

1996

# Punishment. Special Circumstances. Carjacking. Murder of Juror.

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**Punishment. Special Circumstances.  
Carjacking. Murder of Juror.  
Legislative Initiative Amendment.**

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**Official Title and Summary Prepared by the Attorney General**

**PUNISHMENT. SPECIAL CIRCUMSTANCES.  
CARJACKING. MURDER OF JUROR.  
LEGISLATIVE INITIATIVE AMENDMENT.**

- Adds murder during a carjacking, murder resulting from a carjacking kidnap and the intentional murder of a juror in retaliation for, or prevention of, the performance of the juror's official duties to the existing list of special circumstances for first-degree murder for which the death penalty or life imprisonment without the possibility of parole is authorized.
- Joined to Proposition 196 (Chapter 478, Statutes of 1995). If both measures pass, murder by intentional discharge of firearm at persons from a motor vehicle is also added to the list of special circumstances.

**Summary of Legislative Analyst's  
Estimate of Net State and Local Government Fiscal Impact:**

- Probably minor additional state costs.
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**Final Votes Cast by the Legislature on SB 32 (Proposition 195)**

Assembly: Ayes 59	Senate: Ayes 28
Noes 7	Noes 2

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## Analysis by the Legislative Analyst

### Background

First-degree murder is generally defined in state law as murder which is planned in advance, or which takes place during certain other crimes, including robbery, kidnapping, rape, or arson. It is generally punishable by a sentence of 25-years-to-life imprisonment with the possibility of release from prison on parole. However, a conviction for first-degree murder results in a more severe sentence of death or life imprisonment *without* the possibility of parole if the prosecutor charges and the court finds that one or more “special circumstances” specified in state law apply to the crime.

Currently, a first-degree murder resulting from a “carjacking”—taking a vehicle against the will of a driver or passenger by force or fear of force—is not such a special circumstance. However, state law specifies that carjackers can also be charged with robbery, which is a special circumstance crime. Consequently, under current law, a person convicted of first-degree murder during the commission of a carjacking and additionally convicted of robbery could be sentenced to death or life imprisonment without the possibility of parole.

Similarly, a first-degree murder resulting from the kidnapping of an individual during a carjacking is not considered a special circumstance. Such offenders could be charged, as the law allows, with kidnapping as a special circumstance crime resulting in a sentence of death or life imprisonment without the possibility of parole.

Finally, state law provides that the first-degree murder of a judge, prosecutor, or certain other public officials is a special circumstance punishable by a sentence of death or life imprisonment without the possibility of parole.

However, the law does not provide such a penalty in the case of the first-degree murder of a juror.

### Proposal

This measure adds first-degree murder during either a carjacking or a carjacking-kidnap to the list of special circumstances punishable by the death penalty or life imprisonment without the possibility of parole. This measure also specifies that the first-degree murder of a juror—either in retaliation for performing his or her official actions or to prevent the juror from carrying out his or her official duties—is a special circumstance.

### Fiscal Effect

Because this measure increases the number of crimes for which the special circumstances for first-degree murder applies, it would result in longer prison terms for some offenders, thereby increasing state costs. However, state law already permits carjackers or carjack-kidnappers who commit first-degree murder to be charged with robbery or kidnapping, thereby subjecting them to the harsher penalties for special circumstance crimes. Thus, the changes in the law made by this measure explicitly listing those two crimes as special circumstances are likely to result in minor additional incarceration costs.

The provision of this measure designating the first-degree murder of a juror as a special circumstance crime is likely to have little fiscal effect because such crimes occur infrequently.

In summary, we estimate that the measure would probably result in minor additional state costs.

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**For the text of Proposition 195 see page 56**

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**Punishment. Special Circumstances.  
Carjacking. Murder of Juror.  
Legislative Initiative Amendment.**

**Argument in Favor of Proposition 195**

Proposition 195 updates California's death penalty law. In order to impose the death penalty or a sentence of life without possibility of parole, a defendant must be found guilty of first-degree murder and a special circumstance.

First-degree murder includes various types of felony murder. Under the first-degree felony murder rule, when a criminal participant kills a non-participant during a robbery, carjacking, sexual assault crime, kidnapping or other listed felony, all criminal participants are guilty of first-degree murder.

The list of special circumstances includes murders for financial gain, the victim was a law enforcement officer or firefighter, retaliatory murders of witnesses, prosecutors, or judges; and with two exceptions, all first-degree felony murders.

The two categories of first-degree felony murders which are not currently special circumstances are carjacking and kidnapping-carjacking first-degree felony murders. All other first-degree felony murders are also special circumstances. Proposition 195 would make the law of first-degree felony murder conform with the law of special circumstances by adding these two categories to the list of special circumstances.

As noted above, the current death penalty law covers retaliatory murders of witnesses, prosecutors, and judges, but does not include a retaliatory murder of a juror as a special circumstance murder. Murdering a juror because of his or her official actions is an equal outrage and should be treated as such. Proposition 195 adds retaliatory first-degree murders of jurors to the special circumstance list.

Proposition 195 is supported by Governor Wilson, the California District Attorneys Association, the California Peace Officers Association, the California State Sheriffs Association, the California Correctional Peace Officers Association, and the Doris Tate Crime Victims Bureau.

Vote Yes on Proposition 195!

**STEVE PEACE**

*Senator, 40th District*

**PETER FRUSETTA**

*Assemblyman, 28th District*

**MICHAEL BRADBURY**

*District Attorney of Ventura County*

**Rebuttal to Argument in Favor of Proposition 195**

The death penalty has failed whenever and wherever it has been tried. Enactment of Proposition 195 would extend this failed policy, draining resources needed for our children's education and for improvement of human life. As voters, we have moral obligations to insist on more effective policies to safeguard the limited public resources needed to enhance our communities. Do not extend use of the death penalty, even in appearance.

For too long, societies have experimented with death as an outlet for vengeance, or as a shortcut solution to difficult social problems. The experiment has failed, and our communities have suffered. The very existence of Proposition 195 attests to this.

History shows that the threat of death, when used as a policy instrument inevitably erodes our collective vision of the dignity of the human person. The death penalty

undermines the value of human life on which democracy rests, and tends to increase those same violent attitudes and actions that the policy seeks to prevent.

We must use methods of preventing and penalizing violent crime which do not promote the attitudes underlying the wanton carjackings we abhor. Our policies should instead promote awareness that human life is a priceless gift endowed with inalienable value and dignity.

**RABBI LEONARD I. BEERMAN**

*Los Angeles, CA*

**JEANETTE G. ARNQUIST**

*Director of Human Concerns*

*Roman Catholic Diocese of San Bernardino*

**SAM REESE SHEPPARD**

*Director, Murder Victims' Families for Reconciliation*

**Punishment. Special Circumstances.  
Carjacking. Murder of Juror.  
Legislative Initiative Amendment.**

**195**

**Argument Against Proposition 195**

A NO Vote on Proposition 195 will improve public safety by re-focusing legislative attention on effective ways to actually prevent violence.

Chiefs of police and law enforcement officers across the country publicly acknowledge that the death penalty does virtually nothing to prevent murder. In fact, attention to the death penalty diverts law enforcement resources from truly effective measures to reduce violence and make communities safer. The best steps to reduce crimes of all kinds include more neighborhood watch programs, improved police training, effective community policing, tough programs to reduce drug and alcohol abuse, early juvenile offender intervention programs, weapons control efforts, speedier trials, domestic violence programs, and better funded probation and parole services.

The death penalty already diverts too many dollars from more worthy activities, and takes too much valuable time of police and courts. Because some 50 capital cases are investigated and prosecuted to effect a single execution, millions of dollars must be spent and countless hours of court time must be consumed to bring about infrequent executions many years after the crime. Although the death penalty may fascinate the media and

the public, the high cost of any extension of it cannot be justified.

Too much attention to the extreme punishment distracts policy makers and the public from the more critical daily task of preventing violence. It also burdens courts with lengthy death penalty trials and years of appeals. From the perspective of those who see crime up close on a daily basis, other priorities are more deserving of public attention and support. The sooner we order crime prevention priorities toward solutions with proven records of effectiveness, the sooner we will be able to make a serious dent in California's problems of violence.

Knowledgeable prosecutors and attorneys have pointed out that this proposal would not add anything of substance to the law. It is nothing more than a cosmetic change. Let it be known that you want more effective attention to the problem of violence by voting NO on Proposition 195.

**SENATOR MILTON MARKS**

*Chair, Senate Committee on Criminal Procedure*

**RIGHT REVEREND JERRY A. LAMB**

*Bishop of the Episcopal Diocese of Northern California*

**MIKE FARRELL**

*President, M, J & E Productions, Inc.*

**Rebuttal to Argument Against Proposition 195**

The opponents of Proposition 195 fail to make any valid argument against the merits of this necessary change to California's Death Penalty Law.

Instead, the opponents who are clearly philosophically opposed to the death penalty engage in a typical attack on the utility and wisdom of the death penalty.

In truth, the death penalty is a deterrent. Those who are executed never kill again. Moreover, society rightly expects that those who commit the most aggravated murders may, after careful procedures are followed, forfeit their own lives for their heinous crimes.

On three separate occasions in the last 25 years, California voters have overwhelmingly voted to support the death penalty. The opponents of 195 choose to ignore this mandate by making a misleading argument that is simply untrue.

Proposition 195 simply updates the death penalty law by adding "carjacking" and "kidnapping-carjacking" first-degree felony murders to a list of special

circumstances that make a criminal eligible for the death penalty.

Also, while the current death penalty law covers retaliatory murders of witnesses, prosecutors, and judges, it does not include a retaliatory first-degree murder of a juror. Proposition 195 therefore adds this terrible crime to the special circumstance list.

Contrary to the arguments of the opposition, the death penalty *is* supported by cops, prosecutors, and crime victims. That is why these same groups overwhelmingly support 195.

The bottom line is that the opposition has no merit.

Vote Yes on 195!

**SUSAN A. DAVIS**

*Assemblywoman, 76th District*

**JIM MORRISSEY**

*Assemblyman, 69th District*

**MICHAEL FERGUSON**

*District Attorney of Nevada County*

for investment earnings, order the payment of those earnings to comply with any rebate requirement applicable under federal law, and may otherwise direct the use and investment of those proceeds so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

8879.17. The Director of Transportation shall report annually to the Governor and the Legislature regarding the funds available for seismic retrofit projects and the expenditure of bond proceeds.

### Proposition 193: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 17 (Statutes of 1994, Resolution Chapter 110) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in **strikeout type** and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED AMENDMENT TO SUBDIVISION (h) OF SECTION 2 OF ARTICLE XIII A

(h) (1) For purposes of subdivision (a), the terms "purchased" and "change of ownership" shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first \$1,000,000 of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) *Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph*

*becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.*

(B) *A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar (\$1,000,000) full cash value limit specified in paragraph (1).*

### Proposition 194: Text of Proposed Law

This law proposed by Senate Bill 103 (Statutes of 1995, Chapter 440) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law adds a section to the Penal Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

SECTION 1. Section 2717.9 is added to the Penal Code, to read:

*2717.9. Notwithstanding any other provision of law, a prisoner who participates in a joint venture program is ineligible for unemployment benefits upon his or her release from prison based upon participation in that program.*

### Proposition 195: Text of Proposed Law

This law proposed by Senate Bill 32 (Statutes of 1995, Chapter 477) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends a section of the Penal Code; therefore, existing provisions proposed to be deleted are printed in **strikeout type** and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

SECTION 1. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant *who is found guilty of murder in the first degree shall be death or confinement imprisonment in the state prison for a term of life without the possibility of parole in any case in which if* one or more of the following special circumstances has been found under Section 190.4; to be true:

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As ~~utilized used~~ in this section, the phrase ~~especially especially~~ heinous, atrocious, or cruel, manifesting exceptional ~~depravity depravity~~ means a conscienceless; or pitiless crime ~~which that~~ is unnecessarily torturous to the victim.

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

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

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

- (i) (A) Robbery in violation of Section 211 or 212.5.
- (ii) (B) Kidnapping in violation of Section 207 or , 209 , or 209.5 .
- (iii) (C) Rape in violation of Section 261.
- (iv) (D) Sodomy in violation of Section 286.
- (v) (E) The performance of a lewd or lascivious act upon *the* person of a child under the age of 14 years in violation of Section 288.
- (vi) (F) Oral copulation in violation of Section 288a.
- (vii) (G) Burglary in the first or second degree in violation of Section 460.
- (viii) (H) Arson in violation of subdivision (b) of Section 451.
- (ix) (I) Train wrecking in violation of Section 219.
- (x) (J) Mayhem in violation of Section 203.
- (xi) (K) Rape by instrument in violation of Section 289.
- (xii) (L) *Carjacking, as defined in Section 215.*
- (18) The murder was intentional and involved the infliction of torture.
- (19) The defendant intentionally killed the victim by the administration of poison.

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

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

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

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

The penalty shall be determined as provided in *this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.*

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

190.2. (a) The penalty for a defendant *who is* found guilty of murder in the first degree shall be death or ~~confinement imprisonment~~ in the state prison for a term of life without the possibility of parole ~~in any case in which~~ if one or more of the following special circumstances has been found under Section 190.4; to be true:

- (1) The murder was intentional and carried out for financial gain.
- (2) The defendant was ~~previously~~ convicted ~~previously~~ of murder in the first degree or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.
- (3) The defendant ~~has~~, in this proceeding, ~~has~~ been convicted of more than one offense of murder in the first or second degree.
- (4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to ~~a human being one or more~~ human beings.
- (5) The murder was committed for the purpose of avoiding or preventing a lawful arrest ~~or to perfect, or attempt, or perfecting or attempting to perfect, an escape from lawful custody.~~
- (6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or ~~caused~~ caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to ~~a human being one or more~~ human beings.
- (7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the ~~above enumerated above-enumerated~~ sections of the Penal Code, or a former peace officer under any of ~~such those~~ sections, and was intentionally killed in retaliation for the performance of his or her official duties.

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

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

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

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

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

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

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

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

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

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

- (i) (A) Robbery in violation of Section 211 or 212.5.
- (ii) (B) Kidnapping in violation of Section 207 or , 209 , or 209.5 .
- (iii) (C) Rape in violation of Section 261.
- (iv) (D) Sodomy in violation of Section 286.
- (v) (E) The performance of a lewd or lascivious act upon *the* person of a child under the age of 14 years in violation of Section 288.
- (vi) (F) Oral copulation in violation of Section 288a.
- (vii) (G) Burglary in the first or second degree in violation of Section 460.
- (viii) (H) Arson in violation of subdivision (b) of Section 451.
- (ix) (I) Train wrecking in violation of Section 219.
- (x) (J) Mayhem in violation of Section 203.
- (xi) (K) Rape by instrument in violation of Section 289.
- (xii) (L) *Carjacking, as defined in Section 215.*
- (18) The murder was intentional and involved the infliction of torture.
- (19) The defendant intentionally killed the victim by the administration of poison.

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

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

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

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall ~~suffer be punished~~ by death or ~~confinement imprisonment~~ in the state prison for ~~a term~~ of life without the possibility of parole, ~~in any case in which~~ if one or more of the special

circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.

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

The penalty shall be determined as provided in *this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.*

SEC. 3. This act affects an initiative statute and shall become effective only when submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SEC. 4. Section 2 of this bill incorporates amendments to Section 190.2 of the Penal Code proposed by both this bill and SB 9. It shall only become operative (1) both this bill and SB 9 are submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and become effective on the same date, (2) each bill amends Section 190.2 of the Penal Code, and (3) this bill receives more affirmative votes from the voters than SB 9, in which case Section 1 of this bill shall not become operative.

## Proposition 196: Text of Proposed Law

This law proposed by Senate Bill 9 (Statutes of 1995, Chapter 478) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends a section of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

SECTION 1. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant *who is* found guilty of murder in the first degree ~~shall be~~ death or ~~confinement imprisonment in the state prison for a term of~~ life without the possibility of parole ~~in any case in which if~~ one or more of the following special circumstances has been found under Section 190.4; to be true:

(1) The murder was intentional and carried out for financial gain.  
(2) The defendant was ~~previously convicted previously~~ convicted of murder in the first degree or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

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

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

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

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

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

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

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

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

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

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

(13) The victim was an elected or appointed official, *or a former elected or former appointed official*, of the federal government, of a local or state government of ~~California this state~~, or of any local or state government of any other state in of the United States, and the ~~killing murder~~ was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As utilized in this section, the phrase ~~especially "especially~~ heinous, atrocious, or cruel, manifesting exceptional ~~depravity depravity~~ means a conscienceless; or pitiless crime ~~which that~~ is unnecessarily torturous to the victim.

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

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

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

(i) Robbery in violation of Section 211 or 212.5.

(ii) Kidnapping in violation of Section 207 or 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

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

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

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

(ix) Train wrecking in violation of Section 219.

(x) Mayhem in violation of Section 203.

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

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

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

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

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

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

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

The penalty shall be determined as provided in *this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.*

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