



CITY OF SACRAMENTO

DEPARTMENT OF POLICE
HALL OF JUSTICE
813 - 6TH STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5121

JOHN P. KEARNS
CHIEF OF POLICE

August 7, 1985

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: REQUEST FOR SUPPORT OF ASSEMBLY BILL 989

SUMMARY

Assemblyman Gary Condit has authored a major death penalty bill, AB 989 (formally AB 1467) which would give the California voters the opportunity next June to overrule recent court decisions and restore substantial strength to the death penalty in California.

BACKGROUND

AB 989 would not only re-enforce the death penalty, but as amended by Assemblyman Condit, would include the following:

1. Add foreign object rape and mayhem to the list of "special circumstances" under which the death penalty could be imposed.
2. Declare that the murder of a witness in a juvenile proceeding constitutes "special circumstances."
3. Declare transferred intent as sufficient grounds for "special circumstances."
4. Allow sentencing of 16 and 17 year olds convicted of "special circumstances" murder to be sentenced either to 35 years to life or to life without the possibility of parole.
5. Allow prosecutors to use defendant's admission of guilt in "special circumstances" determinations.
6. Prohibit a trial judge from striking a jury's findings of "special circumstances."

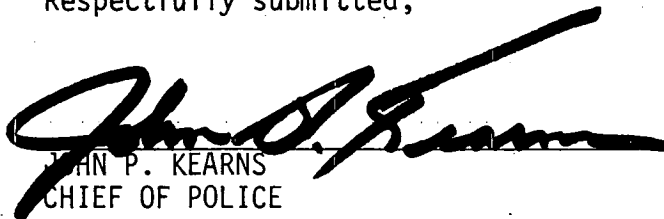
7. Increase the penalty for first degree murder in non-capital cases from 25 years to life to 35 years to life.

AB 989, as amended, will be heard before the Senate Judiciary Committee on August 20, 1985. The California District Attorney's Association, California Peace Officer's Association and the Peace Officer's Research Association along with over 125 other law enforcement and civic organizations and individuals strongly endorse this bill. (see attached) It is important that we join forces with them by supporting legislation that will keep vicious criminals off the street.

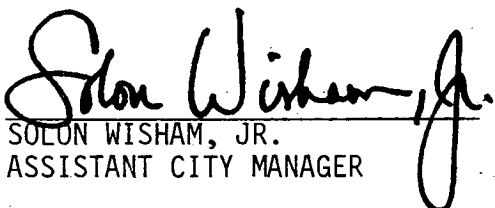
RECOMMENDATION

I request the Law and Legislation Committee's support of this legislation by corresponding with the Senate Judiciary Committee requesting they vote for this bill.

Respectfully submitted,


JOHN P. KEARNS
CHIEF OF POLICE

RECOMMENDATION APPROVED:


SOLON WISHAM, JR.
ASSISTANT CITY MANAGER

JPK:ket
REF: 8-21

Attachment



CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

1130 K STREET, SUITE 200 • SACRAMENTO, CALIFORNIA 95814 • 916/443-2017

OFFICERS

President
MICHAEL D. BRADBURY
Ventura County

First Vice-President
JOHN J. MEEHAN
Alameda County

Second Vice-President
CECIL HICKS
Orange County

Secretary-Treasurer
J. BRUCE ECKERSON
Mariposa County

Sergeant-at-Arms
GROVER C. TRASK II
Riverside County

BOARD OF DIRECTORS

KATHRYN CANLIS
Sacramento County

MAURY EVANS
Orange County

TERRY R. FARMER
Humboldt County

JOHN A. HEWICKER
San Diego County

LEO HIMMELSBACH
Santa Clara County

JEFFREY C. JONAS
Los Angeles County

DENNIS KOTTMEIER
San Bernardino County

WM. McKINSTRY
Alameda County

J. MICHAEL MULLINS
Sonoma County

THOMAS SNEDDON
Santa Barbara County

EXECUTIVE DIRECTOR

GREGORY THOMPSON

July 3, 1985

The Honorable Gary Condit
California State Assembly
State Capitol, Room 2141
Sacramento, California 95814

Dear Assemblyman Condit.

You have posed to the representatives of the California District Attorneys Association, the California Peace Officers Association, PORAC and Los Angeles District Attorney a question: whether AB 989 (formerly AB 1467) relating to the death penalty is a meritorious measure, regardless of whether it contains language requiring the Supreme Court to notify the Governor and the parties to death penalty litigation of the reason for delay in the case (the language of AB 1709 - Wyman). Our collective judgment is that AB 989 and 1709 are independently meritorious.

Assembly Bill 989 addresses important substantive issues of crime and punishment relating to the death penalty. The "notice provision" of AB 1709 relates to procedure -- now the system will procedurally deal with a death penalty conviction.

Assembly Bill 989 addresses significant substantive issues in death penalty cases. Those issues exist and are critical because of decisions of the California Supreme Court. The bill would prohibit a trial court from dismissing a jury's finding of special circumstances; the Supreme Court has said such a dismissal is permissible. The bill would permit a defendant's confession to be used to establish the "special circumstances"; the Supreme Court has said you must have independent evidence. The bill would allow the doctrine of transferred intent to apply in death penalty cases, currently this issue is before an appellate court. The bill would allow 16 or 17 year old murderers, where there are "special circumstances", to be sentenced to life imprisonment without parole in the discretion of the jury and court. Assembly Bill 989 also increases the penalty for first-degree murder from 25 years to life to 35 years to life.

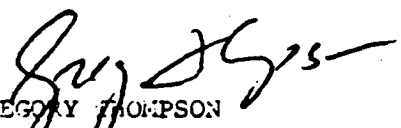
These are important provisions which would add substantially to the strength of our death penalty law. We support them.

The Honorable Gary Condit
July 3, 1985
Page -2-

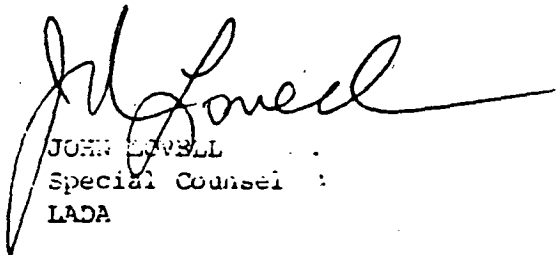
The "notice provision" relating to the handling of these cases on appeal is an important issue as well, since death penalty cases now take an average of over 1,100 days to decide after leaving the trial court and the trend is for greater and greater delay. However, if you choose or the Legislature chooses to treat this issue separately, it does not derogate the importance of AB 989. In our view, the provisions of AB 989 are so important that it merits support on its own terms.

I trust this explains our position relative to this important measure.


Very truly yours.



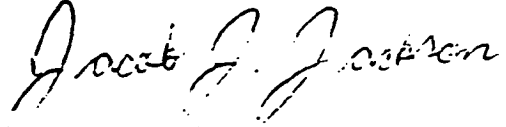
GREGORY THOMPSON
Executive Director
CDRA



JOHN LOVELL
Special Counsel
LADA



AL COOPER
Legislative Representative
CPOA



JACOB J. JACKSON
Legislative Director
PORAC

UPDATED AB 1467 (NOW AB 989) SUPPORT LIST

Ira Reiner, Los Angeles District Attorney

Robert H. Philbosian, California Council on Criminal Justice

Lt. Governor Leo McCarthy

California Chamber of Commerce

County of Los Angeles Board of Supervisors

KTRB-AM

Amador County Sheriff Robert T. Campbell

El Dorado County Sheriff Richard F. Pacileo

Imperial County Sheriff Oren R. Fox

Los Angeles County Sheriff Sherman Block

Mendocino County Sheriff Tim Shea

Merced County Sheriff William C. Amis, Jr.

Monterey County Sheriff Bud Cook

Placer County Sheriff Donald J. Nunes

Plumas County Sheriff Steven D. Wright

Sacramento County Sheriff Robbie Waters

San Bernardino County Sheriff Floyd Tidwell

San Diego County Sheriff John Duffy

San Francisco County Sheriff Cornelius P. Murphy

San Joaquin County Sheriff John Zunino

San Luis Obispo County Sheriff George S. Whiting

San Mateo County Sheriff Brendan P. Maguire

Santa Clara County Sheriff Armand J. Tiano

Shasta County Sheriff James J. Pope

Siskiyou County Sheriff L. E. "Bud" Taylor

Stanislaus County Sheriff Lynn Wood

Sutter County Sheriff Roy D. Whiteaker

Tehama County Sheriff Allen W. Groves

Tuolumne County Sheriff Wallace C. Berry

Ventura County Sheriff John V. Gillespie

California District Attorney's Association

Amador County District Attorney David S. Richmond

Imperial County District Attorney Thomas W. Storey

Merced County District Attorney Pat Hallford

Nevada County District Attorney John A. Darlington

Riverside County District Attorney Grover C. Trask II

San Benito County District Attorney Harry J. Damkar

San Diego County District Attorney Edwin Miller

San Luis Obispo County District Attorney Barry T. La Barbera

Trinity County District Attorney David L. Cross

Ventura County District Attorney Michael D. Bradbury

California Organization of Police & Sheriffs: Al Angela

Legislative Oversight Committee: Alva S. Cooper

California Peace Officers' Assn.

California Police Chiefs' Assn.

California State Sheriffs' Assn.

PORAC-Statewide: Jacob J. Jackson

Peace Officers Research Assn. of California:

Northern Chapter - Dick Butera

Orange County Chapter - Gil Coerper

Law Enforcement Administrators of Amador County: Richard Lockwood

Buena Park Police Assn. Inc: David W. Skaugstad

Colma Police Officers Assn.: Gary T. Brown

Contra Costa County Police Chiefs' Assn.: Russell S. Quinn

Fort Bragg Police Association: Floyd E. Higdon

Gridley Police Officers Association: Gregory A. Ebey

Huntington Beach Police Officers Assn.: Gil Coerper

Los Angeles County Police Chiefs Assn: Donald J. Burnett

Marin Community College Police Officers Assn: John Pell
Mendocino County Deputy Sheriffs Assn: Rick J. Shipley
Menlo Park Police Officers Assn.: John R. Cady
Oceanside Harbor Police: Jon W. Curtis
Police Officers Assn. of Lodi: Rex Hegwar
Sacramento Police Officers Assn.: Richard H. Lucero
San Anselmo Police Officers Assn.: Joseph R. Mendez
San Bernardino County Safety Employees'
Benefit Association: Larry Malmberg
San Clemente Peace Officer's Assn.: Neil J. Murray
San Joaquin County Deputy Sheriff's Assn.: Roy Cash
Santa Cruz County Law Enforcement Chiefs Assn: R.A. Menefee
Santa Rosa Police Officers Assn.: Stan MacIsaac
Sierra County Deputy Sheriffs Assn.: Lee Adams
South San Francisco Police Assn: Kenneth A. Metcalf
Vernon Police Officers Benefit Assn.: Devin Chase
Woodland Prof. Police Employees Assn: Ben Reed
Yreka Police Officers Assn: Robert F. Dunn

Atwater Chief of Police Robert G. Calaway
Azusa Chief of Police Lloyd J. Wood
Beaumont Chief of Police R. L. Justus
Buena Park Chief of Police Robert T. Reben
Ceres Chief of Police Gail W. Peterson
Chino Chief of Police James E. Anthony
Coachella Chief of Police Arnold Jimenez
Colusa Chief of Police Raegene C. Cation
Desert Hot Springs Chief of Police Frank Robles
El Cajon Chief of Police D. R. Sinclair
El Segundo Chief of Police J. Clark Devilbiss

Escondido Chief of Police J. W. Connole
Fontana Chief of Police Ben L. Abernathy
Foster City Chief of Police Robert G. Norman
Glendale Chief of Police David J. Thompson
Gonzales Chief of Police Conrad Aponte, Jr.
Gridley Chief of Police John B. Donnahoe
Hayward Chief of Police C. C. Plummer
Hemet Chief of Police R. Miller
Hughson Chief of Police Lenox G. Etherington
Ione Chief of Police Ramon F. Dreho
Isleton Chief of Police Eugene Byrd
Jackson Chief of Police Richard H. Lockwood
Laguna Beach Chief of Police Neil J. Purcell
La Mesa Chief of Police Don Fach
Livermore Chief of Police Mel Nelson
Lodi Chief of Police Floyd A. Williams
Los Angeles Chief of Police Daryl F. Gates
Los Alamitos Chief of Police Kelson McDaniel
Manteca Chief of Police Leonard B. Taylor
Maywood Chief of Police Ed Lozano
Monterey Park Chief of Police Jon D. Elder
Morro Bay Chief of Police Dave Howell
Newman Chief of Police Tom Engstrom
Oakdale Chief of Police David Sundy
Oceanside Chief of Police Jon Curtis
Orange Chief of Police Wayne V. Streed
Orange Cove Chief of Police George Garcia
Patterson Chief of Police D.E. Braunton
Petaluma Chief of Police Robert Murphy

Placentia Chief of Police H.A. Fischer

Redondo Beach Chief of Police Roger M. Moulton

Roseville Chief of Police James A. Hall

Salinas Chief of Police Fred Ferguson

San Clemente Chief of Police Robert J. McDonell

San Francisco Chief of Police Cornelius P. Murphy

San Juan Bautista Chief of Police Lawrence Hurlbut

Santa Barbara Chief of Police Gerald L. Lowry

Santa Rosa Chief of Police Salvatore Rosano

Suisun City Chief of Police Thomas Alder

Torrance Chief of Police Donald Nash

Turlock Chief of Police John R. Johnson

Twin Cities Chief of Police Phil Green

Watsonville Chief of Police Ray Belgard

Yreka Chief of Police William E. Duncan

AMENDED IN SENATE JULY 10, 1985

AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 989

Introduced by Assembly Member Condit

February 26, 1985

An act to amend ~~Section 987.9~~ Sections 189, 190, 190.1, 190.2, 190.25, 190.3, 190.4, 190.5, 190.6, and 1385 of the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 989, as amended, Condit. Capital cases: defense expenses.

Existing law provides that in the trial of a capital case an indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. If the court approves the application for funds the county may receive reimbursement of those cost from the Controller.

This bill would require the Controller to adopt regulations controlling reimbursements to counties. The regulations would be required to consider compensation for investigators, expert witnesses, and other expenses that may or may not be reimbursable. The Controller would be required to follow the regulations until final approval by the Office of Administrative Law.

Under existing law, there are various statutory and judicially declared provisions defining murder, including felony murder, and relating to the penalty therefor.

This bill would, subject to a vote of the people, enact the Capital Punishment Act of 1985, which would declare

specified legislative policy and would revise applicable special circumstances and other provisions to, among other things, include additional conduct as subject to the death penalty or life imprisonment without possibility of parole, require imposition of life imprisonment without possibility of parole or a term of 35 years to life upon a minor, increase the penalty for first degree murder without special circumstances from 25 years to life to 35 years to life, require the expeditious processing of appeals in capital cases, and prohibit dismissal of special circumstances which have been found by a jury.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 987.9 of the Penal Code is
2 amended to read:

3 987.9. In the trial of a capital case the indigent
4 defendant, through the defendant's counsel, may request
5 the court for funds for the specific payment of
6 investigators, experts, and others for the preparation or
7 presentation of the defense. The application for funds
8 shall be by affidavit and shall specify that the funds are
9 reasonably necessary for the preparation or presentation
10 of the defense. The fact that an application has been
11 made shall be confidential and the contents of the
12 application shall be confidential. Upon receipt of an
13 application, a judge of the court, other than the trial
14 judge presiding over the capital case in question, shall
15 rule on the reasonableness of the request and shall
16 disburse an appropriate amount of money to defendant's
17 attorney. The ruling on the reasonableness of the request
18 shall be made at an in camera hearing. In making the
19 ruling, the court shall be guided by the need to provide
20 a complete and full defense for the defendant.

21 The Controller shall not reimburse any county for costs
22 that exceed Board of Control standards for travel and per
23 diem expenses. The Controller may reimburse
24 extraordinary costs in unusual cases if the county
25 provides sufficient documentation of the need for such

1 expenditures.

2 At the termination of the proceedings, the attorney
3 shall furnish to the court a complete accounting of all
4 moneys received and disbursed pursuant to this section.

5 The Controller shall adopt regulations pursuant to
6 Chapter 3.5 (commencing with Section 11340) of Part 1
7 of Division 3 of Title 2 of the Government Code,
8 controlling reimbursements under this section. The
9 regulations shall consider compensation for investigators,
10 expert witnesses, and other expenses that may or may not
11 be reimbursable pursuant to this section.
12 Notwithstanding the provision of Chapter 3.5
13 (commencing with Section 11340) of Part 1 of Division 3
14 of Title 2 of the Government Code, the Controller shall
15 follow any regulations adopted until final approval by the
16 Office of Administrative Law.

17 SECTION 1. This act shall be known and may be
18 cited as "The Capital Punishment Act of 1985."

19 SEC. 2. The Legislature declares that it is the policy
20 of California to attain the certain disposition of criminal
21 cases so as to provide for the imposition of penalties. It is
22 declared to be the policy of California to take all
23 necessary and constitutional steps in this regard.

24 SEC. 3. Section 189 of the Penal Code is amended to
25 read:

26 189. (a) All A murder which is perpetrated by means
27 of a destructive device or explosive, knowing use of
28 ammunition designed primarily to penetrate metal or
29 armor, poison, lying in wait, torture, or by any other kind
30 of willful, deliberate, and premeditated killing, or which
31 is committed in the perpetration of, or attempt to
32 perpetrate, arson, kidnapping, rape, sodomy, oral
33 copulation, robbery, burglary, mayhem, train wrecking,
34 or any act punishable under Section 288 or 289, is murder
35 of the first degree; and all other kinds of murders are of
36 the second degree.

37 (b) As used in this section, and Section 190.2,
38 "destructive device" shall mean means any destructive
39 device as defined in Section 12301, and "explosive" shall
40 mean means any explosive as defined in Section 12000 of

1 the Health and Safety Code.

2 (c) To prove the killing was "deliberate and
3 premeditated," it shall not be necessary to prove the
4 defendant maturely and meaningfully reflected upon the
5 gravity of his or her act.

6 *SEC. 4. Section 190 of the Penal Code is amended to*
7 *read:*

8 190. Every person guilty of murder in the first degree
9 shall suffer death, confinement in state prison for life
10 without possibility of parole, or confinement in the state
11 prison for a term of ~~25~~ 35 years to life. The penalty to be
12 applied shall be determined as provided in Sections 190.1,
13 190.2, 190.25, 190.3, 190.4, and 190.5.

14 Every person guilty of murder in the second degree
15 shall suffer confinement in the state prison for a term of
16 15 years to life.

17 The provisions of Article 2.5 (commencing with
18 Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal
19 Code shall apply to reduce any minimum term of ~~25~~ 35
20 or 15 years in a state prison imposed pursuant to this
21 section, but ~~such~~ the person shall not otherwise be
22 released on parole prior to ~~such~~ that time.

23 *SEC. 5. Section 190.1 of the Penal Code is amended to*
24 *read:*

25 190.1. A case in which the death penalty may be
26 imposed pursuant to this chapter shall be tried in
27 separate phases as follows:

28 (a) The question of the defendant's guilt shall be first
29 determined. If the trier of fact finds the defendant guilty
30 of first degree murder, it shall at the same time
31 determine the truth of all special circumstances charged
32 as enumerated in Section 190.2 except for a special
33 circumstance charged pursuant to paragraph ~~(2)~~ (1) of
34 subdivision (a) of Section 190.2 where it is alleged that
35 the defendant had been convicted in a prior proceeding
36 of the offense of murder in the first or second degree.

37 (b) If the defendant is found guilty of first degree
38 murder and ~~one of the~~ a special ~~circumstances~~
39 ~~circumstance~~ is charged pursuant to paragraph ~~(2)~~ (1) of
40 subdivision (a) of Section 190.2 which charges that the

1 defendant had been convicted in a prior proceeding of
2 the offense of murder of the first or second degree, there
3 shall thereupon be further proceedings on the question
4 of the truth of such special circumstance.

5 (c) If the defendant is found guilty of first degree
6 murder and one or more special circumstances as
7 enumerated in Section 190.2 has been charged and found
8 to be true, his or her sanity on any plea of not guilty by
9 reason of insanity under Section 1026 shall be determined
10 as provided in Section 190.4. If he or she is found to be
11 sane, there shall thereupon be further proceedings on the
12 question of the penalty to be imposed. Such proceedings
13 shall be conducted in accordance with the provisions of
14 Sections 190.3 and 190.4.

15 *SEC. 6. Section 190.2 of the Penal Code is amended to*
16 *read:*

17 190.2. (a) ~~The~~ Except as provided in Section 190.5,
18 the penalty for a defendant found guilty of murder in the
19 first degree shall be death or confinement in state prison
20 for a term of life without the possibility of parole in any
21 case in which one or more of the following special
22 circumstances has been charged and specially found
23 under Section 190.4, to be true:

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

26 ~~(2)~~
27 (1) The defendant was previously convicted of
28 murder in the first or second degree. For the purpose of
29 this paragraph an offense committed in another
30 jurisdiction which if committed in California would be
31 punishable as first or second degree murder shall be
32 deemed murder in the first or second degree.

33 ~~(3)~~
34 (2) The defendant has ~~in this proceeding~~ been
35 convicted ~~in this proceeding~~ of more than one offense of
36 murder in the first or second degree.

37 ~~(4)~~
38 (3) The murder was committed by means of a
39 destructive device, bomb, or explosive planted, hidden,
40 or concealed in any place, area, dwelling, building, or

1 structure, and the defendant knew or reasonably should
2 have known that his or her act or acts would create a
3 great risk of death to a human being or human beings.

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

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

15 ~~(7)~~
16 (5) The victim was a peace officer as defined in
17 Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4,
18 830.5, 830.5a, 830.6, 830.10, 830.11, or 830.12, who, while
19 engaged in the course of the performance of his or her
20 duties was intentionally killed, and ~~such the~~ defendant
21 knew or reasonably should have known that ~~such the~~
22 victim was a peace officer engaged in the performance of
23 his or her duties; or the victim was a peace officer as
24 defined in the above enumerated sections of the Penal
25 Code, or a former peace officer under any of ~~such those~~
26 sections, and was intentionally killed in retaliation for the
27 performance of his or her official duties.

28 ~~(8)~~
29 (6) The victim was a federal law enforcement officer
30 or agent, who, while engaged in the course of the
31 performance of his or her duties was intentionally killed,
32 and ~~such the~~ defendant knew or reasonably should have
33 known that ~~such the~~ victim was a federal law
34 enforcement officer or agent, engaged in the
35 performance of his or her duties; or the victim was a
36 federal law enforcement officer or agent, and was
37 intentionally killed in retaliation for the performance of
38 his or her official duties.

39 ~~(9)~~
40 (7) The victim was a fireman as defined in Section

1 245.1, who, while engaged in the course of the
2 performance of his or her duties was intentionally killed
3 and ~~such the~~ defendant knew or reasonably should have
4 known that ~~such the~~ victim was a fireman engaged in the
5 performance of his or her duties.

6 ~~(10)~~
7 (8) The victim was a witness to a crime who was
8 intentionally killed for the purpose of preventing his or
9 her testimony in ~~any~~ a juvenile or criminal proceeding
10 and the killing was not committed during the
11 commission, or attempted commission ~~or~~ of the crime to
12 which he or she was a witness; or the victim was a witness
13 to a crime and was intentionally killed in retaliation for
14 his or her testimony in any juvenile or criminal
15 proceeding.

16 ~~(11)~~
17 (9) The victim was a prosecutor or assistant
18 prosecutor or a former prosecutor or assistant prosecutor
19 of any local or state prosecutor's office in this state or any
20 other state, or a federal prosecutor's office, and the
21 murder was carried out in retaliation for or to prevent the
22 performance of the victim's official duties.

23 ~~(12)~~
24 (10) The victim was a judge or former judge of any
25 court of record in the local, state, or federal system in the
26 State of California or in any other state or place in the
27 United States and the murder was carried out
28 in retaliation for, or to prevent the performance of, the
29 victim's official duties.

30 ~~(13)~~
31 (11) The victim was an elected or appointed official
32 or former official of the ~~Federal Government~~ federal
33 government, a local or State state government of
34 California, or of any local or state government of any
35 other state in the United States and the killing murder
36 was ~~intentionally~~ carried out in retaliation for, or
37 to prevent the performance of, the victim's official duties.

38 ~~(14) The murder was especially heinous, atrocious,~~
39 ~~eruel, manifesting exceptional depravity, as utilized~~
40 ~~this section, the phrase especially heinous, atrocious,~~

AMENDED IN SENATE JULY 10, 1985
AMENDED IN ASSEMBLY APRIL 15, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 989

Introduced by Assembly Member Condit

February 26, 1985

An act to amend ~~Section 987.9~~ Sections 189, 190, 190.1, 190.2, 190.25, 190.3, 190.4, 190.5, 190.6, and 1385 of the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 989, as amended, Condit. Capital cases: defense expenses.

Existing law provides that in the trial of a capital case an indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. If the court approves the application for funds the county may receive reimbursement of those cost from the Controller.

This bill would require the Controller to adopt regulations controlling reimbursements to counties. The regulations would be required to consider compensation for investigators, expert witnesses, and other expenses that may or may not be reimbursable. The Controller would be required to follow the regulations until final approval by the Office of Administrative Law.

Under existing law, there are various statutory and judicially declared provisions defining murder, including felony murder, and relating to the penalty therefor.

This bill would, subject to a vote of the people, enact the Capital Punishment Act of 1985, which would declare

specified legislative policy and would revise applicable special circumstances and other provisions to, among other things, include additional conduct as subject to the death penalty or life imprisonment without possibility of parole, require imposition of life imprisonment without possibility of parole or a term of 35 years to life upon a minor, increase the penalty for first degree murder without special circumstances from 25 years to life to 35 years to life, require the expeditious processing of appeals in capital cases, and prohibit dismissal of special circumstances which have been found by a jury.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 **SECTION 1.** Section 987.9 of the Penal Code is
2 amended to read:

3 987.9. In the trial of a capital case the indigent
4 defendant, through the defendant's counsel, may request
5 the court for funds for the specific payment
6 investigators, experts, and others for the preparation or
7 presentation of the defense. The application for funds
8 shall be by affidavit and shall specify that the funds are
9 reasonably necessary for the preparation or presentation
10 of the defense. The fact that an application has been
11 made shall be confidential and the contents of the
12 application shall be confidential. Upon receipt of an
13 application, a judge of the court, other than the trial
14 judge presiding over the capital case in question, shall
15 rule on the reasonableness of the request and shall
16 disburse an appropriate amount of money to defendant's
17 attorney. The ruling on the reasonableness of the request
18 shall be made at an in camera hearing. In making the
19 ruling, the court shall be guided by the need to provide
20 a complete and full defense for the defendant.

21 The Controller shall not reimburse any county for costs
22 that exceed Board of Control standards for travel and per
23 diem expenses. The Controller may reimburse
24 extraordinary costs in unusual cases if the county
25 provides sufficient documentation of the need for such

1 defendant had been convicted in a prior proceeding of
2 the offense of murder of the first or second degree, there
3 shall thereupon be further proceedings on the question
4 of the truth of such special circumstance.

5 (c) If the defendant is found guilty of first degree
6 murder and one or more special circumstances as
7 enumerated in Section 190.2 has been charged and found
8 to be true, his or her sanity on any plea of not guilty by
9 reason of insanity under Section 1026 shall be determined
10 as provided in Section 190.4. If he or she is found to be
11 sane, there shall thereupon be further proceedings on the
12 question of the penalty to be imposed. Such proceedings
13 shall be conducted in accordance with the provisions of
14 Sections 190.3 and 190.4.

15 *SEC. 6. Section 190.2 of the Penal Code is amended to*
16 *read:*

17 190.2. (a) *The Except as provided in Section 190.5,*
18 *the* penalty for a defendant found guilty of murder in the
19 first degree shall be death or confinement in state prison
20 for a term of life without the possibility of parole in any
21 case in which one or more of the following special
22 circumstances has been charged and specially found
23 under Section 190.4; to be true:

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

26 ~~(2)~~
27 (1) The defendant was previously convicted of
28 murder in the first or second degree. For the purpose of
29 this paragraph an offense committed in another
30 jurisdiction which if committed in California would be
31 punishable as first or second degree murder shall be
32 deemed murder in the first or second degree.

33 ~~(3)~~
34 (2) The defendant has in this proceeding been
35 convicted in this proceeding of more than one offense of
36 murder in the first or second degree.

37 ~~(4)~~
38 (3) The murder was committed by means of a
39 destructive device, bomb, or explosive planted, hidden,
40 or concealed in any place, area, dwelling, building, or

1 structure, and the defendant knew or reasonably should
2 have known that his or her act or acts would create a
3 great risk of death to a human being or human beings.

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

7 ~~(6)~~

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

15 ~~(7)~~

16 (5) The victim was a peace officer as defined in
17 Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4,
18 830.5, 830.5a, 830.6, 830.10, 830.11, or 830.12, who, while
19 engaged in the course of the performance of his or her
20 duties was intentionally killed, and ~~such the~~ defendant
21 knew or reasonably should have known that ~~such the~~
22 victim was a peace officer engaged in the performance of
23 his or her duties; or the victim was a peace officer as
24 defined in the above enumerated sections of the Penal
25 Code, or a former peace officer under any of ~~such those~~
26 sections, and was intentionally killed in retaliation for the
27 performance of his or her official duties.

28 ~~(8)~~

29 (6) The victim was a federal law enforcement officer
30 or agent, who, while engaged in the course of the
31 performance of his or her duties was intentionally killed,
32 and ~~such the~~ defendant knew or reasonably should have
33 known that ~~such the~~ victim was a federal law
34 enforcement officer or agent, engaged in the
35 performance of his or her duties; or the victim was a
36 federal law enforcement officer or agent, and was
37 intentionally killed in retaliation for the performance of
38 his or her official duties.

39 ~~(9)~~

40 (7) The victim was a fireman as defined in Section

1 expenditures.

2 At the termination of the proceedings, the attorney
3 shall furnish to the court a complete accounting of all
4 moneys received and disbursed pursuant to this section.

5 The Controller shall adopt regulations pursuant to
6 Chapter 3.5 (commencing with Section 11340) of Part 1
7 of Division 3 of Title 2 of the Government Code,
8 controlling reimbursements under this section. The
9 regulations shall consider compensation for investigators,
10 expert witnesses, and other expenses that may or may not
11 be reimbursable pursuant to this section.
12 Notwithstanding the provision of Chapter 2.5
13 (commencing with Section 11340) of Part 1 of Division 3
14 of Title 2 of the Government Code, the Controller shall
15 follow any regulations adopted until final approval by the
16 Office of Administrative Law.

17 *SECTION 1. This act shall be known and may be*
18 *cited as "The Capital Punishment Act of 1985."*

19 *SEC. 2. The Legislature declares that it is the policy*
20 *of California to attain the certain disposition of criminal*
21 *cases so as to provide for the imposition of penalties. It is*
22 *declared to be the policy of California to take all*
23 *necessary and constitutional steps in this regard.*

24 *SEC. 3. Section 189 of the Penal Code is amended to*
25 *read:*

26 189. (a) All A murder which is perpetrated by means
27 of a destructive device or explosive, knowing use of
28 ammunition designed primarily to penetrate metal or
29 armor, poison, lying in wait, torture, or by any other kind
30 of willful, deliberate, and premeditated killing, or which
31 is committed in the perpetration of, or attempt to
32 perpetrate, arson, kidnapping, rape, sodomy, oral
33 copulation, robbery, burglary, mayhem, train wrecking,
34 or any act punishable under Section 288 or 289, is murder
35 of the first degree; and all other kinds of murders are of
36 the second degree.

37 (b) As used in this section; and Section 190.2,
38 "destructive device" shall mean means any destructive
39 device as defined in Section 12301, and "explosive" shall
40 mean means any explosive as defined in Section 12000 of

1 the Health and Safety Code.

2 (c) To prove the killing was "deliberate and
3 premeditated," it shall not be necessary to prove the
4 defendant maturely and meaningfully reflected upon the
5 gravity of his or her act.

6 *SEC. 4. Section 190 of the Penal Code is amended to*
7 *read:*

8 190. Every person guilty of murder in the first degree
9 shall suffer death, confinement in state prison for life
10 without possibility of parole, or confinement in the state
11 prison for a term of ~~25~~ 35 years to life. The penalty to be
12 applied shall be determined as provided in Sections 190.1,
13 190.2, 190.25, 190.3, 190.4, and 190.5.

14 Every person guilty of murder in the second degree
15 shall suffer confinement in the state prison for a term of
16 15 years to life.

17 The provisions of Article 2.5 (commencing with
18 Section 2930) of Chapter 7 of Title 1 of Part 3 of the Pen-
19 al Code shall apply to reduce any minimum term of ~~5~~ 35
20 or 15 years in a state prison imposed pursuant to this
21 section, but such the person shall not otherwise be
22 released on parole prior to such that time.

23 *SEC. 5. Section 190.1 of the Penal Code is amended to*
24 *read:*

25 190.1. A case in which the death penalty may be
26 imposed pursuant to this chapter shall be tried in
27 separate phases as follows:

28 (a) The question of the defendant's guilt shall be first
29 determined. If the trier of fact finds the defendant guilty
30 of first degree murder, it shall at the same time
31 determine the truth of all special circumstances charged
32 as enumerated in Section 190.2 except for a special
33 circumstance charged pursuant to paragraph (2) (1) of
34 subdivision (a) of Section 190.2 where it is alleged that
35 the defendant had been convicted in a prior proceeding
36 of the offense of murder in the first or second degree.

37 (b) If the defendant is found guilty of first degree
38 murder and one of the a special circumstances
39 circumstance is charged pursuant to paragraph (2) (1) of
40 subdivision (a) of Section 190.2 which charges that the

1 245.1, who, while engaged in the course of the
2 performance of his *or her* duties was intentionally killed,
3 and ~~such~~ *the* defendant knew or reasonably should have
4 known that ~~such~~ *the* victim was a fireman engaged in the
5 performance of his *or her* duties.

6 ~~(10)~~

7 (8) The victim was a witness to a crime who was
8 intentionally killed for the purpose of preventing his *or*
9 *her* testimony in ~~any~~ *a juvenile or* criminal proceeding,
10 and the killing was not committed during the
11 commission, or attempted commission ~~or~~ of the crime to
12 which he *or she* was a witness; or the victim was a witness
13 to a crime and was intentionally killed in retaliation for
14 his *or her* testimony in any *juvenile or* criminal
15 proceeding.

16 ~~(11)~~

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

23 ~~(12)~~

24 (10) The victim was a judge or former judge of any
25 court of record in the local, state, or federal system in the
26 State of California or in any other state *or place* in the
27 United States and the murder was carried out in
28 retaliation for, or to prevent the performance of, the
29 victim's official duties.

30 ~~(13)~~

31 (11) The victim was an elected or appointed official
32 or former official of the ~~Federal Government~~ *federal*
33 *government*, a local or ~~State~~ *state* government of
34 California, or of any local or state government of any
35 other state in the United States and the ~~killing~~ *murder*
36 was ~~intentionally~~ carried out in retaliation for, or to
37 prevent the performance of, the victim's official duties.

38 ~~(14)~~ The murder was especially heinous, atrocious, or
39 ~~cruel~~, manifesting exceptional depravity, as utilized in
40 this section; the phrase especially heinous, atrocious or

1 cruel manifesting exceptional depravity means a
2 conscienceless, or pitiless crime which is unnecessarily
3 torturous to the victim.

4 (12) The victim was intentionally killed for financial
5 gain.

6 ~~(15)~~

7 (13) The defendant intentionally killed the victim
8 while lying in wait.

9 ~~(16)~~

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

13 (15) The murder was intentional and involved the
14 infliction of torture. For the purpose of this section,
15 torture requires proof of the infliction of extreme
16 physical pain no matter how long its duration.

17 (16) The defendant intentionally killed the victim by
18 the administration of poison.

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

24 (i) Robbery in violation of Section 211.

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

26 (iii) Rape in violation of Section 261.

27 (iv) Sodomy in violation of Section 286.

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

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

32 (vii) Penetration of a genital or anal opening in
33 violation of Section 289.

34 (viii) Burglary in the first or second degree in
35 violation of Section 460.

36 ~~(viii)~~

37 (ix) Arson in violation of Section 447.

38 ~~(ix)~~

39 (x) Train wrecking in violation of Section 219.

40 (xi) Mayhem in violation of Section 203.

1 (18) The murder was intentional and involved the
2 infliction of torture. For the purpose of this section
3 torture requires proof of the infliction of extreme
4 physical pain no matter how long its duration.

5 (19) The defendant intentionally killed the victim by
6 the administration of poison. The murder was
7 intentionally committed for the purpose of avoiding or
8 preventing a lawful arrest or to perfect, or attempt to
9 perfect, an escape from lawful custody.

10 (b) Every person whether or not the actual killer
11 found guilty of intentionally aiding, abetting, counseling,
12 commanding, inducing, soliciting, requesting, or assisting
13 any actor in the commission of murder in the first degree
14 shall suffer death or confinement in state prison for a
15 term of life without the possibility of parole, in any case
16 in which one or more of the special circumstances
17 enumerated in paragraphs (1), (2), (3), (4), (5), (6), (7), (8),
18 (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or
19 (19) to (18), inclusive, of subdivision (a) of this section
20 has been charged and specially found under Section 190.4
21 to be true.

22 The penalty shall be determined as provided in
23 Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

24 (c) Where there has been an attempt to kill a person
25 described or referred to in any paragraph of subdivision
26 (a), but by mistake or inadvertence another person has
27 instead been killed, the decedent shall be deemed to be
28 the victim within the scope of that paragraph.

29 SEC. 7. Section 190.25 of the Penal Code is amended
30 to read:

31 190.25. (a) The penalty for a defendant found guilty
32 of murder in the first degree shall be confinement in state
33 prison for a term of life without the possibility of parole
34 in any case in which any of the following special
35 circumstances has been charged and specially found
36 under Section 190.4, to be true: the victim was the
37 operator or driver of a bus, taxicab, streetcar, cable car,
38 trackless trolley, or other motor vehicle operated on land,
39 including a vehicle operated on stationary rails or on a
40 track or rail suspended in the air, used for the

1 transportation of persons for hire, or the victim was a
2 station agent or ticket agent for the entity providing such
3 transportation, who, while engaged in the course of the
4 performance of his or her duties was intentionally killed,
5 and such defendant knew or reasonably should have
6 known that such victim was the operator or driver of a
7 bus, taxicab, streetcar, cable car, trackless trolley, or other
8 motor vehicle operated on land, including a vehicle
9 operated on stationary rails or on a track or rail
10 suspended in the air, used for the transportation of
11 persons for hire, or was a station agent or ticket agent for
12 the entity providing such transportation, engaged in the
13 performance of his or her duties.

14 (b) Every person whether or not the actual killer
15 found guilty of intentionally aiding, abetting, counseling,
16 commanding, inducing, soliciting, requesting, or assisting
17 any actor in the commission of murder in the first degree
18 shall suffer confinement in state prison for a term of life
19 without the possibility of parole, in any case in which one
20 or more of the special circumstances enumerated in
21 subdivision (a) has been charged and specially found
22 under Section 190.4 to be true.

23 (c) *Where there has been an attempt to kill a person*
24 *described or referred to in subdivision (a), but by*
25 *mistake or inadvertence another person has instead been*
26 *killed, the decedent shall be deemed to be the victim*
27 *within the scope of subdivision (a).*

28 (d) Nothing in this section shall be construed to
29 prohibit the charging or finding of any special
30 circumstance pursuant to Sections 190.1, 190.2, 190.3,
31 190.4, and 190.5.

32 *SEC. 8. Section 190.3 of the Penal Code is amended to*
33 *read:*

34 190.3. If the defendant has been found guilty of
35 murder in the first degree, and a special circumstance has
36 been charged and found to be true, or if the defendant
37 may be subject to the death penalty after having been
38 found guilty of violating subdivision (a) of Section 1672 of
39 the Military and Veterans Code or Section 37, 128, 219, or
40 4500 of this code, the trier of fact shall determine whether

1 the penalty shall be death or confinement in state prison
2 for a term of life without the possibility of parole. In the
3 proceedings on the question of penalty, evidence may be
4 presented by both the people and the defendant as to any
5 matter relevant to aggravation, mitigation, and sentence
6 including, but not limited to, the nature and
7 circumstances of the present offense, any prior felony
8 conviction or convictions whether or not such conviction
9 or convictions involved a crime of violence, the presence
10 or absence of other criminal activity by the defendant
11 which involved the use or attempted use of force or
12 violence or which involved the express or implied threat
13 to use force or violence, and the defendant's character,
14 background, history, mental condition and physical
15 condition.

16 However, no evidence shall be admitted regarding
17 other criminal activity by the defendant which did not
18 involve the use or attempted use of force or violence or
19 which did not involve the express or implied threat to use
20 force or violence. As used in this section, criminal activity
21 does not require a conviction.

22 However, in no event shall evidence of prior criminal
23 activity be admitted for an offense for which the
24 defendant was prosecuted and acquitted. The restriction
25 on the use of this evidence is intended to apply only to
26 proceedings pursuant to this section and is not intended
27 to affect statutory or decisional law allowing such
28 evidence to be used in any other proceedings.

29 Except for evidence in proof of the offense or special
30 circumstances which subject a defendant to the death
31 penalty, no evidence may be presented by the
32 prosecution in aggravation unless notice of the evidence
33 to be introduced has been given to the defendant within
34 a reasonable period of time as determined by the court,
35 prior to trial. Evidence may be introduced without such
36 notice in rebuttal to evidence introduced by the
37 defendant in mitigation.

38 The trier of fact shall be instructed that a sentence of
39 confinement to state prison for a term of life without the
40 possibility of parole may ~~the in~~ in the future after

1 sentence is imposed, be commuted or modified to a
2 sentence that includes the possibility of parole by the
3 Governor of the State of California.

4 In determining the penalty, the trier of fact shall take
5 into account any of the following factors if relevant:

6 (a) The circumstances of the crime of which the
7 defendant was convicted in the present proceeding and
8 the existence of any special circumstances found to be
9 true pursuant to Section 190.1.

10 (b) The presence or absence of criminal activity by
11 the defendant which involved the use or attempted use
12 of force or violence or the express or implied threat to use
13 force or violence.

14 (c) The presence or absence of any prior felony
15 conviction.

16 (d) Whether or not the offense was committed while
17 the defendant was under the influence of extreme
18 mental or emotional disturbance.

19 (e) Whether or not the victim was a participant in the
20 defendant's homicidal conduct or consented to the
21 homicidal act.

22 (f) Whether or not the offense was committed under
23 circumstances which the defendant reasonably believed
24 to be a moral justification or extenuation for his or her
25 conduct.

26 (g) Whether or not defendant acted under extreme
27 duress or under the substantial domination of another
28 person.

29 (h) Whether or not at the time of the offense the
30 capacity of the defendant to appreciate the criminality of
31 his or her conduct or to conform his conduct to the
32 requirements of law was impaired as a result of mental
33 disease or defect, or the affects effects of intoxication.

34 (i) The age of the defendant at the time of the crime.

35 (j) Whether or not the defendant was an accomplice
36 to the offense and his or her participation in the
37 commission of the offense was relatively minor.

38 (k) Any other circumstance which extenuates the
39 gravity of the crime even though it is not a legal excuse
40 for the crime, or evidence of the defendant's background

1 or character, whether or not offered by him or her, which
2 can serve as a basis for a sentence less than death.

3 After having heard and received all of the evidence,
4 and after having heard and considered the arguments of
5 counsel, the trier of fact shall consider, take into account
6 and be guided by the aggravating and mitigating
7 circumstances referred to in this section, and shall impose
8 a sentence of death if the trier of fact concludes that the
9 aggravating circumstances outweigh the mitigating
10 circumstances. If the trier of fact determines that the
11 mitigating circumstances outweigh the aggravating
12 circumstances the trier of fact shall impose a sentence of
13 confinement in state prison for a term of life without the
14 possibility of parole.

15 *SEC. 9. Section 190.4 of the Penal Code is amended to*
16 *read:*

17 190.4. (a) Whenever special circumstances as
18 enumerated in Section 190.2 are alleged and the trier of
19 fact finds the defendant guilty of first degree murder, the
20 trier of fact shall also make a special finding on the truth
21 of each alleged special circumstance. The determination
22 of the truth of any or all of the special circumstances shall
23 be made by the trier of fact on the evidence presented
24 at the trial or at the hearing held pursuant to subdivision
25 (b) of Section 190.1.

26 In case of a reasonable doubt as to whether a special
27 circumstance is true, the defendant is entitled to a finding
28 that it is not true. The trier of fact shall make a special
29 finding that each special circumstance charged is either
30 true or not true. Whenever a special circumstance
31 requires proof of the commission or attempted
32 commission of a crime, ~~such~~ the crime shall be charged
33 and proved pursuant to the general law applying to the
34 trial and conviction of the crime. *However, the corpus*
35 *delicti of a felony-based special circumstance need not be*
36 *proved independently of the defendant's extrajudicial*
37 *statements.*

38 If the defendant was convicted by the court sitting
39 without a jury, the trier of fact shall be a jury unless a jury
40 is waived by the defendant and by the people, in which

1 case the trier of fact shall be the court. If the defendant
2 was convicted by a plea of guilty, the trier of fact shall be
3 a jury unless a jury is waived by the defendant and by the
4 people.

5 If the trier of fact finds that any one or more of the
6 special circumstances enumerated in Section 190.2 as
7 charged is true, there shall be a separate penalty hearing,
8 and neither the finding that any of the remaining special
9 circumstances charged is not true, nor if the trier of fact
10 is a jury, the inability of the jury to agree on the issue of
11 the truth or untruth of any of the remaining special
12 circumstances charged, shall prevent the holding of a
13 separate penalty hearing.

14 In any case in which the defendant has been found
15 guilty by a jury, and the jury has been unable to reach ~~an~~
16 a unanimous verdict that one or more of the special
17 circumstances charged are true, and does not reach a
18 unanimous verdict that all the special circumstances
19 charged are not true, the court shall dismiss the jury and
20 shall order a new jury impaneled to try the issues, but the
21 issue of guilt shall not be tried by ~~such~~ the jury, nor shall
22 ~~such~~ the jury retry the issue of the truth of any of the
23 special circumstances which were found by ~~an~~ a
24 unanimous verdict of the previous jury to be untrue. If
25 ~~such~~ the new jury is unable to reach the unanimous
26 verdict that one or more of the special circumstances it
27 is trying are true, the court shall dismiss the jury and in
28 the court's discretion shall either order a new jury
29 impaneled to try the issues the previous jury was unable
30 to reach the unanimous verdict on, or impose a
31 punishment of confinement in state prison for a term of
32 ~~35 25~~ years to life.

33 (b) If the defendant was convicted by the court sitting
34 without a jury, the trier of fact at the penalty hearing
35 shall be a jury unless a jury is waived by the defendant
36 and the people, in which case the trier of fact shall be the
37 court. If the defendant was convicted by a plea of guilty,
38 the trier of fact shall be a jury unless a jury is waived by
39 the defendant and the people.

40 If the trier of fact is a jury and has been unable to reach

1 a unanimous verdict as to what the penalty shall be, the
2 court shall dismiss the jury and shall order a new jury
3 impaneled to try the issue as to what the penalty shall be.
4 If ~~the such~~ new jury is unable to reach a unanimous
5 verdict as to what the penalty shall be, the court in its
6 discretion shall either order a new jury or impose a
7 punishment of confinement in state prison for a term of
8 life without the possibility of parole.

9 (c) If the trier of fact which convicted the defendant
10 of a crime for which he may be subject to the death
11 penalty was a jury, the same jury shall consider any plea
12 of not guilty by reason of insanity pursuant to Section
13 1026, the truth of any special circumstances which may be
14 alleged, and the penalty to be applied, unless for good
15 cause shown the court discharges that jury in which case
16 a new jury shall be drawn. The court shall state facts in
17 support of the finding of good cause upon the record and
18 cause them to be entered into the minutes.

19 (d) In any case in which the defendant may be subject
20 to the death penalty, evidence presented at any prior
21 phase of the trial, including any proceeding under a plea
22 of not guilty by reason of insanity pursuant to Section
23 1026 shall be considered ~~an~~ in any subsequent phase of
24 the trial, if the trier of fact of the prior phase is the same
25 trier of fact at the subsequent phase.

26 (e) In every case in which the trier of fact has
27 returned a verdict or finding imposing the death penalty,
28 the defendant shall be deemed to have made an
29 application for modification of the verdict or finding
30 pursuant to ~~subdivision 7~~ subdivision (7) of Section 1181.
31 In ruling on the application, the judge shall review the
32 evidence, consider, take into account, and be guided by
33 the aggravating and mitigating circumstances referred to
34 in Section 190.3, and shall make a determination as to
35 whether the jury's findings and verdicts that the
36 aggravating circumstances outweigh the mitigating
37 circumstances are contrary to law or the evidence
38 presented. The judge shall state on the record the reasons
39 for his or her findings.

40 The judge shall set forth the reasons for his or her

1 ruling on the application and direct that they be entered
2 on the Clerk's clerk's minutes. The denial of the
3 modification of the death penalty verdict pursuant to
4 subdivision (7) of Section 1181 shall be reviewed on the
5 defendant's automatic appeal pursuant to subdivision (b)
6 of Section 1239. The granting of the application shall be
7 reviewed on the People's people's appeal pursuant to
8 paragraph (6) of Section 1238.

9 SEC. 10. Section 190.5 of the Penal Code is amended
10 to read:

11 190.5. (a) Notwithstanding any other provision of
12 law, the death penalty shall not be imposed upon any
13 person who was under the age of 18 at the time of the
14 commission of the crime. The burden of proof as to the
15 age of such person shall be upon the defendant.

16 (b) The penalty for a defendant found guilty of
17 murder in the first degree, in any case in which one or
18 more special circumstances enumerated in Sections 190.2
19 and 190.25 has been charged and specially found under
20 Section 190.4 to be true, who was under the age of 18
21 years at the time of the commission of the crime, shall be
22 confinement in the state prison for life without the
23 possibility of parole or for a term of 35 years to life.

24 (c) The trier of fact shall determine the existence of a
25 special circumstance and the penalty for the defendant
26 pursuant to the procedures set forth in Sections 190.3 and
27 190.4. For the purposes of following those procedures, the
28 court shall consider the penalty of imprisonment for life
29 without the possibility of parole to be the procedural
30 equivalent of the death penalty, and the penalty of
31 imprisonment for a term of 35 years to life to be the
32 procedural equivalent of imprisonment for life without
33 the possibility of parole.

34 SEC. 11. Section 190.6 of the Penal Code is amended
35 to read:

36 190.6. The Legislature finds that the imposition of
37 sentence in all capital cases should be expeditiously
38 carried out.

39 Therefore, in all cases in which a sentence of death has
40 been imposed, the appeal to the State Supreme Court

1 must *be expeditiously processed and* be decided and an
2 opinion reaching the merits must be filed within 150 days
3 of certification of the entire record by the sentencing
4 court. In any case in which this time requirement is not
5 met, the Chief Justice of the Supreme Court shall state on
6 the record the extraordinary and compelling
7 circumstances causing the delay and the facts supporting
8 these circumstances. A failure to comply with the time
9 requirements of this section shall not be grounds for
10 precluding the ultimate imposition of the death penalty.

11 *SEC. 12. Section 1385 of the Penal Code is amended*
12 *to read:*

13 1385. The judge or magistrate may, either of its own
14 motion or upon the application of the prosecuting
15 attorney, and in furtherance of justice, order an action to
16 be dismissed. The reasons of the dismissal must be set
17 forth in an order entered upon the minutes. No dismissal
18 shall be made for any cause which would be ground of
19 demurrer to the accusatory pleading. *This section does*
20 *not authorize a judge to strike or dismiss any special*
21 *circumstance found by a jury as provided in Sections*
22 *190.1 to 190.5, inclusive.*

23 *SEC. 13. If any provision of this act or the application*
24 *thereof to any person or circumstances is held invalid,*
25 *that invalidity shall not affect other provisions or*
26 *applications of the act which can be given effect without*
27 *the invalid provision or application, and to this end the*
28 *provisions of this act are severable.*

29 *If any provision of this act or the application thereof to*
30 *any person or circumstance is, or already has been, held*
31 *invalid upon the ground that it makes it possible for the*
32 *defendant to be liable to the death penalty in violation of*
33 *the Constitution of the United States or that of this state,*
34 *that provision or application thereof, otherwise valid,*
35 *shall nevertheless be deemed valid insofar as it makes it*
36 *possible for the defendant to be liable to life*
37 *imprisonment without the possibility of parole unless*
38 *otherwise provided herein.*

39 *SEC. 14. Sections 4, 5, 6, 8, 9, and 10 of this act shall*
40 *become effective only when submitted to and approved*

1 by the electors, pursuant to subdivision (c) of Section 10
2 of Article II of the State Constitution.