the California  
40 Constitution.

1 SEC. 6. (a) Section 1 of this act is declaratory of  
2 existing law.

3 (b) Section 2 of this act is intended to clarify that a  
4 murder committed with the intent to kill which is  
5 perpetrated by means of arson or kidnapping constitutes  
6 murder in the first degree.

7 SEC. 7. Sections 3 and 4 of this act affect an initiative  
8 statute and shall become effective, subject to the  
9 conditions set forth in Section 8, only when submitted to,  
10 and approved by, the voters of California, pursuant to  
11 subdivision (c) of Section 10 of Article II of the California  
12 Constitution.

13 SEC. 8. (a) Section 4 of this act incorporates  
14 amendments to Section 190.2 of the Penal Code proposed  
15 by both this act and Chapter 629 of the Statutes of 1998.  
16 It shall become operative only if (1) both this act and  
17 Chapter 629 of the Statutes of 1998 are submitted to, and  
18 approved by, the voters pursuant to subdivision (c) of  
19 Section 10 of Article II of the California Constitution, and  
20 (2) this act and Chapter 629 of the Statutes of 1998 both  
21 amend Section 190.2 of the Penal Code.

22 (b) If this act and Chapter 629 of the Statutes of 1998  
23 are approved by the voters at the same election, Section  
24 3 of this act and Section 2 of Chapter 629 of the Statutes  
25 of 1998 shall not become operative.

26 (c) If Chapter 629 of the Statutes of 1998 is approved  
27 by the voters at an election held before the election at  
28 which this act is submitted to the voters, Section 3 of this  
29 act shall not become operative and shall not be submitted  
30 to the voters.

