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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff/Respondent,	)	No. S051968
	)	
vs.	)	(Santa Clara Sup. Ct.
	)	No. SC169362)
	)	
VALDAMIR FRED MORELOS,	)	
	)	
Defendant/Appellant.	)	
	)	

REQUEST TO TAKE JUDICIAL NOTICE AND PROPOSED ORDER

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Appellant Valdamir Fred Morelos, by counsel, hereby respectfully requests that this Court take judicial notice of the legislative history of

Senate Bill 155, which became California's death penalty statute in 1977. Appellant makes this request pursuant to Evidence Code sections 452 and 459, and Rules 8.630(h) and 8.252(a) of the California Rules of Court. Pursuant to Rule 8.252(a), a copy of the legislative history is attached herein as Exhibit A and a proposed order is enclosed herewith.

This motion is also supported by the attached declaration of counsel.

DATED: July 26, 2013

Respectfully submitted,

Sara Theiss

Sara Theiss
Attorney for Appellant

DECLARATION OF SARA THEISS IN SUPPORT OF MOTION TO TAKE JUDICIAL NOTICE

I, Sara Theiss, declare:

1. I am the deputy state public defender assigned to represent Mr. Morelos in his automatic direct appeal. Simultaneously with this Motion, Appellant's Opening Brief (AOB) is being filed in this Court.

2. Argument VII of the AOB argues that Mr. Morelos was denied a proper hearing on his motion for modification of his death verdict pursuant to California Penal Code section 190.4, subdivision (e). Because Mr. Morelos did not receive a jury trial in this capital case, he was denied the independent review of the death verdict that section 190.4, subdivision (e) guarantees to all capital defendants. Mr. Morelos argues that the denial of his right to an independent review of his death verdict violated the United States and California Constitutions, as well as the California death penalty statute. (See AOB, Argument VII.)

3. In the course of making this argument, Mr. Morelos asserts that the California Legislature intended to provide independent review of death verdicts at the trial court level for all defendants, even those tried by a judge. (See AOB, Argument VII.D.2.) Mr. Morelos cites in this argument the legislative history of Senate Bill 155, which became California's death penalty statute in 1977. The legislative history was compiled by the California Appellate Project (hereafter, CAP), and was downloaded from CAP's password-protected website. A complete copy of the legislative history is attached to this motion.

4. Although this matter was not presented to the trial court, the legislative history of the California Legislature is the kind of material that this Court often takes judicial notice of pursuant to Evidence Code section

452. (See, e.g., *People v. Massie* (1998) 19 Cal.4th 550, 566, fn. 4 ["At defendant's request, we take judicial notice of legislative history relating to the 1935 amendment to [California Penal Code] section 1239(b); [and] of legislative history relating to the passage in 1965 of [California Penal Code] section 1237.5 . . . . The materials are appropriate subjects of judicial notice"]; *Planning & Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 264, 271, fn. 4 [taking judicial notice of legislative history]; *People v. Eubanks* (1996) 14 Cal.4th 580, 591, fn. 3 [same].) Accordingly, the legislative history of Senate Bill 155 should be judicially noticed by this Court.

5. I have provided a copy of the legislative history and a proposed order to this Court as required by Rule 8.252(a) of the California Rules of Court. I have also provided a copy of the legislative history to respondent through the means and address set forth in the attached certificate of service.

6. I declare under penalty of perjury that the foregoing is true and correct.

Signed this 26 day of July, 2013, at Oakland, California.

Sara Theiss

SARA THEISS

DECLARATION OF SERVICE

Re: People v. Valdamir Fred Morelos

Supreme Court No. S051968
Superior Court No. CSC169362

I, Tamara Reus, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1111 Broadway, Suite 1000, Oakland, California 94607; that I served a copy of the attached:

REQUEST TO TAKE JUDICIAL NOTICE AND PROPOSED ORDER

on each of the following, by placing same in an envelope addressed respectively as follows:

Catherine Rivlin, Esq.
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Room 11000
San Francisco, CA 94102

Valdamir Fred Morelos # J-97900
CSP-SQ
2-EB-48
San Quentin, CA 94974

Clerk of the Court
Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

Each said envelope was then, on July 26, 2013, sealed and deposited in the United States mail at Oakland, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on July 26, 2013, at Oakland, California.

Tamara Reus
DECLARANT

EXHIBIT A

AMENDMENT ANALYSIS
OF
SENATE BILL 155

INTRODUCED VERSION
THROUGH
EIGHTH VERSION

SENATE BILL 155

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Section 190.3

Feb. 17

EXPANDS CRIMES FOR WHICH DEATH MAY BE IMPOSED

Amends SB 155 to include Section 219 of the Penal Code, train derailing, as an offense for which a penalty hearing will be convened to determine whether the defendant will be sentenced to death or life imprisonment without parole. This provision is inconsistent, however, with the remainder of the bill because as introduced SB 155 expressly amended §219 to provide that the severest sentence that could be imposed was life imprisonment without parole. On April 13, §219 was also amended so as to allow death to be a possible sentence for train derailing. The remainder of the amendment is grammatical and does not have a substantive effect on the law.

Mar. 10

LIMITS EVIDENCE OF AGGRAVATION TO CONVICTIONS FOR VIOLENT FELONY OFFENSES

The original draft of SB 155 allowed the trier of fact in a penalty hearing to consider the defendant's "prior criminal activity." The March 10th amendment restricts the trier of fact's consideration to the defendant's prior felony convictions for crimes of violence against a person.

PRECLUDES EVIDENCE OF MISDEMEANORS OR NON-VIOLENT FELONIES FROM BEING CONSIDERED WHEN EVALUATING DEFENDANT'S CHARACTER AND BACKGROUND

This amendment assures the defendant that an analysis of his "character, background, and "history" will not include the introduction of evidence regarding prior criminal activity that did not result in a felony conviction for a violent crime. The amendment strengthens the amendment beginning on line 15 by precluding the prosecution from introducing evidence of misdemeanors and non-violent felonies under the guise of aiding the trier of fact in an evaluation of defendant's character and background.

DELETES THE REQUIREMENT THAT MITIGATION BE PROVED BY A PREPONDERANCE OF EVIDENCE

As introduced, SB 155 required the defendant to prove mitigating circumstances by a prepondemance of evidence. The March 10 amendment deletes this requirement and allows the trier of fact to impose a sentence of life imprisonment without parole if it finds that the mitigating circumstances are sufficiently substantial to call for leniency. This is a much easier burden for the defendant to meet.

AMENDMENT ANALYSIS
Section 190.3

Mar. 10

LIMITS EVIDENCE OF AGGRAVATION TO CONVICTIONS FOR VIOLENT FELONY OFFENSES

The same result as in the amendment beginning on line 15. Note that the words of the provision "against the person of another" may act to effectively exclude such crimes as arson of an uninhabited building.

Mar. 24

ALLOWS CONSIDERATION OF PRIOR "SIGNIFICANT CRIMINAL ACTIVITY"

This provision alters the amendment offered on March 10, when consideration of defendant's prior criminal activity was limited to his past felony convictions for violent crimes. The March 24 amendment allows the trier of fact in a penalty hearing to consider evidence of defendant's "significant prior criminal activity." Under this provision a conviction is apparently not necessary, thus the sentencing authority could consider past arrests as well as past convictions for any "significant" misconduct. The word "significant" is never defined. This amendment would probably result in different standards being applied in like cases. For example, assault may be considered significant by one court but insignificant by another court. The same evidence is at stake both times, but a different result is achieved.

SAME EFFECT AS AMENDMENT BEGINNING LINE 15

April 13

NO SUBSTANTIVE EFFECT

ALLOWS CONSIDERATION OF OFFENSES INVOLVING VIOLENCE

This is the third time this provision has been amended. This particular amendment attempts to compromise the differences between those who want to let evidence of virtually any criminal activity be considered in the penalty hearing, and those who wish to restrict consideration to prior felony convictions for crimes of violence. The April 13th amendment allows the trier of fact to consider any offense involving the threat or use of violence whether or not a conviction resulted.

SAME EFFECT AS AMENDMENT BEGINNING ON LINE 15

AMENDMENT ANALYSIS
Section 190.3

April 28

STREAMLINES LANGUAGE. NO SUBSTANTIVE EFFECT.

FURTHER DELINEATES TASKS OF TRIER OF FACT IN PENALTY HEARING

The April 28th amendment to this section adds the word "other," apparently to focus the trier of facts attention on defendant's prior criminal activity other than that for which he is currently on trial. This provision consequently emphasizes that the trier of fact should not only (1) consider the circumstances of the crime for which defendant stands presently convicted, but also (2) consider defendant's prior criminal activity.

PROHIBITS CONSIDERATION OF NON-VIOLENT OFFENSES. REQUIRES THAT THE DEFENDANT RECEIVE NOTICE OF EVIDENCE TO BE USED IN AGGRAVATION PRIOR TO TRIAL.

This amendment first deletes lines 18 through 23. It replaces these lines with a prohibition against consideration of criminal activity that did not involve the threat or use of force or violence. Significantly, the new amendment expressly states that an offense can be considered even though a conviction for that offense was never obtained. The provision also prohibits the prosecution from introducing evidence of aggravation at the penalty hearing unless the defendant receives notice prior to trial that such evidence will be so used. This amendment was apparently submitted by the author of the bill himself. Unfortunately no reason for the addition was forthcoming either through his office or from the Committee on Criminal Justice.

INSTRUCTS TRIER OF FACT AS TO CIRCUMSTANCES TO BE CONSIDERED AT SENTENCING HEARING. REQUIRES TRIER OF FACT TO BASE DECISION AS TO SENTENCE UPON FACTS PRESENTED AT PENALTY HEARING.

In the original draft of SB 155 evidence concerning the nature and circumstances of the present offense could be presented at the penalty hearing by either the People or the defendant. However, the list of items that the trier of fact was to take into account did not include the nature of the present offense. The April 28th amendment rectifies this deficiency by including, as subdivision (a) the ability of the trier of fact to consider the circumstances of the present crime in determining the penalty to be imposed. Subdivisions (b), (c), (d), (e), (f), (g), (h), and (i) have been given new subdivision letters but otherwise remain unchanged. The amendment does, however, add (j), allows the defendant to introduce any other evidence of extenuation though not previously listed. (Continued next pg.)

AMENDMENT ANALYSIS
Section 190.3

April 28

26 (cont.) The amendment, beginning on line 58 also replaces the provision that was deleted on lines 18 through 23. In the original draft of the bill the trier of fact need only consider the evidence. The amended provision requires the trier of fact not only to consider and take into account the evidence, but also to be guided by the evidence in coming to a decision about sentence. This protects the defendant from the caprice of a jury who hears substantial evidence of mitigation but due to prejudice refuses to base the sentence upon the evidence presented.

May 9

18G PROHIBITS CONSIDERATION OF PAST OFFENSES FOR WHICH DEFENDANT HAS BEEN ACQUITTED

The May 9th amendment to this section precludes the prosecution from introducing as an aggravating circumstance evidence that the defendant was arrested but later acquitted for an offense. This amendment unfortunately goes only part way in ameliorating the prior section's infirmities. It is still conceivable that the prosecution could introduce evidence that the defendant was arrested for a crime even though the charges were later dropped or the defendant pled guilty to a lesser offense.

18R REQUIRES DEFENDANT TO RECEIVE NOTICE OF ALL EVIDENCE IN AGGRAVATION TO BE INTRODUCED AT PENALTY HEARING

This amendment apparently was designed to plug up a loophole whereby the prosecution could introduce evidence of aggravating circumstances without notifying the defendant because such evidence was never "proved" by the People. By substituting "introduced" for "proved" the amendment forces the prosecution to notify the defendant of all the evidence to be presented at the hearing, not just that evidence to be "proved."

62 STREAMLINES LANGUAGE. NO APPARENT SUBSTANTIVE EFFECT

SECTION 190.1

April 28

4 As introduced SB 155 mandated a trifurcated proceeding. The defendant's guilt was first adjudged. If he was found guilty, his sanity under 1026 was then determined. If he was found sane, the verity of any alleged special circumstances was determined in a separate proceeding. If any of the charged special circumstances was found to exist, then a separate penalty hearing was to be convened to determine sentence.

The April 28 amendment restructures the trial procedure by providing for a bifurcated hearing in which the trier of fact ascertains defendant's guilt or innocence at the same time special circumstances are evaluated. This ill-considered amendment was probably the result of a criticism addressed to the original version of the bill by the Senate Committee on the Judiciary, whose report on SB 155 noted that Gregg expressed a preference for a bifurcated procedure (See Appendix). By requiring that the determination of special circumstances occur in the same hearing as the adjudication of guilt the April 28 amendment postpones a determination of sanity under PC 1026 until after the law may have automatically imposed a sentence. See 9 Pacific Law Journal, January 1978 pp. 446-447 (Appendix).

Section 190.4(c) requires the same jury that adjudges guilt or innocence to determine sanity. However the April 28 amendment to Section 190.1 complicates this since now there is an intervening special circumstance hearing between determination of guilt and sanity. It is conceivable that to meet the mandates of 190.4 a jury that determines guilt but who could not agree on special circumstances and hence was dismissed would have to be reimpaneled after another jury evaluated special circumstances in order to evaluate sanity.

May 9

10 This amendment merely clarifies ehat procedure is to be followed when the special circumstance alleged is a prior murder. There is, apparently no substantive difference between the original version of the bill and the bill as amended.

SENATE BILL
155

INTRODUCED VERSION
January 19, 1977

SENATE BILL No. 155

Introduced by Senator Deukmejian (Principal Coauthors: Senator Beverly and Assemblyman McAlister)
(Coauthors: Senators Briggs, Campbell, Cusanovich, Johnson, Nejedly, Nimmo, Presley, Richardson, Russell, and Stull; Assemblymen Perino, Antonovich, Boatwright, Chappie, Cline, Collier, Cordova, Craven, Cullen, Duffy, Ellis, Hayden, Imbrecht, Lancaster, Lanterman, Lewis, Nestande, Robinson, Statham, Stirling, Vincent Thomas, William Thomas, Thurman, Norman Waters, and Wray)

January 19, 1977

An act to amend Section 1672 of the Military and Veterans Code, to amend Sections 37, 128, 209, 219, 1018, 1050, 1103, 1105, 4500, and 12310 of, to repeal Sections 190, 190.1, 190.2, and 190.3 of, and to add Sections 190, 190.1, 190.2, 190.3, 190.4, 190.5, and 190.6 to, the Penal Code, relating to punishment for crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 155, as introduced, Deukmejian. Death penalty.

Existing law provides for the imposition of the death penalty under procedures which have been invalidated by court decision because they lack provision for consideration of mitigating circumstances.

This bill would make such a mitigating circumstances provision in the law, as to certain crimes formerly subject only to the death penalty, and would impose life imprisonment without parole rather than death or life imprisonment with parole in other cases.

The bill would take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: no. State-

Corrected 1-20-77

mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1672 of the Military and Veterans Code is amended to read:

1672. Any person who is guilty of violating ~~Sections~~ *Section* 1670 or 1671 is punishable as follows:

(a) If his act or failure to act causes the death ~~of, or great bodily injury to,~~ *of* any person, he is punishable by death or imprisonment in the state prison for ~~life, at the discretion of the jury trying the case, or at the discretion of the court where a jury does not try the case.~~ *life without possibility of parole. The penalty shall be determined pursuant to the provisions of Penal Code Sections 190.3 and 190.4. If the act or failure to act causes great bodily injury to any person, a person violating this section is punishable by life imprisonment without possibility of parole.*

(b) If his act or failure to act does not cause the death of, or great bodily injury to, any person, he is punishable by imprisonment in the state prison for not more than 20 years, or a fine of not more than ten thousand dollars ($10,000), or both. However, if such person so acts or so fails to act with the intent to hinder, delay, or interfere with the preparation of the United States or of any state for defense or for war, or with the prosecution of war by the United States, or with the rendering of assistance by the United States to any other nation in connection with that nation's defense, the minimum punishment shall be imprisonment in the state prison for not less than one year, and the maximum punishment shall be imprisonment in the state prison for not more than 20 years, or by a fine of not more than ten thousand dollars ($10,000), or both.

SEC. 2. Section 37 of the Penal Code is amended to read:

37. Treason against this ~~State~~ *state* consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by

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persons owing allegiance to the ~~State.~~ *state.* The punishment of treason shall be ~~death.~~ *death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Penal Code Sections 190.3 and 190.4.*

SEC. 3. Section 128 of the Penal Code is amended to read:

128. Every person who, by willful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by ~~death.~~ *death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Penal Code Sections 190.3 and 190.4.*

SEC. 4. Section 190 of the Penal Code is repealed.

~~190. Every person guilty of murder in the first degree shall suffer death if any one or more of the special circumstances enumerated in Section 190.2 have been charged and found to be true in the manner provided in Section 190.1. Every person otherwise guilty of murder in the first degree shall suffer confinement in the state prison for life, unless he or she is guilty of murder in the first degree which is perpetuated by means of torture with the intent to kill, in which case he or she shall suffer confinement in the state prison without the possibility of parole. Every person guilty of murder in the second degree is punishable by imprisonment in the state prison for five, six, or seven years.~~

SEC. 5. Section 190 is added to the Penal Code, to read:

190. Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in state prison for life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5. Every person guilty of murder in the second degree is punishable by imprisonment in the state prison for five, six, or seven years.

SEC. 6. Section 190.1 of the Penal Code is repealed.

~~190.1. In any case in which the death penalty is to be imposed as the penalty for an offense only upon the finding of the truth of the special circumstances~~

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enumerated in Section 190.2, the guilt or innocence of the person charged shall first be determined without a finding as to penalty. In any such case the person charged shall be represented by counsel. If such a person has been found guilty of such an offense, and has been found sane on any plea of not guilty by reason of insanity, and any one or more of the special circumstances enumerated in Section 190.2 have been charged, there shall be further proceedings on the issue of the special circumstances charged. In any such proceedings the person shall be represented by counsel. The determination of the truth of any or all of the special circumstances charged shall be made by the trier of fact on the evidence presented. In case of a reasonable doubt whether a special circumstance is true, the defendant is entitled to a finding that it is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Wherever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of a crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant with the consent of the defendant's counsel, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty the trier of fact shall be a jury unless a jury is waived by the defendant with the consent of his counsel. If the defendant was convicted by a jury, the trier of fact shall be the same jury unless, for good cause shown, the court discharges that jury, in which case a new jury shall be drawn to determine the issue of whether or not any of the special circumstances charged are true or not true.

If the trier of fact finds, as to any person convicted of any offense under Section 190 requiring further proceedings that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, the defendant shall suffer the penalty of death, and neither the finding that any of the remaining special

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~~circumstances charged is not true, not if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prohibit the imposition of such penalty.~~

~~In any case in which the defendant has been found guilty by a jury, and the same or another jury is unable to reach a unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all of such special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be retried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by a unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach a unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and impose the punishment of confinement in the state prison for life.~~

SEC. 7. Section 190.1 is added to the Penal Code, to read:

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

(a) The defendant's guilt shall first be determined without a finding as to special circumstances or penalty.

(b) If the defendant is found guilty, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, and one or more special circumstances as enumerated in Section 190.2 have been charged, there shall thereupon be further proceedings on the question of the truth of the charged special circumstance or circumstances. Such proceedings shall be conducted in accordance with the provisions of Section 190.4.

(c) If any charged special circumstance is found to be true, there shall thereupon be further proceedings on the question of penalty. Such proceedings shall be conducted in accordance with the provisions of Sections 190.3 and

190.4.

SEC. 8. Section 190.2 of the Penal Code is repealed.

~~190.2. The penalty for a person found guilty of first-degree murder shall be death in any case in which the trier of fact pursuant to the further proceedings provided for in Section 190.1 makes a special finding that:~~

~~(a) The murder was intentional and was carried out pursuant to an agreement with the defendant. "An agreement," as used in this subdivision, means an agreement by the person who committed the murder to accept valuable consideration for the act of murder from any person other than the victim.~~

~~(b) The defendant personally committed the act which caused the death of the victim and any of the following additional circumstances exist:~~

~~(1) The victim is a peace officer, as defined in Section 830.1, subdivision (a) of Section 830.2, or subdivision (b) of Section 830.5, who, while engaged in the performance of his duty, was intentionally killed, and the defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties.~~

~~(2) The murder was willful, deliberate and premeditated and the victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding.~~

~~(3) The murder was willful, deliberate and premeditated and was committed during the commission or attempted commission of any of the following crimes:~~

~~(i) Robbery, in violation of Section 211.~~

~~(ii) Kidnapping, in violation of Section 207 or Section 209. Brief movements of a victim which are merely incidental to the commission of another offense and which do not substantially increase the victim's risk of harm over that necessarily inherent in the other offense do not constitute kidnapping within the meaning of this paragraph.~~

~~(iii) Rape by force or violence, in violation of subdivision (2) of Section 261, or by threat of great and immediate bodily harm, in violation of subdivision (3 of~~

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~~Section 261.~~

~~(iv) The performance of lewd or lascivious acts upon the person of a child under the age of 14, in violation of Section 288.~~

~~(v) Burglary, in violation of subdivision (1) of Section 460, of an inhabited dwelling housing entered by the defendant with an intent to commit grand or petit larceny or rape.~~

~~(4) The defendant has in this or in any prior proceeding been convicted of more than one offense of murder of 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 to be murder of the first or second degree.~~

SEC. 9. Section 190.2 is added to the Penal Code, to read:

190.2. The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in the state prison for life without possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found, in a proceeding under Section 190.4, to be true:

(a) The murder was intentional and was carried out pursuant to agreement by the person who committed the murder to accept a valuable consideration for the act of murder from any person other than the victim;

(b) The defendant was personally present during the commission of the act or acts causing death, and directly committed or physically aided in such act or acts and any of the following additional circumstances exists:

(1) The victim is a peace officer as defined in Section 830.1, subdivision (a), (b), (d), or (e) of Section 830.2, subdivision (a) or (b) of Section 830.3, or subdivision (b) of Section 830.5, who, while engaged in the performance of his duty was intentionally killed, and the defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties.

(2) The murder was willful, deliberate, and

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premeditated and the victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding.

(3) The murder was willful, deliberate, and premeditated and was committed during the commission or attempted commission of any of the following crimes:

(i) Robbery in violation of Section 211;

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

(iii) Rape by force or violence in violation of subdivision (2) of Section 261; or by threat of great and immediate bodily harm in violation of subdivision (3) of Section 261;

(iv) 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;

(v) Burglary in violation of subdivision (1) of Section 460 of an inhabited dwelling house with an intent to commit grand or petit larceny or rape.

(4) The murder was willful, deliberate, and premeditated, and involved the infliction of torture.

(5) The defendant has in this proceeding been convicted of more than one offense of murder of the first or second degree, or has been convicted in a prior proceeding of the offense of murder of 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 to be murder in the first or second degree.

SEC. 10. Section 190.3 of the Penal Code is repealed.

~~190.3. (a) Notwithstanding any other provisions of law, the death penalty shall not be imposed upon any person who was under the age of 18 years at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.~~

~~(b) Except when the trier of facts finds that a murder was committed pursuant to an agreement as defined in subdivision (a) of Section 190.2, or when a person is convicted of a violation of Section 37 or 128, the death~~

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