

AMENDED IN ASSEMBLY APRIL 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2826

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

February 28, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2826, as amended, Cardoza. Murder: special circumstances: *Debi's Law*.

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 *or dismembered* the victim ~~for the purpose of concealing the act~~, or a murder in which the defendant ~~committed~~ *burned the victim to death, or intentionally killed the victim to engage in sexual acts upon the corpse, or to dismember, mutilate, or incinerate the victim's 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~~



1 caused to be mailed or delivered, and the defendant
2 knew, or reasonably should have known, that his or her
3 act or acts would create a great risk of death to one or
4 more human beings.

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

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

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

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



1 ~~proceeding brought pursuant to Section 602 or 707 of the~~
2 ~~Welfare and Institutions Code.~~

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

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

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

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

25 ~~(15) The defendant intentionally killed the victim~~
26 ~~while lying in wait.~~

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

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

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

36 ~~(B) Kidnapping in violation of Section 207, 209, or~~
37 ~~209.5.~~

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

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



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

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

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

7 ~~(H) Arson in violation of subdivision (b) of Section~~
8 ~~451.~~

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

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

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

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

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

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

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

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

28 ~~(22) The defendant mutilated the victim's corpse for~~
29 ~~the purpose of concealing the murder.~~

30 ~~(23) The defendant committed sexual acts upon the~~
31 ~~corpse after the murder.~~

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



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

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

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

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

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

32 ~~(1) The murder was intentional and carried out for~~
33 ~~financial gain.~~

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



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

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

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

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

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

32 ~~(8) The victim was a federal law enforcement officer~~
33 ~~or agent 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 federal law enforcement~~
37 ~~officer or agent engaged in the performance of his or her~~
38 ~~duties; or the victim was a federal law enforcement~~
39 ~~officer or agent, and was intentionally killed in retaliation~~
40 ~~for the performance of his or her official duties.~~



1 ~~(9) The victim was a firefighter, as defined in Section~~
2 ~~245.1, 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 firefighter engaged in the~~
6 ~~performance of his or her duties.~~

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

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

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

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

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



1 ~~(15) The defendant intentionally killed the victim by~~
2 ~~means of lying in wait.~~

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

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

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

12 ~~(B) Kidnapping in violation of Section 207, 209, or~~
13 ~~209.5.~~

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

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

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

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

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

22 ~~(H) Arson in violation of subdivision (b) of Section~~
23 ~~451.~~

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

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

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

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

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

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

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



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

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

12 ~~(22) The defendant mutilated the victim's corpse for~~
13 ~~the purpose of concealing the murder.~~

14 ~~(23) The defendant committed sexual acts upon the~~
15 ~~corpse after the murder.~~

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

13 ~~SEC. 4. Section 2 of this act shall become operative~~
14 ~~only if Section 190.2 of the Penal Code, as amended by~~
15 ~~Section 2 of Chapter 629 of the Statutes of 1998, is~~
16 ~~approved by the voters at the March 7, 2000 primary~~
17 ~~election, in which case, Section 1 of this act shall not~~
18 ~~become operative and shall not be submitted to the~~
19 ~~voters.~~

20 ~~SEC. 5. Sections 1 and 2~~

21 *SECTION 1. This act shall be known as, and may be*
22 *cited as, "Debi's Law."*

23 *SEC. 2. Section 190.2 of the Penal Code is amended to*
24 *read:*

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

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

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



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

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

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

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

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

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



1 (9) The victim was a firefighter, as defined in Section
2 245.1, 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 firefighter engaged in the
6 performance of his or her duties.

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

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

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

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

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



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

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

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

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

12 (B) Kidnapping in violation of Section 207, 209, or
13 209.5.

14 (C) Rape in violation of Section 261.

15 (D) Sodomy in violation of Section 286.

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

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

20 (G) Burglary in the first or second degree in violation
21 of Section 460.

22 (H) Arson in violation of subdivision (b) of Section
23 451.

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

25 (J) Mayhem in violation of Section 203.

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

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

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

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

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



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

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

12 (22) The defendant intentionally killed the victim
13 while the defendant was an active participant in a
14 criminal street gang, as defined in subdivision (f) of
15 Section 186.22, and the murder was carried out to further
16 the activities of the criminal street gang.

17 (23) *The murder was intentional and involved the*
18 *mutilation or dismemberment of the victim.*

19 (24) *The defendant intentionally killed the victim by*
20 *means of intentionally burning the victim to death.*

21 (25) *The defendant intentionally killed the victim in*
22 *order to do one of the following acts:*

23 (A) *Engage in sexual acts upon the victim's corpse.*

24 (B) *Dismember the victim's corpse.*

25 (C) *Mutilate the victim's corpse.*

26 (D) *Incinerate the victim's corpse.*

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

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



1 possibility of parole if one or more of the special
2 circumstances enumerated in subdivision (a) has been
3 found to be true under Section 190.4.

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

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

18 *SEC. 3. Section 2 of this act ~~affect~~ affects* an initiative
19 statute and shall become effective only when submitted
20 to, and approved by, the voters pursuant to subdivision
21 (c) of Section 10 of Article II of the California
22 Constitution and in accordance with Section 3 of this act.

