

ASSEMBLY BILL

No. 4

**Introduced by Assembly Members Baldwin and Kaloogian
(Coauthors: Assembly Members Aanestad, Bates, Cunneen,
Leonard, Margett, Pescetti, and Strickland)**

December 7, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

AB 4, as introduced, Baldwin. 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.

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. This act shall be known and may be cited
2 as "Matthew's Law."

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

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

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

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

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

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

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

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

36 (7) The victim was a peace officer, as defined in
37 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
38 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
39 830.12, who, while engaged in the course of the
40 performance of his or her duties, was intentionally killed,



1 and the defendant knew, or reasonably should have
2 known, that the victim was a peace officer engaged in the
3 performance of his or her duties; or the victim was a peace
4 officer, as defined in the above-enumerated sections, or
5 a former peace officer under any of those sections, and
6 was intentionally killed in retaliation for the performance
7 of his or her official duties.

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

17 (9) The victim was a firefighter, as defined in Section
18 245.1, 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 firefighter engaged in the
22 performance of his or her duties.

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

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



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

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

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

17 (15) The defendant intentionally killed the victim
18 while lying in wait.

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

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

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

28 (B) Kidnapping in violation of Section 207, 209, or
29 209.5.

30 (C) Rape in violation of Section 261.

31 (D) Sodomy in violation of Section 286.

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

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

36 (G) Burglary in the first or second degree in violation
37 of Section 460.

38 (H) Arson in violation of subdivision (b) of Section
39 451.

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



1 (J) Mayhem in violation of Section 203.

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

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

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

6 (19) The defendant intentionally killed the victim by
7 the administration of poison.

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

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

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

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

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



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

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

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

