



Murder: Special Circumstances. Legislative Initiative Amendment.

Official Title and Summary Prepared by the Attorney General

MURDER: SPECIAL CIRCUMSTANCES. LEGISLATIVE INITIATIVE AMENDMENT.

- Amends provisions of Penal Code section 190 defining the special circumstances where first degree murder is punishable by either death or life imprisonment without the possibility of parole. Provides that a special circumstance exists for killings committed “by means of lying in wait” rather than “while lying in wait.” Provides that a special circumstance exists where murder is committed while the defendant was involved in acts of kidnapping or arson, even if it is proved that the defendant had a specific intent to kill, and the kidnapping or arson was committed to facilitate murder.

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

- Unknown, probably minor, additional state costs.

Final Votes Cast by the Legislature on SB 1878 (Proposition 18)

Assembly: Ayes 66	Senate: Ayes 28
Noes 2	Noes 6



Background

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

One such special circumstance involves cases in which the murderer intentionally killed the victim “while lying in wait.” The courts have generally interpreted this provision to mean that, in order to qualify as a special circumstance, a murder must have occurred immediately upon a confrontation between the murderer and the victim. The courts have generally interpreted this provision to rule out a finding of a special circumstance if the defendant waited for the victim, captured the victim, transported the victim to another location, and then committed the murder.

A special circumstance can also be charged and found if one of a list of specific felonies, including arson and kidnapping, occurred during the commission of a first degree murder. However, the courts have determined that a special circumstance can be found in such a case only when the criminal’s primary goal was to commit arson or kidnapping and only later a murder was committed to further the arson or kidnapping. The courts determined that a special circumstance could not be found in a case in which the criminal’s primary goal was to kill rather than to commit arson or kidnapping.

Proposal

This measure amends state law so that a case of first degree murder is eligible for a finding of a special circumstance if the murderer intentionally killed the victim “by means of lying in wait.” In so doing, this measure replaces the current language establishing a special circumstance for murders committed “while lying in wait.” This change would permit the finding of a special circumstance not only in a case in which a murder occurred immediately upon a confrontation between the murderer and the victim, but also in a case in which the murderer waited for the victim, captured the victim, transported the victim to another location, and then committed the murder.

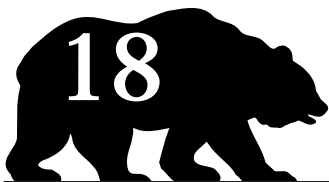
This measure also amends state law so that a case of first degree murder is eligible for a finding of a special circumstance if arson or kidnapping was committed to further the murder scheme.

As a result of these two changes in state law, additional first degree murderers would be subject to punishment by death or by life imprisonment without the possibility of parole, instead of a maximum prison sentence of 25 years to life.

Fiscal Effect

This measure would increase state costs primarily as a result of longer prison terms for the murderers who would receive a life sentence without the possibility of parole. Also, there would be increased state costs for appeals of additional death sentences, which are automatically subject to appeal to the California Supreme Court. The magnitude of these costs is unknown, but is probably minor, because relatively few offenders are likely to be affected by this measure.

For text of Proposition 18 see page 117



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Argument in Favor of Proposition 18

Proposition 18 corrects two odd decisions by the Rose Bird Supreme Court. In 1980, and again in 1985, that court turned our voter-enacted death penalty law on its head. In the first case, the court ruled that an estranged husband who arranged the kidnapping of his wife in order to kill her was not subject to the death penalty or even life imprisonment without parole because the kidnapping was committed solely to murder her rather than to commit a less serious crime! In the second case, the court mandated that a criminal who kidnapped and killed a witness to prevent him from testifying was not subject to the death penalty or life without parole.

Under these hapless decisions:

- A murderer who deliberately kidnaps his victim to kill him and then takes the victim to a remote location and kills him would *not* be subject to the death penalty or life imprisonment without the possibility of parole (even though it would be applicable if the kidnapping was committed for some lesser purpose).
- A murderer who sets fire to a building with a premeditated plan to kill someone inside would *not* be subject to the death penalty or a sentence of life imprisonment without parole (even though it would be applicable if committed only for arson to destroy property that results in an unintended death).

Proposition 18 provides voters the chance to correct

such unjust, illogical remnants of the Rose Bird court and restore logic, fairness, and justice to our death penalty laws. It grants juries the option of rendering verdicts of death or life imprisonment without parole to those who:

- Kidnap for an express premeditated purpose to murder;
- Lie in wait for their victims, then seize and take them to a more secluded spot to murder them;
- Commit arson for the purpose of killing a person inside the building.

It defies reason to exclude such aggravated murders from our death penalty or life imprisonment law. Proposition 18 eliminates unequal treatment from court-imposed law. It restores equal justice for murder victims' families, for law enforcement officers who each day confront criminals and even murderers and for all Californians. Voting "yes" on Proposition 18 ensures a rational standard for capital punishment and life imprisonment and protects the honesty and integrity of the law in our state.

HON. GEORGE DEUKMEJIAN
Former Governor of California

HON. MICHAEL D. BRADBURY
District Attorney of Ventura County

MRS. QUENTIN L. (MARA) KOPP
Retired Social Worker

Rebuttal to Argument in Favor of Proposition 18

What good does it do us to pass Proposition 18, extend capital punishment? We owe it to ourselves to put aside prejudices, assess facts.

Nobody's been able to demonstrate statistically that capital punishment deters murders or saves lives. States and nations without capital punishment have lower murder rates.

Instead, research demonstrates it costs \$2 million more per case to prosecute a murderer through to the death penalty than if the defendant serves for life without possibility of parole.

Why don't we get smart, save that money, invest in efforts which could reduce the murder rate, especially against persons in law enforcement?

We appreciate our fellow humans who choose careers wherein they put their lives on the line to assure our public safety. And we'd provide them more safety if we devoted the money capital punishment costs to research to prevent future murderers.

Capital punishment gives us no way to learn about the root causes of murderous conduct. As we grow to recognize that violence is learned behavior, it's evident we can learn more about their lives, ferret out the root causes of their murders, if these folks are alive. Hopefully, in due time, through sufficient study, we'll learn enough so future children won't grow up so disturbed within themselves, so dangerous to the rest of us!

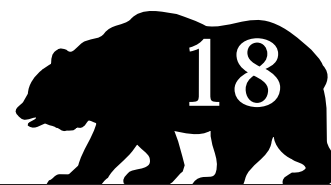
Let's save money, devote it to preventing violence, especially murder. Be smart, join us in voting NO, defeat Proposition 18.

AZIM KHAMISA
Founder, Tariq Khamisa Foundation

WILSON RILES, JR.
*Executive Director, American Friends Service
Committee of Northern California*

SENATOR JOHN VASCONCELLOS
Chair, Senate Public Safety Committee

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Argument Against Proposition 18

As a taxpayer, you are being asked to enlarge the death penalty. You deserve clear proof that this proposed change would improve public safety and the quality of justice. That proof is lacking.

Public safety would not be improved by this proposition.

Under existing law, the homicide rate in California has fallen steadily and dramatically since 1991. Yet we still have not matched the success of the states that use no death penalty. Massachusetts, for example, is an urban state with no death penalty and a homicide rate one-third of California's. In fact, states that have no death penalty usually suffer fewer murders in proportion to their population than states that expend resources on capital punishment. Enlarging the death penalty would not make our streets more safe.

It costs California taxpayers \$2 million over and above the cost of life imprisonment each time a murderer is sent to Death Row. We should be asking some hard questions. Isn't it better to invest this money in after-school programs for youth? Shouldn't schools be funded to train all of their personnel in conflict resolution programs that have been proven effective, and why are only a small fraction of schools able to train parents in these programs? Enlarging the death penalty would not enable us to spend our public safety tax dollars more wisely.

The *quality of justice* would not be improved by this proposition.

Adjusting the scope of punishment can never compensate for the harm caused by murder. Any murder

is deplorable. The community and family members suffer whenever a life is deliberately cut short, regardless of whether arson, kidnaping, or lying-in-wait is involved. In fact, it trivializes the vast majority of cases to imagine there is any link between the circumstances of a killing, the type of retribution imposed, and the agony of friends and family of the victim. There is no evidence that communities and families of murder victims in California are better able to recover from their loss due to the existence of a death penalty than communities and families in Massachusetts heal in the absence of a death penalty. Enlarging the death penalty would not improve justice for communities and families of victims.

The law already allows capital punishment in more homicide cases than prosecutors pursue as death penalty matters. And in cases where they do urge a death sentence, jurors often refuse to recommend it. As a result, most death-eligible cases are resolved by plea bargains. To the extent this proposition would expand the number of death-eligible cases, lawyers would expend extra taxpayer dollars on the plea-bargain process. Added litigation would be of no real assistance to the families of victims, nor to the community.

This proposition will not improve public safety or the quality of justice. Vote NO.

MOST REVEREND SYLVESTER D. RYAN
President, California Catholic Conference

MIKE FARRELL
President, M J & E Productions, Inc.

SENATOR PATRICK JOHNSTON
Chair, Senate Appropriations Committee

Rebuttal to Argument Against Proposition 18

Opposition arguments center almost entirely on philosophical objections to the death penalty but miss the point of this measure, which was approved for the ballot (since it amends an initiative) by huge nonpartisan votes in the Legislature (Senate 28-6, Assembly 66-2) to correct bizarre Rose Bird court decisions.

Reasons for Proposition 18

Under Rose Bird court decisions:

Criminals who kidnap someone to rob them, then kill them as an afterthought or who set fire to a building to destroy property are subject to the death penalty or life imprisonment without parole, *at a jury's discretion*;

Criminals who, however, kidnap someone to murder them or set fire to a building to murder the occupants and do kill them are *not* subject to a death sentence or life imprisonment without parole. *This simply isn't right.*

Nonpartisan Support

Crime victims and law enforcement strongly support Proposition 18. Introduced for the ballot by former Independent State Senator Quentin Kopp, it has been

publicly endorsed and/or voted for by Crime Victims United of California, Democratic Governor Gray Davis, Attorney General Bill Lockyer, former Republican Governors George Deukmejian and Pete Wilson, Democratic Lt. Governor Cruz Bustamante, Speaker Antonio Villaraigosa and Republican Senator Richard Rainey, among others.

Opposition arguments almost seem to trivialize murder cases. Their statements ring hollow with actual family and friends of murder victims. For example, training school personnel in "conflict resolution," while commendable, doesn't cure injustices in current murder law. Proposition 18 does. Please vote "yes".

HONORABLE GEORGE DEUKMEJIAN
Former Governor of the State of California

HONORABLE MICHAEL D. BRADBURY
District Attorney of Ventura County

MRS. HARRIET SALARNO
Chair, Crime Victims United of California