

ASSEMBLY BILL

No. 3

Introduced by Assembly Member Ashburn

December 7, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

AB 3, as introduced, Ashburn. 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 under 14 years of age, and knew or reasonably should have known that the victim was under 14 years of age.

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:

SECTION 1. This act shall be known and may be cited as the “Ashburn Justice for Children Act of 1999.”

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

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

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

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

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

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

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

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

1 (7) The victim was a peace officer, as defined in
2 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
3 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
4 830.12, who, while engaged in the course of the
5 performance of his or her duties, was intentionally killed,
6 and the defendant knew, or reasonably should have
7 known, that the victim was a peace officer engaged in the
8 performance of his or her duties; or the victim was a peace
9 officer, as defined in the above-enumerated sections, or
10 a former peace officer under any of those sections, and
11 was intentionally killed in retaliation for the performance
12 of his or her official duties.

13 (8) The victim was a federal law enforcement officer
14 or agent 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 federal law enforcement
18 officer or agent engaged in the performance of his or her
19 duties; or the victim was a federal law enforcement
20 officer or agent, and was intentionally killed in retaliation
21 for the performance of his or her official duties.

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

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

39 (11) The victim was a prosecutor or assistant
40 prosecutor or a former prosecutor or assistant prosecutor

1 of any local or state prosecutor's office in this or any other
2 state, or of a federal prosecutor's office, and the murder
3 was intentionally carried out in retaliation for, or to
4 prevent the performance of, the victim's official duties.

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

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

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

21 (15) The defendant intentionally killed the victim
22 while lying in wait.

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

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

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

32 (B) Kidnapping in violation of Section 207, 209, or
33 209.5.

34 (C) Rape in violation of Section 261.

35 (D) Sodomy in violation of Section 286.

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

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

1 (G) Burglary in the first or second degree in violation
2 of Section 460.

3 (H) Arson in violation of subdivision (b) of Section
4 451.

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

6 (J) Mayhem in violation of Section 203.

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

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

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

11 (19) The defendant intentionally killed the victim by
12 the administration of poison.

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

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

24 (22) *The defendant intentionally killed the victim,*
25 *who was under 14 years of age, and knew or reasonably*
26 *should have known that the victim was under 14 years of*
27 *age.*

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

37 (c) Every person, not the actual killer, who, with the
38 intent to kill, aids, abets, counsels, commands, induces,
39 solicits, requests, or assists any actor in the commission of
40 murder in the first degree shall be punished by death or

1 imprisonment in the state prison for life without the
2 possibility of parole if one or more of the special
3 circumstances enumerated in subdivision (a) has been
4 found to be true under Section 190.4.

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

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

19 SEC. 3. This act affects an initiative statute and shall
20 become effective only when submitted to, and approved
21 by, the voters pursuant to subdivision (c) of Section 10 of
22 Article II of the California Constitution.

