

ASSEMBLY BILL

No. 2826

**Introduced by Assembly Member Cardoza
(Coauthors: Assembly Members Battin, Cox, Cunneen,
Dickerson, and Rod Pacheco)**

February 28, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2826, as introduced, Cardoza. Murder: special circumstances.

Existing law 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.

This bill would include within the enumerated special circumstances a murder in which the defendant mutilated the victim for the purpose of concealing the act or a murder in which the defendant committed sexual acts upon the corpse.

This bill would provide that the above provisions 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.

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,



1 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
2 830.12, 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.



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

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

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

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

22 (22) *The defendant mutilated the victim's corpse for*
23 *the purpose of concealing the murder.*

24 (23) *The defendant committed sexual acts upon the*
25 *corpse after the murder.*

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

35 (c) Every person, not the actual killer, who, with the
36 intent to kill, aids, abets, counsels, commands, induces,
37 solicits, requests, or assists any actor in the commission of
38 murder in the first degree shall be punished by death or
39 imprisonment in the state prison for life without the
40 possibility of parole if one or more of the special



1 circumstances enumerated in subdivision (a) has been
2 found to be true under Section 190.4.

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

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

17 SEC. 2. Section 190.2 of the Penal Code, as amended
18 by Section 2 of Chapter 629 of the Statutes of 1998, is
19 amended to read:

20 190.2. (a) The penalty for a defendant who is found
21 guilty of murder in the first degree is death or
22 imprisonment in the state prison for life without the
23 possibility of parole if one or more of the following special
24 circumstances has been found under Section 190.4 to be
25 true:

26 (1) The murder was intentional and carried out for
27 financial gain.

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

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

37 (4) The murder was committed by means of a
38 destructive device, bomb, or explosive planted, hidden,
39 or concealed in any place, area, dwelling, building, or
40 structure, and the defendant knew, or reasonably should



1 have known, that his or her act or acts would create a
2 great risk of death to one or more human beings.

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

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

13 (7) The victim was a peace officer, as defined in
14 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
15 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
16 830.12, 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 peace officer engaged in the
20 performance of his or her duties; or the victim was a peace
21 officer, as defined in the above-enumerated sections, or
22 a former peace officer under any of those sections, and
23 was intentionally killed in retaliation for the performance
24 of his or her official duties.

25 (8) The victim was a federal law enforcement officer
26 or agent 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 federal law enforcement
30 officer or agent engaged in the performance of his or her
31 duties; or the victim was a federal law enforcement
32 officer or agent, and was intentionally killed in retaliation
33 for the performance of his or her official duties.

34 (9) The victim was a firefighter, as defined in Section
35 245.1, 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 firefighter engaged in the
39 performance of his or her duties.



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

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

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

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

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

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

36 (16) The victim was intentionally killed because of his
37 or her race, color, religion, nationality, or country of
38 origin.

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

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

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

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

38 (21) The murder was intentional and perpetrated by
39 means of discharging a firearm from a motor vehicle,
40 intentionally at another person or persons outside the



1 vehicle with the intent to inflict death. For purposes of
2 this paragraph, “motor vehicle” means any vehicle as
3 defined in Section 415 of the Vehicle Code.

4 (22) *The defendant mutilated the victim’s corpse for*
5 *the purpose of concealing the murder.*

6 (23) *The defendant committed sexual acts upon the*
7 *corpse after the murder.*

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

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

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

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

39 SEC. 3. Section 1 of this act shall become operative
40 only if Section 190.2 of the Penal Code, as amended by



1 Section 2 of Chapter 629 of the Statutes of 1998, is rejected
2 by the voters at the March 7, 2000 primary election, in
3 which case, Section 2 of this act shall not become
4 operative and shall not be submitted to the voters.

5 SEC. 4. Section 2 of this act shall become operative
6 only if Section 190.2 of the Penal Code, as amended by
7 Section 2 of Chapter 629 of the Statutes of 1998, is
8 approved by the voters at the March 7, 2000 primary
9 election, in which case, Section 1 of this act shall not
10 become operative and shall not be submitted to the
11 voters.

12 SEC. 5. Sections 1 and 2 of this act affect an initiative
13 statute and shall become effective only when submitted
14 to, and approved by, the voters pursuant to subdivision
15 (c) of Section 10 of Article II of the California
16 Constitution and in accordance with Section 3 of this act.

