

ASSEMBLY BILL

No. 589

Introduced by Assembly Member Margett

February 19, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

AB 589, as introduced, Margett. 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. In this connection, existing law provides that a first degree murder committed where the victim is a member of any of specified categories of peace officer is a special circumstance for sentencing purposes.

This bill would include within the enumeration of special circumstances an additional category of peace officers consisting of officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

Because it would amend an initiative statute, the bill would require a $\frac{2}{3}$ vote.

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:

SECTION 1. 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.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,

1 830.35, 830.36, 830.37, 830.38, 830.4, 830.5, 830.6, 830.10,
2 830.11, or 830.12, who, while engaged in the course of the
3 performance of his or her duties, was intentionally killed,
4 and the defendant knew, or reasonably should have
5 known, that the victim was a peace officer engaged in the
6 performance of his or her duties; or the victim was a peace
7 officer, as defined in the above-enumerated sections, or
8 a former peace officer under any of those sections, and
9 was intentionally killed in retaliation for the performance
10 of his or her official duties.

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

20 (9) The victim was a firefighter, as defined in Section
21 245.1, who, while engaged in the course of the
22 performance of his or her duties, was intentionally killed,
23 and the defendant knew, or reasonably should have
24 known, that the victim was a firefighter engaged in the
25 performance of his or her duties.

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

37 (11) The victim was a prosecutor or assistant
38 prosecutor or a former prosecutor or assistant prosecutor
39 of any local or state prosecutor’s office in this or any other
40 state, or of a federal prosecutor’s office, and the murder

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

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

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

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

19 (15) The defendant intentionally killed the victim
20 while lying in wait.

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

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

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

30 (B) Kidnapping in violation of Section 207, 209, or
31 209.5.

32 (C) Rape in violation of Section 261.

33 (D) Sodomy in violation of Section 286.

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

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

38 (G) Burglary in the first or second degree in violation
39 of Section 460.

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

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

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

(L) Carjacking, as defined in Section 215.

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

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

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

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

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

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

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to

1 human life and as a major participant, aids, abets,
2 counsels, commands, induces, solicits, requests, or assists
3 in the commission of a felony enumerated in paragraph
4 (17) of subdivision (a) which results in the death of some
5 person or persons, and who is found guilty of murder in
6 the first degree therefor, shall be punished by death or
7 imprisonment in the state prison for life without the
8 possibility of parole if a special circumstance enumerated
9 in paragraph (17) of subdivision (a) has been found to be
10 true under Section 190.4.

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

