



SB-300 Crimes: murder: punishment. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021-2022 REGULAR SESSION

SENATE BILL

NO. 300

Introduced by Senator Cortese
(Coauthors: Senators Bradford, Kamlager, Skinner, and Wiener)

February 03, 2021

An act to amend Section 190.2 of, ~~to add Section 1170.97 to,~~ and to repeal Section 1385.1 of, the Penal Code, relating to ~~crimes.~~ *crimes, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 300, as amended, Cortese. Crimes: murder: punishment.

(1) Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. Existing law classifies a murder as murder in the first degree if it is willful, deliberate, and premeditated, is committed by specified means including poison, explosive, or torture, or if it is committed in the perpetration of, or attempt to perpetrate specified felonies, including robbery, carjacking, and rape. Existing law holds a person, who is not the actual killer, criminally liable for murder in the first degree if that person either, with intent to kill, aids, abets, counsels, commands, induces, solicits, requests or assists the actual killer in the commission of the murder, or is a major participant in the underlying felony and acts with reckless indifference to human life.

Under existing law, murder in the first degree is punishable by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. Existing law, added by Proposition 115 of the June 5, 1990, statewide primary election, provides that a person, not the actual killer, who is found guilty of first degree murder, and who, with reckless indifference to human life and as a major participant in certain specified violent felonies, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission of that felony, shall be punished by death or imprisonment in the state prison without the possibility of parole. Existing law provides for amendment of these provisions by a $\frac{2}{3}$ vote of each house of the Legislature.

This bill would repeal the aforementioned provision requiring punishment by death or imprisonment for life without the possibility of parole for a person convicted of murder in the first degree who is not the actual killer, but acted with reckless indifference for human life as a major participant in certain specified violent felonies.

~~The bill would also provide a procedure for incarcerated inmates previously convicted under that provision and awaiting execution or serving a sentence of imprisonment for life without the possibility of parole to petition the court to recall the sentence and resentence the inmate.~~

(2) Existing law provides for various specified special circumstances, including the murder of a peace officer, firefighter, or witness, which, if found true as specified, require a defendant found guilty of murder in the first degree to be sentenced to death or imprisonment for life without the possibility of parole. Existing law, added by Proposition 115 of the June 5, 1990, statewide primary election, prohibits a judge from striking or dismissing any special circumstance which is admitted by plea or found true by a jury or court, as specified. Existing law provides for amendment of these provisions by a $\frac{2}{3}$ vote of each house of the Legislature.

This bill would repeal the provision prohibiting a judge from striking a special circumstance.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) There is a need for statutory changes to more equitably sentence offenders in accordance with their involvement in crimes where a death occurs.

(b) It is a bedrock principle of law and of equity that a person should be punished for their actions according to their own level of individual culpability.

(c) Currently, people are sentenced to death and to imprisonment for life without the possibility of parole in California even though they did not kill and did not act with intent to kill.

(d) Current law makes the punishment of either death or imprisonment for life without the possibility of parole the mandatory sentence if a jury finds true any special circumstance, denying judges the discretion to impose a sentence of imprisonment for life with the possibility of parole, even when the judge believes such a sentence is fair and just.

(e) It is the intent of the Legislature to limit the application of special circumstances to accomplices who acted with intent to kill and to restore judicial discretion to dismiss special circumstances, and to abrogate the changes made regarding these issues in Proposition 115, passed by the voters at the June 5, 1990, statewide primary election.

~~(f) It is the intent of the Legislature to apply this change to Section 190.2 of the Penal Code retroactively, to ensure that no person remains under sentence of death or life without the possibility of parole if they did not personally kill or intend to kill. It is the intent of the Legislature to apply the repeal of Section 1385.1 of the Penal Code retroactively, to provide judges with discretion to impose appropriate sentences in the interests of justice during resentencing proceedings.~~

~~(g)~~

(f) California's special circumstance law is one of the most expansive in the nation. It does not adequately limit the number of people a prosecutor can charge with death or life without the possibility of parole. Although the California Supreme Court may find that our special circumstance law is unconstitutional for this reason, this does not relieve the Legislature of its duty to address this injustice, particularly for accomplices in felony murder who neither killed nor intended to kill.

(g) It is the intent of the Legislature that individuals who plan and carry out murders be held responsible for that conduct according to their level of culpability. The Legislature does not intend to dissuade the prosecution of individuals who orchestrate murder under existing law, including prosecution for conspiracy.

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 is death or imprisonment in the state prison for life without the possibility of parole 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 convicted previously of murder in the first 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, 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 their act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, 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 to be mailed or delivered, and the defendant knew, or reasonably should have known, that their act or acts would create a great risk of death to 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 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 duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of 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 duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of official duties.

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

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing their testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which they were a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for their 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 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 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.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of 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 used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

- (15) The defendant intentionally killed the victim by means of lying in wait.
- (16) The victim was intentionally killed because of their 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:
- (A) Robbery in violation of Section 211 or 212.5.
 - (B) Kidnapping in violation of Section 207, 209, or 209.5.
 - (C) Rape in violation of Section 261.
 - (D) Sodomy in violation of Section 286.
 - (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.
 - (F) Oral copulation in violation of Section 287 or former Section 288a.
 - (G) Burglary in the first or second degree in violation of Section 460.
 - (H) Arson in violation of subdivision (b) of Section 451.
 - (I) Train wrecking in violation of Section 219.
 - (J) Mayhem in violation of Section 203.
 - (K) Rape by instrument in violation of Section 289.
 - (L) Carjacking, as defined in Section 215.
- (M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.
- (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.
- (22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.
- (b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom 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 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 be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

~~SEC. 3. Section 1170.97 is added to the Penal Code, to read:~~

~~1170.97.(a)An incarcerated person sentenced to death or serving a sentence of imprisonment for life without the possibility of parole for a conviction of murder in which one or more felony murder special circumstances has been found true pursuant to paragraph (17) of subdivision (a) of Section 190.2, may file a petition to have the special circumstance findings vacated and to have their sentence recalled for any count in which the person was not the actual killer and did not act with intent to kill.~~

~~(b)(1)The petition shall be filed with the presiding judge of the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. The presiding judge may assign the petition to the judge that originally sentenced the petitioner or another judge designated to review such petitions. The petition shall include all of the following:~~

~~(A)A declaration by the petitioner that the petitioner is eligible for relief pursuant to subdivision (a);~~

~~(B)The superior court case number and year of the petitioner's conviction;~~

~~(C)Whether the petitioner requests the appointment of counsel;~~

~~(2)If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information. A court may not summarily deny the petition for any other reason. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner.~~

~~(c)The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor's response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause.~~

~~(d)(1)Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the special circumstance finding or findings and to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not been previously sentenced; provided that the new sentence, if any, is not greater than the initial sentence. This deadline may be extended for good cause.~~

~~(2)At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior special circumstance finding or findings shall be vacated and the petitioner shall be resentenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.~~

~~(e)This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.~~

~~(f)A person who is resentenced pursuant to this section shall be given credit for time served.~~

SEC. 4. **SEC. 3.** Section 1385.1 of the Penal Code is repealed.

SEC. 4. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

In order to rapidly address injustice and the risk of untimely death while incarcerated, it is necessary that this act go into effect immediately.