

AMENDED IN ASSEMBLY FEBRUARY 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1712**

**Introduced by Assembly Member Cunneen**

January 3, 2000

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~~An act to amend Section 190.2 of, and to repeal Section 190.03 of, the Penal Code, relating to the death penalty. An act to amend Sections 190.03, 190.1, 190.3, 190.4, and 190.5, relating to the death penalty.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1712, as amended, 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.

*Existing law also provides that the penalty for murder in the first degree is imprisonment in the state prison for life without the possibility of parole if the defendant intentionally killed the victim because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's disability, gender, or sexual orientation.*

*This bill would ~~include in the above special circumstance,~~ authorize imposition of the death penalty upon a person*

*convicted of 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. The bill would also make conforming changes to the procedural provisions of law governing imposition of the death penalty.*

~~(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~~



1 ~~punishable as first or second degree murder, shall be~~  
2 ~~deemed murder in the first or second degree.~~

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

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

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

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

22 ~~(7) The victim was a peace officer, as defined in~~  
23 ~~Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,~~  
24 ~~830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or~~  
25 ~~830.12, 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 peace officer engaged in the~~  
29 ~~performance of his or her duties; or the victim was a peace~~  
30 ~~officer, as defined in the above-enumerated sections, or~~  
31 ~~a former peace officer under any of those sections, and~~  
32 ~~was intentionally killed in retaliation for the performance~~  
33 ~~of his or her official duties.~~

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



1 officer or agent, and was intentionally killed in retaliation  
2 for the performance of his or her official duties.

3 (9) The victim was a firefighter, as defined in Section  
4 245.1, 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 firefighter engaged in the  
8 performance of his or her duties.

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

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

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

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

36 (14) The murder was especially heinous, atrocious, or  
37 cruel, manifesting exceptional depravity. As used in this  
38 section, the phrase “especially heinous, atrocious, or  
39 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~~  
4 ~~while lying in wait.~~

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

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

37 ~~(20) The victim was a juror in any court of record in~~  
38 ~~the local, state, or federal system in this or any other state,~~  
39 ~~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 ~~(b) Unless an intent to kill is specifically required~~  
10 ~~under subdivision (a) for a special circumstance~~  
11 ~~enumerated therein, an actual killer, as to whom the~~  
12 ~~special circumstance has been found to be true under~~  
13 ~~Section 190.4, need not have had any intent to kill at the~~  
14 ~~time of the commission of the offense which is the basis~~  
15 ~~of the special circumstance in order to suffer death or~~  
16 ~~confinement in the state prison for life without the~~  
17 ~~possibility of parole.~~

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

26 ~~(d) Notwithstanding subdivision (c), every person,~~  
27 ~~not the actual killer, who, with reckless indifference to~~  
28 ~~human life and as a major participant, aids, abets,~~  
29 ~~counsels, commands, induces, solicits, requests, or assists~~  
30 ~~in the commission of a felony enumerated in paragraph~~  
31 ~~(17) of subdivision (a) which results in the death of some~~  
32 ~~person or persons, and who is found guilty of murder in~~  
33 ~~the first degree therefor, shall be punished by death or~~  
34 ~~imprisonment in the state prison for life without the~~  
35 ~~possibility of parole if a special circumstance enumerated~~  
36 ~~in paragraph (17) of subdivision (a) has been found to be~~  
37 ~~true under Section 190.4.~~

38 ~~The penalty shall be determined as provided in this~~  
39 ~~section and Sections 190.1, 190.3, 190.4, and 190.5.~~



1 ~~SEC. 2. Section 190.2 of the Penal Code as amended~~  
2 ~~by Section 2 of Chapter 629 of the Statutes of 1998, 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~~  
35 ~~act or acts would create a great risk of death to one or~~  
36 ~~more human beings.~~

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



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

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

18 (9) The victim was a firefighter, as defined in Section  
19 245.1, who, while engaged in the course of the  
20 performance of his or her duties, was intentionally killed,  
21 and the defendant knew, or reasonably should have  
22 known, that the victim was a firefighter engaged in the  
23 performance of his or her duties.

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

35 (11) The victim was a prosecutor or assistant  
36 prosecutor or a former prosecutor or assistant prosecutor  
37 of any local or state prosecutor's office in this or any other  
38 state, or of a federal prosecutor's office, and the murder  
39 was intentionally carried out in retaliation for, or to  
40 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 ~~eruel, manifesting exceptional depravity. As used in this~~  
13 ~~section, the phrase "especially heinous, atrocious, or~~  
14 ~~eruel, 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 by~~  
18 ~~means of lying in wait.~~

19 ~~(16) The victim was intentionally killed because of his~~  
20 ~~or her race, color, religion, nationality, country of origin,~~  
21 ~~disability, gender, or sexual orientation, or because of the~~  
22 ~~defendant's perception of the victim's race, color,~~  
23 ~~religion, nationality, country of origin, disability, gender,~~  
24 ~~or sexual orientation.~~

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

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

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

33 ~~(C) Rape in violation of Section 261.~~

34 ~~(D) Sodomy in violation of Section 286.~~

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

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

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



1 ~~(H) Arson in violation of subdivision (b) of Section~~  
2 ~~451.~~

3 ~~(I) Train wrecking in violation of Section 219.~~

4 ~~(J) Mayhem in violation of Section 203.~~

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

6 ~~(L) Carjacking, as defined in Section 215.~~

7 ~~(M) To prove the special circumstances of kidnapping~~  
8 ~~in subparagraph (B), or arson in subparagraph (H), if~~  
9 ~~there is specific intent to kill, it is only required that there~~  
10 ~~be proof of the elements of those felonies. If so~~  
11 ~~established, those two special circumstances are proven~~  
12 ~~even if the felony of kidnapping or arson is committed~~  
13 ~~primarily or solely for the purpose of facilitating the~~  
14 ~~murder.~~

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

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

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

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

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 death or~~  
37 ~~confinement in the state prison for life without the~~  
38 ~~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. 3. Section 190.03 of the Penal Code is repealed.~~

22 ~~SEC. 4. Sections 1 and 2~~

23 *SECTION 1. Section 190.03 of the Penal Code is*  
24 *amended to read:*

25 190.03. (a) A person who commits first-degree  
26 murder shall be punished by imprisonment in the state  
27 prison for life without the possibility of parole, *or death,*  
28 if the defendant intentionally killed the victim because of  
29 the victim's disability, gender, or sexual orientation or  
30 because of the defendant's perception of the victim's  
31 disability, gender, or sexual orientation. *The penalty to be*  
32 *applied shall be determined as provided in Sections 190.1,*  
33 *190.3, 190.4, and 190.5.*

34 (b) The term authorized by subdivision (a) shall not  
35 apply unless the allegation is charged in the accusatory  
36 pleading and admitted by the defendant or found true by  
37 the trier of fact. The court shall not strike the allegation,  
38 except in the interest of justice, in which case the court  
39 shall state its reasons in writing for striking the allegation.



1 (c) For the purpose of this section, “because of” means  
2 the bias motivation must be a cause in fact of the offense,  
3 whether or not other causes also exist. When multiple  
4 concurrent motives exist, the prohibited bias must be a  
5 substantial factor in bringing about the particular result.  
6 This subdivision does not constitute a change in, but is  
7 declaratory of, existing law as set forth in *In Re M.S.*  
8 (1995) 10 Cal.4th 698, 716-720 and *People v. Superior*  
9 *Court of San Diego County (Aishman)* (1995) 10 Cal.4th  
10 735.

11 (d) Nothing in this section shall be construed to  
12 prevent punishment instead pursuant to any other  
13 provision of law that imposes a greater or more severe  
14 punishment.

15 *SEC. 2. Section 190.1 of the Penal Code is amended to*  
16 *read:*

17 190.1. A case in which the death penalty may be  
18 imposed pursuant to this chapter shall be tried in separate  
19 phases as follows:

20 (a) The question of the defendant’s guilt shall be first  
21 determined. If the trier of fact finds the defendant guilty  
22 of first degree murder, it shall at the same time determine  
23 the truth of all special circumstances charged as  
24 enumerated in Section 190.2 except for a special  
25 circumstance charged pursuant to paragraph (2) of  
26 subdivision (a) of Section 190.2 where it is alleged that the  
27 defendant had been convicted in a prior proceeding of  
28 the offense of murder in the first or second degree, *or the*  
29 *truth of the allegation under subdivision (a) of Section*  
30 *190.03.*

31 (b) If the defendant is found guilty of first degree  
32 murder and one of the special circumstances is charged  
33 pursuant to paragraph (2) of subdivision (a) of Section  
34 190.2 which charges that the defendant had been  
35 convicted in a prior proceeding of the offense of murder  
36 of the first or second degree, there shall thereupon be  
37 further proceedings on the question of the truth of such  
38 special circumstance.

39 (c) If the defendant is found guilty of first degree  
40 murder and *the allegation under subdivision (a) of*



1 *Section 190.03* or one or more special circumstances as  
2 enumerated in Section 190.2 has been charged and found  
3 to be true, his *or her* sanity on any plea of not guilty by  
4 reason of insanity under Section 1026 shall be determined  
5 as provided in Section 190.4. If he *or she* is found to be  
6 sane, there shall thereupon be further proceedings on the  
7 question of the penalty to be imposed. Such proceedings  
8 shall be conducted in accordance with the provisions of  
9 Section 190.3 and 190.4.

10 *SEC. 3. Section 190.3 of the Penal Code is amended to*  
11 *read:*

12 190.3. If the defendant has been found guilty of  
13 murder in the first degree, and a special circumstance has  
14 been charged and found to be true, or if the defendant  
15 may be subject to the death penalty after having been  
16 found guilty of violating subdivision (a) of Section 1672 of  
17 the Military and Veterans Code or ~~Sections~~ *Section 37; or*  
18 *128, or subdivision (a) of Section 190.03, or Section 219; or*  
19 ~~4500 of this code~~, the trier of fact shall determine whether  
20 the penalty shall be death or confinement in state prison  
21 for a term of life without the possibility of parole. In the  
22 proceedings on the question of penalty, evidence may be  
23 presented by both the people and the defendant as to any  
24 matter relevant to aggravation, mitigation, and sentence  
25 including, but not limited to, the nature and  
26 circumstances of the present offense, any prior felony  
27 conviction or convictions whether or not such conviction  
28 or convictions involved a crime of violence, the presence  
29 or absence of other criminal activity by the defendant  
30 which involved the use or attempted use of force or  
31 violence or which involved the express or implied threat  
32 to use force or violence, and the defendant's character,  
33 background, history, mental condition and physical  
34 condition.

35 However, no evidence shall be admitted regarding  
36 other criminal activity by the defendant which did not  
37 involve the use or attempted use of force or violence or  
38 which did not involve the express or implied threat to use  
39 force or violence. As used in this section, criminal activity  
40 does not require a conviction.



1 However, in no event shall evidence of prior criminal  
2 activity be admitted for an offense for which the  
3 defendant was prosecuted and acquitted. The restriction  
4 on the use of this evidence is intended to apply only to  
5 proceedings pursuant to this section and is not intended  
6 to affect statutory or decisional law allowing such  
7 evidence to be used in any other proceedings.

8 Except for evidence in proof of the offense or special  
9 circumstances which subject a defendant to the death  
10 penalty, no evidence may be presented by the  
11 prosecution in aggravation unless notice of the evidence  
12 to be introduced has been given to the defendant within  
13 a reasonable period of time as determined by the court,  
14 prior to trial. Evidence may be introduced without such  
15 notice in rebuttal to evidence introduced by the  
16 defendant in mitigation.

17 The trier of fact shall be instructed that a sentence of  
18 confinement to state prison for a term of life without the  
19 possibility of parole may in future after sentence is  
20 imposed, be commuted or modified to a sentence that  
21 includes the possibility of parole by the Governor of the  
22 State of California.

23 In determining the penalty, the trier of fact shall take  
24 into account any of the following factors if relevant:

25 (a) The circumstances of the crime of which the  
26 defendant was convicted in the present proceeding and  
27 the existence of any *allegations or* special circumstances  
28 found to be true pursuant to Section 190.1.

29 (b) The presence or absence of criminal activity by the  
30 defendant which involved the use or attempted use of  
31 force or violence or the express or implied threat to use  
32 force or violence.

33 (c) The presence or absence of any prior felony  
34 conviction.

35 (d) Whether or not the offense was committed while  
36 the defendant was under the influence of extreme mental  
37 or emotional disturbance.

38 (e) Whether or not the victim was a participant in the  
39 defendant's homicidal conduct or consented to the  
40 homicidal act.



1 (f) Whether or not the offense was committed under  
2 circumstances which the defendant reasonably believed  
3 to be a moral justification or extenuation for his conduct.

4 (g) Whether or not defendant acted under extreme  
5 duress or under the substantial domination of another  
6 person.

7 (h) Whether or not at the time of the offense the  
8 capacity of the defendant to appreciate the criminality of  
9 his conduct or to conform his conduct to the  
10 requirements of law was impaired as a result of mental  
11 disease or defect, or the affects of intoxication.

12 (i) The age of the defendant at the time of the crime.

13 (j) Whether or not the defendant was an accomplice  
14 to the offense and his participation in the commission of  
15 the offense was relatively minor.

16 (k) Any other circumstance which extenuates the  
17 gravity of the crime even though it is not a legal excuse  
18 for the crime.

19 After having heard and received all of the evidence,  
20 and after having heard and considered the arguments of  
21 counsel, the trier of fact shall consider, take into account  
22 and be guided by the aggravating and mitigating  
23 circumstances referred to in this section, and shall impose  
24 a sentence of death if the trier of fact concludes that the  
25 aggravating circumstances outweigh the mitigating  
26 circumstances. If the trier of fact determines that the  
27 mitigating circumstances outweigh the aggravating  
28 circumstances the trier of fact shall impose a sentence of  
29 confinement in state prison for a term of life without the  
30 possibility of parole.

31 *SEC. 4. Section 190.4 of the Penal Code is amended to*  
32 *read:*

33 190.4. (a) Whenever *an allegation under subdivision*  
34 *(a) of Section 190.03 is pled, or* special circumstances as  
35 enumerated in Section 190.2 are alleged and the trier of  
36 fact finds the defendant guilty of first degree murder, the  
37 trier of fact shall also make a special finding on the truth  
38 of each *allegation or* alleged special circumstance. The  
39 determination of the truth of any or all of the *allegations*  
40 *or* special circumstances shall be made by the trier of fact



1 on the evidence presented at the trial or at the hearing  
2 held pursuant to ~~Subdivision~~ *subdivision* (b) of Section  
3 190.1.

4 In case of a reasonable doubt as to whether *an*  
5 *allegation or* a special circumstance is true, the defendant  
6 is entitled to a finding that is not true. The trier of fact  
7 shall make a special finding that each *allegation or* special  
8 circumstance charged is either true or not true.  
9 Whenever a special circumstance requires proof of the  
10 commission or attempted commission of a crime, such  
11 crime shall be charged and proved pursuant to the  
12 general law applying to the trial and conviction of the  
13 crime.

14 If the defendant was convicted by the court sitting  
15 without a jury, the trier of fact shall be a jury unless a jury  
16 is waived by the defendant and by the people, in which  
17 case the trier of fact shall be the court. If the defendant  
18 was convicted by a plea of guilty, the trier of fact shall be  
19 a jury unless a jury is waived by the defendant and by the  
20 people.

21 If the trier of fact finds that *an allegation under*  
22 *subdivision (a) of Section 190.03 or* any one or more of the  
23 special circumstances enumerated in Section 190.2 as  
24 charged is true, there shall be a separate penalty hearing,  
25 and neither the finding that any of the remaining  
26 *allegations or* special circumstances charged is not true,  
27 nor if the trier of fact is a jury, the inability of the jury to  
28 agree on the issue of the truth or untruth of any of the  
29 remaining *allegation or* special circumstances charged,  
30 shall prevent the holding of a separate penalty hearing.

31 In any case in which the defendant has been found  
32 guilty by a jury, and the jury has been unable to reach an  
33 unanimous verdict that one or more of the *allegations or*  
34 special circumstances charged are true, and does not  
35 reach a unanimous verdict that all the *allegations or*  
36 special circumstances charged are not true, the court  
37 shall dismiss the jury and shall order a new jury impaneled  
38 to try the issues, but the issue of guilt shall not be tried by  
39 such jury, nor shall such jury retry the issue of the truth  
40 of any of the *allegations or* special circumstances which



1 were found by an unanimous verdict of the previous jury  
2 to be untrue. If such new jury is unable to reach the  
3 unanimous verdict that one or more of the *allegations or*  
4 special circumstances it is trying are true, the court shall  
5 dismiss the jury and in the court's discretion shall either  
6 order a new jury impaneled to try the issues the previous  
7 jury was unable to reach the unanimous verdict on, or  
8 impose a punishment of confinement in state prison for  
9 a term of 25 years.

10 (b) If *the* defendant was convicted by the court sitting  
11 without a jury the trier of fact at the penalty hearing shall  
12 be a jury unless a jury is waived by the defendant and the  
13 people, in which case the trier of fact shall be the court.  
14 If the defendant was convicted by a plea of guilty, the  
15 trier of fact shall be a jury unless a jury is waived by the  
16 defendant and the people.

17 If the trier of fact is a jury and has been unable to reach  
18 a unanimous verdict as to what the penalty shall be, the  
19 court shall dismiss the jury and shall order a new jury  
20 impaneled to try the issue as to what the penalty shall be.  
21 If such new jury is unable to reach a unanimous verdict  
22 as to what the penalty shall be, the court in its discretion  
23 shall either order a new jury or impose a punishment of  
24 confinement in state prison for a term of life without the  
25 possibility of parole.

26 (c) If the trier of fact which convicted the defendant  
27 of a crime for which he may be subject to the death  
28 penalty was a jury, the same jury shall consider any plea  
29 of not guilty by reason of insanity pursuant to Section  
30 1026, the truth of any special circumstances which may be  
31 alleged, and the penalty to be applied, unless for good  
32 cause shown the court discharges that jury in which case  
33 a new jury shall be drawn. The court shall state facts in  
34 support of the finding of good cause upon the record and  
35 cause them to be entered into the minutes.

36 (d) In any case in which the defendant may be subject  
37 to the death penalty, evidence presented at any prior  
38 phase of the trial, including any proceeding under a plea  
39 of not guilty by reason of insanity pursuant to Section 1026  
40 shall be considered an any subsequent phase of the trial,



1 if the trier of fact of the prior phase is the same trier of fact  
2 at the subsequent phase.

3 (e) In every case in which the trier of fact has returned  
4 a verdict or finding imposing the death penalty, the  
5 defendant shall be deemed to have made an application  
6 for modification of such verdict or finding pursuant to  
7 Subdivision 7 of Section 11. In ruling on the application,  
8 the judge shall review the evidence, consider, take into  
9 account, and be guided by the aggravating and mitigating  
10 circumstances referred to in Section 190.3, and shall make  
11 a determination as to whether the jury's findings and  
12 verdicts that the aggravating circumstances outweigh the  
13 mitigating circumstances are contrary to law or the  
14 evidence presented. The judge shall state on the record  
15 the reasons for his findings.

16 The judge shall set forth the reasons for his ruling on the  
17 application and direct that they be entered on the Clerk's  
18 minutes. The denial of the modification of the death  
19 penalty verdict pursuant to subdivision (7) of Section  
20 1181 shall be reviewed on the defendant's automatic  
21 appeal pursuant to subdivision (b) of Section 1239. The  
22 granting of the application shall be reviewed on the  
23 People's appeal pursuant to paragraph (6).

24 *SEC. 5. Section 190.5 of the Penal Code is amended to*  
25 *read:*

26 190.5. (a) Notwithstanding any other provision of  
27 law, the death penalty shall not be imposed upon any  
28 person who is under the age of 18 at the time of the  
29 commission of the crime. The burden of proof as to the  
30 age of such person shall be upon the defendant.

31 (b) The penalty for a defendant found guilty of  
32 murder in the first degree, in any case in which, *an*  
33 *allegation under subdivision (a) of Section 190.03 or one*  
34 *or more special circumstances enumerated in Section*  
35 *190.2 or 190.25 has been found to be true under Section*  
36 *190.4, who was 16 years of age or older and under the age*  
37 *of 18 years at the time of the commission of the crime,*  
38 *shall be confinement in the state prison for life without*  
39 *the possibility of parole or, at the discretion of the court,*  
40 *25 years to life.*



1 (c) The trier of fact shall determine the existence of *an*  
2 *allegation under subdivision (a) of Section 190.03* or any  
3 special circumstance pursuant to the procedure set forth  
4 in Section 190.4.

5 *SEC. 6. Sections 1 to 5, inclusive,* of this act affect an  
6 initiative statute and shall become effective only when  
7 submitted to, and approved by, the voters of California,  
8 pursuant to subdivision (c) of Section 10 of Article II of  
9 the California Constitution.

10 ~~SEC. 5. Section 1 of this act shall become effective~~  
11 ~~unless Section 2 of Chapter 629 of the Statutes of 1998 is~~  
12 ~~submitted to and approved by the voters of California, in~~  
13 ~~which case Section 2 of this act shall become effective and~~  
14 ~~Section 1 of this act shall not become effective.~~

15 ~~SEC. 6. Section 3 of this act shall become effective~~  
16 ~~only if Section 1 or 2 of this act are approved by the voters.~~  
17

