



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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October 21, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum #11094

TO: All County Clerks/Registrars of Voters and Proponent

FROM:


Katherine Montgomery
Initiative Program Manager

RE: Initiative: 1512, Related to the Death Penalty

Pursuant to Elections Code section 9004 (c), we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**DEATH PENALTY REPEAL.
INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Jeanne Woodford
c/o James C. Harrison
Remcho, Johansen, and Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577

(510) 346-6200

#1512

**DEATH PENALTY REPEAL.
INITIATIVE STATUTE.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 504,760
California Constitution, Article II, Section 8(b)
2. Official Summary Date: Thursday, 10/20/11
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (Elections Code § 336) Thursday, 10/20/11
 - b. Last day Proponent can circulate and file with the county.
All sections are to be filed at the same time within each
county. (Elections Codes §§ 9014, 9030(a))..... Monday, 03/19/12*
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (Elections Code § 9030(b)).....Thursday, 03/29/12

(If the Proponent files the petition with the county on a date prior to
03/19/12, the county has eight working days from the filing of the petition
to determine the total number of signatures affixed to the petition and to
transmit the total to the Secretary of State) (Elections Code § 9030(b).)
 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures
and notifies the counties.....Saturday, 04/07/12**
 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(Elections Code §§ 9030(d)(e)).....Friday, 05/18/12

* Date adjusted for official deadline, which falls on a weekend (Elec. Code § 15).

** Date varies based on the date of county receipt.

INITIATIVE #1512
Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 04/07/12, the last day is no later than the thirtieth working day after the county's receipt of notification). (Elections Code §§ 9030(d)(e).)

- f. If the signature count is more than 555,236 or less than 479,522 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 479,522 and 555,236 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures (EC §9030(f)(g); 9031(a)) Monday, 05/28/12*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (Elections Code §§ 9031(b)(c)) Tuesday, 07/10/12

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 05/28/12, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elections Code §§ 9031(b)(c).)

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (Elections Code §§ 9031(d), 9033)... Saturday, 07/14/12*

*Date varies based on the date of county receipt.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code § 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal.App.3d 825, 177 Cal.Rptr. 621; 63 Ops.Cal.Atty.Gen. 37 (1980).
- Please refer to Elections Code §§ 100, 101, 104, 9008, 9009, 9013, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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E-Mail: Dawn.McFarland@doj.ca.gov

October 20, 2011

The Honorable Debra Bowen
Secretary of State
Office of the Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814

Attention: Ms. Katherine Montgomery
Elections Analyst

Dear Secretary Bowen:

Pursuant to Elections Code section 9004, you are hereby notified that on this day we sent our title and summary for the following proposed initiative to the proponent:

- 11-0035, "The Savings, Accountability and Full Enforcement for California Act"

A copy of that title and summary and text of the proposed initiative is enclosed. Please contact me if you have questions.

Sincerely,

DAWN L. MCFARLAND
Acting Initiative Coordinator

For KAMALA D. HARRIS
Attorney General

DLM:

cc: James C. Harrison, Remcho, Johansen & Purcell

FILED
In the office of the Secretary of State
of the State of California

OCT 20 2011

VIA
EMAIL
4:58pm

Debra Bowen, Secretary of State
By Deputy Secretary of State

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

DEATH PENALTY REPEAL. INITIATIVE STATUTE. Repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without possibility of parole. Applies retroactively to persons already sentenced to death.

Requires persons found guilty of murder to work while in prison, with their wages to be applied to any victim restitution fines or orders against them. Creates \$100 million fund to be distributed to law enforcement agencies to help solve more homicide and rape cases. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:

Net savings to the state and counties that could amount to the high tens of millions of dollars annually on a statewide basis due to the elimination of the death penalty. One-time state costs totaling \$100 million from 2012-13 through 2015-16 to provide funding to local law enforcement agencies. (11-0035.)

11 0035

RECEIVED

AUG 29 2011

August 26, 2011

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Krystal M. Paris

Re: *The Savings, Accountability and Full Enforcement for California Act*

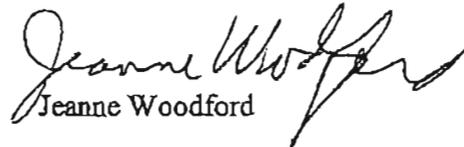
Dear Ms. Paris:

Pursuant to Elections Code section 9002, I request that the Attorney General prepare a title and summary of a measure entitled "The Savings, Accountability and Full Enforcement for California Act." The text of the measure, a check for \$200.00, the address at which I am registered to vote and the signed statement certifying that I will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,


Jeanne Woodford

Enclosures
(00151205)

This Act amends, repeals, and adds sections to the Penal Code and the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The SAFE California Act

SEC. 1 Title

This initiative shall be known and may be cited as "The Savings, Accountability, and Full Enforcement for California Act," or "The SAFE California Act."

SEC. 2 Findings and Declarations

The People of the State of California do hereby find and declare all of the following:

1. Murderers and rapists need to be stopped, brought to justice, and punished. Yet, on average, a shocking 46% of homicides and 56% of rapes go unsolved every year. Our limited law enforcement resources should be used to solve more crimes, to get more criminals off our streets, and to protect our families.
2. Police, Sheriffs, and District Attorneys now lack the funding they need to quickly process evidence in rape and murder cases, to use modern forensic science such as DNA testing, or even hire enough homicide and sex offense investigators. Law enforcement should have the resources needed for full enforcement of the law. By solving more rape and murder cases and bringing more criminals to justice, we keep our families and communities safer.
3. Many people think the death penalty is less expensive than life in prison without the possibility of parole, but that's just not true. California has spent \$4 billion on the death penalty since 1978 and death penalty trials are 20 times more expensive than trials seeking life in prison without the possibility of parole, according to a study by former death penalty prosecutor and Judge, Arthur Alarcon, and law professor Paula Mitchell. By replacing the death penalty with life in prison without the possibility of parole, California taxpayers would save well over \$100 million every year. That money could be used to improve crime prevention and prosecution.
4. Killers and rapists walk our streets free and threaten our safety, while we spend hundreds of millions of taxpayer dollars on a select few who are already behind bars forever on death row. These resources would be better spent on violence prevention and education, to keep our families safe.
5. By replacing the death penalty with life in prison without the possibility of parole, we would save the state \$1 billion in five years without releasing a single prisoner -- \$1 billion that could be invested in law enforcement to keep our communities safer, in our children's schools, and in services for the elderly and disabled. Life in prison without the possibility of parole ensures that the worst criminals stay in prison forever and saves money.

6. More than 100 innocent people have been sentenced to death in this country and some innocent people have actually been executed. Experts concluded that Cameron Todd Willingham was wrongly executed for a fire that killed his three children. With the death penalty, we will always risk executing innocent people.
7. Experts have concluded that California remains at risk of executing an innocent person. Innocent people are wrongfully convicted because of faulty eyewitness identification, outdated forensic science, and overzealous prosecutions. We are not doing what we need to do to protect the innocent. State law even protects a prosecutor if he or she intentionally sends an innocent person to prison, preventing accountability to taxpayers and victims. Replacing the death penalty with life in prison without the possibility of parole will at least ensure that we do not execute an innocent person.
8. Convicted murderers must be held accountable and pay for their crimes. Today, less than 1% of inmates on death row work and, as a result, they pay little restitution to victims. Every person convicted of murder should be required to work in a high security prison and money earned should be used to help victims through the victim's compensation fund, consistent with the victims' rights guaranteed by Marsy's Law.
9. California's death penalty is an empty promise. Death penalty cases drag on for decades. A sentence of life in prison without the possibility of parole provides faster resolution for grieving families and is a more certain punishment.
10. Retroactive application of this Act will end a costly and ineffective practice, free up law enforcement resources to increase the rate at which homicide and rape cases are solved, and achieve fairness, equality and uniformity in sentencing.

SEC. 3 Purpose and Intent

The people of the State of California declare their purpose and intent in enacting the Act to be as follows:

1. To get more murderers and rapists off the streets and to protect our families.
2. To save the taxpayers \$1 billion in five years so those dollars can be invested in local law enforcement, our children's schools, and services for the elderly and disabled.
3. To use some of the savings from replacing the death penalty to create the SAFE California Fund, to provide funding for local law enforcement, specifically police departments, Sheriffs, and District Attorney Offices, to increase the rate at which homicide and rape cases are solved.
4. To eliminate the risk of executing innocent people.
5. To require that persons convicted of murder with special circumstances remain behind bars for the rest of their lives, with mandatory work in a high security prison, and that money earned be used to help victims through the victim's compensation fund.

6. To end the more than 25 year-long process of review in death penalty cases, with dozens of court dates and postponements that grieving families must bear in memory of loved ones.
7. To end a costly and ineffective practice and free up law enforcement resources to keep our families safe; and
8. To achieve fairness, equality and uniformity in sentencing, through retroactive application of this Act to replace the death penalty with life in prison without the possibility of parole.

SEC. 4 Section 190 of the Penal Code is hereby amended to read:

190. (a) Every person guilty of murder in the first degree shall be punished by ~~death~~, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections ~~190.1~~, 190.2, ~~190.3~~, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall be ~~punished by imprisonment in the state prison for a term of 25 years to life~~ if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

- (1) The defendant specifically intended to kill the peace officer.
- (2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.
- (3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.
- (4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

(f) Every person found guilty of murder and sentenced pursuant to this section shall be required to work within a high security prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to section 2700 of the Penal Code. In any case where the prisoner owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct money from the wages and trust account deposits of the prisoner and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to sections 2085.5 and 2717.8 of the Penal Code.

SEC. 5 Section 190.1 of the Penal Code is hereby repealed.

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

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

~~(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.~~

~~(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, 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, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.~~

SEC. 6 Section 190.2 of the Penal Code is hereby amended to read:

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

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

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

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

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

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

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

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

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

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

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

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and

the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

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

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

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

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

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

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

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

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

(C) Rape in violation of Section 261.

(D) Sodomy in violation of Section 286.

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

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

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

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

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

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

(L) Carjacking, as defined in Section 215.

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

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

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

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

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

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

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

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

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

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

SEC. 7 Section 190.3 of the Penal Code is hereby repealed.

~~190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the~~

proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

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

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

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

~~The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.~~

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

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

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

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

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

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

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

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

~~-(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.~~

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

~~-(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.~~

~~-(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.~~

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

SEC. 8 Section 190.4 of the Penal Code is hereby amended to read:

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

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever 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 the 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 and by the people, 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 and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, ~~there shall be a separate penalty hearing the defendant shall be punished by imprisonment in state prison for life without the possibility of parole, and neither the finding that any of the remaining special circumstances charged is not true, nor 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 prevent the holding of a separate penalty hearing.~~

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the 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 tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

~~(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, 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 and the people.~~

~~If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.~~

~~(e) (b) If the trier of fact which convicted the defendant of a crime for which he may be subject to imprisonment in state prison for life without the possibility of parole the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, and the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.~~

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

~~(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11. In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.~~

~~The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision~~

~~(7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).~~

SEC. 9 Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:

Chapter 33. SAFE California Fund to Investigate Unsolved Rapes and Murders

Article 1. Creation of SAFE California Fund

7599. A special fund to be known as the "SAFE California Fund" is created within the State Treasury and is continuously appropriated for carrying out the purposes of this division.

Article 2. Appropriation and Allocation of Funds

7599.1. Funding Appropriation

On January 1, 2013, \$10,000,000 shall be transferred from the General Fund to the SAFE California Fund for the 2012-13 fiscal year and shall be continuously appropriated for the purposes of this Act. On July 1 of each of fiscal years 2013-2014, 2014-2015 and 2015-2016, an additional sum of \$30,000,000 shall be transferred from the General Fund to the SAFE California Fund and shall be continuously appropriated for the purposes of this Act. Funds transferred to the SAFE California Fund shall be used exclusively for the purposes of this Act and shall not be subject to appropriation or transfer by the Legislature for any other purpose. The funds in the SAFE California Fund may be used without regard to fiscal year.

7599.2. Distribution of Monies from SAFE California Fund

(a) At the direction of the Attorney General, the Controller shall disburse monies deposited in the SAFE California Fund to police departments, Sheriffs and District Attorney Offices, for the purpose of increasing the rate at which homicide and rape cases are solved. Projects and activities that may be funded include but are not limited to faster processing of physical evidence collected in rape cases, improving forensic science capabilities including DNA analysis and matching, increasing staffing in homicide and sex offense investigation or prosecution units, and relocation of witnesses. Monies from the SAFE California Fund shall be allocated to police departments, Sheriffs and District Attorney Offices through a fair and equitable distribution formula to be determined by the Attorney General.

(b) Any costs associated with the allocation and distribution of these funds shall be deducted from the SAFE California Fund. The Attorney General and Controller shall make every effort to keep the costs of allocation and distribution at or close to zero, to ensure that the maximum amount of funding is allocated to programs and activities that increase the rate at which homicide and rape cases are solved.

SEC. 10 Retroactive Application of Act

(a) In order to best achieve the purpose of this Act as stated in Section (3) and to achieve fairness, equality and uniformity in sentencing, this Act shall be applied retroactively.

(b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this Act, the sentence shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this Act. The state of California shall not carry out any execution following the effective date of this Act.

(c) Following the effective date of this Act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of Appeal or Superior Court, in the Supreme Court's discretion.

SEC. 11 Effective Date

This Act shall become effective on the day following the election pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 12 Severability

The provisions of this Act are severable. If any provision of this Act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.