

ASSEMBLY BILL

No. 1712

Introduced by Assembly Member Cunneen

January 3, 2000

An act to amend Section 190.2 of, and to repeal Section 190.03 of, the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

AB 1712, as introduced, Cunneen. Death penalty.

(1) 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. The intentional killing of a person because of his or her race, color, religion, nationality, or country of origin is one of these special circumstances.

This bill would include in the above special circumstance, the intentional killing of a person because of his or her disability, gender, or sexual orientation, or because of the defendant's perception of the victim's race, color, religion, nationality, country of origin, disability, gender, or sexual orientation.

(2) Existing law provides that the penalty for a defendant who is found guilty of murder in the first degree is imprisonment in the state prison for life without the possibility of parole if the victim was intentionally killed because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's race,

color, religion, nationality, country of origin, disability, gender, or sexual orientation, and this allegation has been charged and found to be true.

This bill would repeal this provision.

(3) 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 as
2 amended by Section 2 of Chapter 478 of the Statutes of
3 1995, is 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.



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

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

11 (7) The victim was a peace officer, as defined in
12 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
13 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
14 830.12, 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 peace officer engaged in the
18 performance of his or her duties; or the victim was a peace
19 officer, as defined in the above-enumerated sections, or
20 a former peace officer under any of those sections, and
21 was intentionally killed in retaliation for the performance
22 of his or her official duties.

23 (8) The victim was a federal law enforcement officer
24 or agent who, while engaged in the course of the
25 performance of his or her duties, was intentionally killed,
26 and the defendant knew, or reasonably should have
27 known, that the victim was a federal law enforcement
28 officer or agent engaged in the performance of his or her
29 duties; or the victim was a federal law enforcement
30 officer or agent, and was intentionally killed in retaliation
31 for the performance of his or her official duties.

32 (9) The victim was a firefighter, as defined in Section
33 245.1, who, while engaged in the course of the
34 performance of his or her duties, was intentionally killed,
35 and the defendant knew, or reasonably should have
36 known, that the victim was a firefighter engaged in the
37 performance of his or her duties.

38 (10) The victim was a witness to a crime who was
39 intentionally killed for the purpose of preventing his or
40 her testimony in any criminal or juvenile proceeding, and



1 the killing was not committed during the commission or
2 attempted commission, of the crime to which he or she
3 was a witness; or the victim was a witness to a crime and
4 was intentionally killed in retaliation for his or her
5 testimony in any criminal or juvenile proceeding. As used
6 in this paragraph, “juvenile proceeding” means a
7 proceeding brought pursuant to Section 602 or 707 of the
8 Welfare and Institutions Code.

9 (11) The victim was a prosecutor or assistant
10 prosecutor or a former prosecutor or assistant prosecutor
11 of any local or state prosecutor’s office in this or any other
12 state, or of a federal prosecutor’s office, and the murder
13 was intentionally carried out in retaliation for, or to
14 prevent the performance of, the victim’s official duties.

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

20 (13) The victim was an elected or appointed official or
21 former official of the federal government, or of any local
22 or state government of this or any other state, and the
23 killing was intentionally carried out in retaliation for, or
24 to prevent the performance of, the victim’s official duties.

25 (14) The murder was especially heinous, atrocious, or
26 cruel, manifesting exceptional depravity. As used in this
27 section, the phrase “especially heinous, atrocious, or
28 cruel, manifesting exceptional depravity” means a
29 conscienceless or pitiless crime that is unnecessarily
30 torturous to the victim.

31 (15) The defendant intentionally killed the victim
32 while lying in wait.

33 (16) The victim was intentionally killed because of his
34 or her race, color, religion, nationality, ~~or~~ country of
35 origin, *disability, gender, or sexual orientation, or*
36 *because of the defendant’s perception of the victim’s*
37 *race, color, religion, nationality, country of origin,*
38 *disability, gender, or sexual orientation.*

39 (17) The murder was committed while the defendant
40 was engaged in, or was an accomplice in, the commission



1 of, attempted commission of, or the immediate flight
2 after committing, or attempting to commit, the following
3 felonies:

- 4 (A) Robbery in violation of Section 211 or 212.5.
- 5 (B) Kidnapping in violation of Section 207, 209, or
6 209.5.
- 7 (C) Rape in violation of Section 261.
- 8 (D) Sodomy in violation of Section 286.
- 9 (E) The performance of a lewd or lascivious act upon
10 the person of a child under the age of 14 years in violation
11 of Section 288.
- 12 (F) Oral copulation in violation of Section 288a.
- 13 (G) Burglary in the first or second degree in violation
14 of Section 460.
- 15 (H) Arson in violation of subdivision (b) of Section
16 451.
- 17 (I) Train wrecking in violation of Section 219.
- 18 (J) Mayhem in violation of Section 203.
- 19 (K) Rape by instrument in violation of Section 289.
- 20 (L) Carjacking, as defined in Section 215.
- 21 (18) The murder was intentional and involved the
22 infliction of torture.
- 23 (19) The defendant intentionally killed the victim by
24 the administration of poison.
- 25 (20) The victim was a juror in any court of record in
26 the local, state, or federal system in this or any other state,
27 and the murder was intentionally carried out in
28 retaliation for, or to prevent the performance of, the
29 victim's official duties.
- 30 (21) The murder was intentional and perpetrated by
31 means of discharging a firearm from a motor vehicle,
32 intentionally at another person or persons outside the
33 vehicle with the intent to inflict death. For purposes of
34 this paragraph, "motor vehicle" means any vehicle as
35 defined in Section 415 of the Vehicle Code.
- 36 (b) Unless an intent to kill is specifically required
37 under subdivision (a) for a special circumstance
38 enumerated therein, an actual killer, as to whom the
39 special circumstance has been found to be true under
40 Section 190.4, need not have had any intent to kill at the



1 time of the commission of the offense which is the basis
2 of the special circumstance in order to suffer death or
3 confinement in the state prison for life without the
4 possibility of parole.

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

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

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

27 SEC. 2. Section 190.2 of the Penal Code as amended
28 by Section 2 of Chapter 629 of the Statutes of 1998, is
29 amended to read:

30 190.2. (a) The penalty for a defendant who is found
31 guilty of murder in the first degree is death or
32 imprisonment in the state prison for life without the
33 possibility of parole if one or more of the following special
34 circumstances has been found under Section 190.4 to be
35 true:

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

38 (2) The defendant was convicted previously of
39 murder in the first or second degree. For the purpose of
40 this paragraph, an offense committed in another



1 jurisdiction, which if committed in California would be
2 punishable as first or second degree murder, shall be
3 deemed murder in the first or second degree.

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

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

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

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

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

35 (8) The victim was a federal law enforcement officer
36 or agent who, while engaged in the course of the
37 performance of his or her duties, was intentionally killed,
38 and the defendant knew, or reasonably should have
39 known, that the victim was a federal law enforcement
40 officer or agent engaged in the performance of his or her



1 duties; or the victim was a federal law enforcement
2 officer or agent, and was intentionally killed in retaliation
3 for the performance of his or her official duties.

4 (9) The victim was a firefighter, as defined in Section
5 245.1, who, while engaged in the course of the
6 performance of his or her duties, was intentionally killed,
7 and the defendant knew, or reasonably should have
8 known, that the victim was a firefighter engaged in the
9 performance of his or her duties.

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

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

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

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

37 (14) The murder was especially heinous, atrocious, or
38 cruel, manifesting exceptional depravity. As used in this
39 section, the phrase “especially heinous, atrocious, or
40 cruel, manifesting exceptional depravity” means a



1 conscienceless or pitiless crime that is unnecessarily
2 torturous to the victim.

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

5 (16) The victim was intentionally killed because of his
6 or her race, color, religion, nationality, ~~or~~ country of
7 origin, *disability, gender, or sexual orientation, or*
8 *because of the defendant's perception of the victim's*
9 *race, color, religion, nationality, country of origin,*
10 *disability, gender, or sexual orientation.*

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

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

17 (B) Kidnapping in violation of Section 207, 209, or
18 209.5.

19 (C) Rape in violation of Section 261.

20 (D) Sodomy in violation of Section 286.

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

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

25 (G) Burglary in the first or second degree in violation
26 of Section 460.

27 (H) Arson in violation of subdivision (b) of Section
28 451.

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

30 (J) Mayhem in violation of Section 203.

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

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

33 (M) To prove the special circumstances of kidnapping
34 in subparagraph (B), or arson in subparagraph (H), if
35 there is specific intent to kill, it is only required that there
36 be proof of the elements of those felonies. If so
37 established, those two special circumstances are proven
38 even if the felony of kidnapping or arson is committed
39 primarily or solely for the purpose of facilitating the
40 murder.



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

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

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

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

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

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

33 (d) Notwithstanding subdivision (c), every person,
34 not the actual killer, who, with reckless indifference to
35 human life and as a major participant, aids, abets,
36 counsels, commands, induces, solicits, requests, or assists
37 in the commission of a felony enumerated in paragraph
38 (17) of subdivision (a) which results in the death of some
39 person or persons, and who is found guilty of murder in
40 the first degree therefor, shall be punished by death or



1 imprisonment in the state prison for life without the
2 possibility of parole if a special circumstance enumerated
3 in paragraph (17) of subdivision (a) has been found to be
4 true under Section 190.4.

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

7 SEC. 3. Section 190.03 of the Penal Code is repealed.

8 ~~190.03. (a) A person who commits first-degree
9 murder shall be punished by imprisonment in the state
10 prison for life without the possibility of parole, if the
11 defendant intentionally killed the victim because of the
12 victim's disability, gender, or sexual orientation or
13 because of the defendant's perception of the victim's
14 disability, gender, or sexual orientation.~~

15 ~~(b) The term authorized by subdivision (a) shall not
16 apply unless the allegation is charged in the accusatory
17 pleading and admitted by the defendant or found true by
18 the trier of fact. The court shall not strike the allegation,
19 except in the interest of justice, in which case the court
20 shall state its reasons in writing for striking the allegation.~~

21 ~~(c) For the purpose of this section, "because of" means
22 the bias motivation must be a cause in fact of the offense,
23 whether or not other causes also exist. When multiple
24 concurrent motives exist, the prohibited bias must be a
25 substantial factor in bringing about the particular result.
26 This subdivision does not constitute a change in, but is
27 declaratory of, existing law as set forth in Re M.S. (1995)
28 10 Cal.4th 698, 716-720 and People v. Superior Court of
29 San Diego County (Aishman) (1995) 10 Cal.4th 735.~~

30 ~~(d) Nothing in this section shall be construed to
31 prevent punishment instead pursuant to any other
32 provision of law that imposes a greater or more severe
33 punishment.~~

34 SEC. 4. Sections 1 and 2 of this act affect an initiative
35 statute and shall become effective only when submitted
36 to, and approved by, the voters of California, pursuant to
37 subdivision (c) of Section 10 of Article II of the California
38 Constitution.

39 SEC. 5. Section 1 of this act shall become effective
40 unless Section 2 of Chapter 629 of the Statutes of 1998 is



1 submitted to and approved by the voters of California, in
2 which case Section 2 of this act shall become effective and
3 Section 1 of this act shall not become effective.
4 SEC. 6. Section 3 of this act shall become effective
5 only if Section 1 or 2 of this act are approved by the voters.

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