

ASSEMBLY BILL

No. 1022

Introduced by Assembly Member Walters

February 22, 2005

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1022, as introduced, Walters. Murder: special circumstances.

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

This bill would add to the list of special circumstances a situation in which 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 it shall become effective only when submitted to, and approved by, the voters of California.

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 is amended to
2 read:

1 190.2. (a) The penalty for a defendant who is found guilty of
2 murder in the first degree is death or imprisonment in the state
3 prison for life without the possibility of parole if one or more of
4 the following special circumstances has been found under
5 Section 190.4 to be true:

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

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

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

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

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

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

30 (7) The victim was a peace officer, as defined in Section
31 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35,
32 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12,
33 who, while engaged in the course of the performance of his or
34 her duties, was intentionally killed, and the defendant knew, or
35 reasonably should have known, that the victim was a peace
36 officer engaged in the performance of his or her duties; or the
37 victim was a peace officer, as defined in the above-enumerated
38 sections, or a former peace officer under any of those sections,
39 and was intentionally killed in retaliation for the performance of
40 his or her official duties.

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

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

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

24 (11) The victim was a prosecutor or assistant prosecutor or a
25 former prosecutor or assistant prosecutor of any local or state
26 prosecutor’s office in this or any other state, or of a federal
27 prosecutor’s office, and the murder was intentionally carried out
28 in retaliation for, or to prevent the performance of, the victim’s
29 official duties.

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

34 (13) The victim was an elected or appointed official or former
35 official of the federal government, or of any local or state
36 government of this or any other state, and the killing was
37 intentionally carried out in retaliation for, or to prevent the
38 performance of, the victim’s official duties.

39 (14) The murder was especially heinous, atrocious, or cruel,
40 manifesting exceptional depravity. As used in this section, the

1 phrase “especially heinous, atrocious, or cruel, manifesting
2 exceptional depravity” means a conscienceless or pitiless crime
3 that is unnecessarily torturous to the victim.

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

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

8 (17) The murder was committed while the defendant was
9 engaged in, or was an accomplice in, the commission of,
10 attempted commission of, or the immediate flight after
11 committing, or attempting to commit, the following felonies:

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

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

14 (C) Rape in violation of Section 261.

15 (D) Sodomy in violation of Section 286.

16 (E) The performance of a lewd or lascivious act upon the
17 person of a child under the age of 14 years in violation of Section
18 288.

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

20 (G) Burglary in the first or second degree in violation of
21 Section 460.

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

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

24 (J) Mayhem in violation of Section 203.

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

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

27 (M) To prove the special circumstances of kidnapping in
28 subparagraph (B), or arson in subparagraph (H), if there is
29 specific intent to kill, it is only required that there be proof of the
30 elements of those felonies. If so established, those two special
31 circumstances are proven even if the felony of kidnapping or
32 arson is committed primarily or solely for the purpose of
33 facilitating the murder.

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

36 (19) The defendant intentionally killed the victim by the
37 administration of poison.

38 (20) The victim was a juror in any court of record in the local,
39 state, or federal system in this or any other state, and the murder

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

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

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

12 (23) *The defendant intentionally killed the victim, who was*
13 *under 14 years of age, and the defendant knew, or reasonably*
14 *should have known, that the victim was under 14 years of age.*

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

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

30 (d) Notwithstanding subdivision (c), every person, not the
31 actual killer, who, with reckless indifference to human life and as
32 a major participant, aids, abets, counsels, commands, induces,
33 solicits, requests, or assists in the commission of a felony
34 enumerated in paragraph (17) of subdivision (a) which results in
35 the death of some person or persons, and who is found guilty of
36 murder in the first degree therefor, shall be punished by death or
37 imprisonment in the state prison for life without the possibility of
38 parole if a special circumstance enumerated in paragraph (17) of
39 subdivision (a) has been found to be true under Section 190.4.

1 The penalty shall be determined as provided in this section and
2 Sections 190.1, 190.3, 190.4, and 190.5.
3 SEC. 2. Section 1 of this act affects an initiative statute and
4 shall become effective only when submitted to, and approved by,
5 the voters of California, pursuant to subdivision (c) of Section 10
6 of Article II of the California Constitution.