

ASSEMBLY BILL

No. 371

Introduced by Assembly Member Havice

February 11, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

AB 371, as introduced, Havice. 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 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, with premeditation and deliberation, intentionally killed the victim and at the time of committing the murder also, with premeditation and deliberation, attempted to murder two or more persons in addition to the victim of the murder.

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 if that chapter is approved by the voters at a statewide special election held in 1999 or if no such election is held in 1999.

The bill would provide that it 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



1 act or acts would create a great risk of death to one or
2 more human beings.

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

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

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

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



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

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

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

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

23 (15) The defendant intentionally killed the victim
24 while lying in wait.

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

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

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

34 (B) Kidnapping in violation of Section 207, 209, or
35 209.5.

36 (C) Rape in violation of Section 261.

37 (D) Sodomy in violation of Section 286.

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



- 1 (F) Oral copulation in violation of Section 288a.
- 2 (G) Burglary in the first or second degree in violation
- 3 of Section 460.
- 4 (H) Arson in violation of subdivision (b) of Section
- 5 451.
- 6 (I) Train wrecking in violation of Section 219.
- 7 (J) Mayhem in violation of Section 203.
- 8 (K) Rape by instrument in violation of Section 289.
- 9 (L) Carjacking, as defined in Section 215.
- 10 (18) The murder was intentional and involved the
- 11 infliction of torture.
- 12 (19) The defendant intentionally killed the victim by
- 13 the administration of poison.
- 14 (20) The victim was a juror in any court of record in
- 15 the local, state, or federal system in this or any other state,
- 16 and the murder was intentionally carried out in
- 17 retaliation for, or to prevent the performance of, the
- 18 victim's official duties.
- 19 (21) The murder was intentional and perpetrated by
- 20 means of discharging a firearm from a motor vehicle,
- 21 intentionally at another person or persons outside the
- 22 vehicle with the intent to inflict death. For purposes of
- 23 this paragraph, "motor vehicle" means any vehicle as
- 24 defined in Section 415 of the Vehicle Code.
- 25 (22) *The defendant, with premeditation and*
- 26 *deliberation, intentionally killed the victim and at the*
- 27 *time of committing the murder also, with premeditation*
- 28 *and deliberation, attempted to murder two or more*
- 29 *persons in addition to the victim of the murder.*
- 30 (b) Unless an intent to kill is specifically required
- 31 under subdivision (a) for a special circumstance
- 32 enumerated therein, an actual killer, as to whom the
- 33 special circumstance has been found to be true under
- 34 Section 190.4, need not have had any intent to kill at the
- 35 time of the commission of the offense which is the basis
- 36 of the special circumstance in order to ~~suffer~~ *be punished*
- 37 *by death or—~~confinement~~ imprisonment* in the state
- 38 *prison for life without the possibility of parole.*
- 39 (c) Every person, not the actual killer, who, with the
- 40 intent to kill, aids, abets, counsels, commands, induces,



1 solicits, requests, or assists any actor in the commission of
2 murder in the first degree shall be punished by death or
3 imprisonment in the state prison for life without the
4 possibility of parole if one or more of the special
5 circumstances enumerated in subdivision (a) has been
6 found to be true under Section 190.4.

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

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

21 SEC. 2. Section 190.2 of the Penal Code, as amended
22 by Section 2 of Chapter 629 of the Statutes of 1998, is
23 amended to read:

24 190.2. (a) The penalty for a defendant who is found
25 guilty of murder in the first degree is death or
26 imprisonment in the state prison for life without the
27 possibility of parole if one or more of the following special
28 circumstances has been found under Section 190.4 to be
29 true:

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

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

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



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

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

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

17 (7) The victim was a peace officer, as defined in
18 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
19 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
20 830.12, who, while engaged in the course of the
21 performance of his or her duties, was intentionally killed,
22 and the defendant knew, or reasonably should have
23 known, that the victim was a peace officer engaged in the
24 performance of his or her duties; or the victim was a peace
25 officer, as defined in the above-enumerated sections, or
26 a former peace officer under any of those sections, and
27 was intentionally killed in retaliation for the performance
28 of his or her official duties.

29 (8) The victim was a federal law enforcement officer
30 or agent who, while engaged in the course of the
31 performance of his or her duties, was intentionally killed,
32 and the defendant knew, or reasonably should have
33 known, that the victim was a federal law enforcement
34 officer or agent engaged in the performance of his or her
35 duties; or the victim was a federal law enforcement
36 officer or agent, and was intentionally killed in retaliation
37 for the performance of his or her official duties.

38 (9) The victim was a firefighter, as defined in Section
39 245.1, 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 firefighter engaged in the
3 performance of his or her duties.

4 (10) The victim was a witness to a crime who was
5 intentionally killed for the purpose of preventing his or
6 her testimony in any criminal or juvenile proceeding, and
7 the killing was not committed during the commission or
8 attempted commission, of the crime to which he or she
9 was a witness; or the victim was a witness to a crime and
10 was intentionally killed in retaliation for his or her
11 testimony in any criminal or juvenile proceeding. As used
12 in this paragraph, “juvenile proceeding” means a
13 proceeding brought pursuant to Section 602 or 707 of the
14 Welfare and Institutions Code.

15 (11) The victim was a prosecutor or assistant
16 prosecutor or a former prosecutor or assistant prosecutor
17 of any local or state prosecutor’s office in this or any other
18 state, or of a federal prosecutor’s office, and the murder
19 was intentionally carried out in retaliation for, or to
20 prevent the performance of, the victim’s official duties.

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

26 (13) The victim was an elected or appointed official or
27 former official of the federal government, or of any local
28 or state government of this or any other state, and the
29 killing was intentionally carried out in retaliation for, or
30 to prevent the performance of, the victim’s official duties.

31 (14) The murder was especially heinous, atrocious, or
32 cruel, manifesting exceptional depravity. As used in this
33 section, the phrase “especially heinous, atrocious, or
34 cruel, manifesting exceptional depravity” means a
35 conscienceless or pitiless crime that is unnecessarily
36 torturous to the victim.

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



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

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

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

10 (B) Kidnapping in violation of Section 207, 209, or
11 209.5.

12 (C) Rape in violation of Section 261.

13 (D) Sodomy in violation of Section 286.

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

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

18 (G) Burglary in the first or second degree in violation
19 of Section 460.

20 (H) Arson in violation of subdivision (b) of Section
21 451.

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

23 (J) Mayhem in violation of Section 203.

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

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

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

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

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

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



1 retaliation for, or to prevent the performance of, the
2 victim's official duties.

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

9 (22) *The defendant, with premeditation and*
10 *deliberation, intentionally killed the victim and at the*
11 *time of committing the murder also, with premeditation*
12 *and deliberation, attempted to murder two or more*
13 *persons in addition to the victim of the murder.*

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

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

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



1 in paragraph (17) of subdivision (a) has been found to be
2 true under Section 190.4.

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

5 SEC. 3. (a) Section 1 of this act shall become
6 operative only if Section 190.2 of the Penal Code, as
7 amended by Section 2 of Chapter 629 of the Statutes of
8 1998, is rejected by the voters at a statewide special
9 election held in 1999, in which case Section 2 of this act
10 shall not become operative and shall not be submitted to
11 the voters.

12 (b) Section 2 of this act shall become operative if
13 either (1) no statewide special election is held in 1999, in
14 which case Section 2 of this act shall be submitted to the
15 voters at the next statewide election in lieu of Section 2
16 of Chapter 629 of the Statutes of 1998, or (2) a statewide
17 special election is held in 1999 and Section 190.2 of the
18 Penal Code, as amended by Section 2 of Chapter 629 of
19 the Statutes of 1998, is approved by the voters at that
20 election, in which case Section 1 of this act shall not
21 become operative and shall not be submitted to the voters
22 and Section 190.2 of the Penal Code, as amended by
23 Section 2 of Chapter 629 of the Statutes of 1998, shall not
24 be submitted to the voters at a subsequent statewide
25 election. Section 1 of Chapter 629 of the Statutes of 1998
26 shall become operative if either Section 2 of that chapter
27 or Section 2 of this act is adopted by the voters.

28 SEC. 4. Sections 1 and 2 of this act affect an initiative
29 statute and shall become effective, subject to the
30 conditions set forth in Section 3, only when submitted to,
31 and approved by, the voters of California, pursuant to
32 subdivision (c) of Section 10 of Article II of the California
33 Constitution.

