
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1459 **Hearing Date:** June 13, 2017
Author: Quirk-Silva
Version: April 17, 2017
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Murder: Peace Officers*

HISTORY

Source: California State Sheriff's Association

Prior Legislation: None

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; Association of Orange County Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; California Peace Officers' Association; California Police Chiefs Association; California Probation, Parole and Correctional Association; California Statewide Law Enforcement Association; Chief Probation Officers of California; Fraternal Order of Police; Long Beach Police Officers Association; Los Angeles County Probation Officers Union AFSCME Local 685; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Orange County Board of Supervisors; Orange County Supervisor, Todd Spitzer; Peace Officers Research Association of California; Sacramento County Deputy Sheriffs' Association

Opposition: Friends Committee on Legislation of California; California Public Defenders Association

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to state that the Legislature finds and declares that under existing law all unlawful killings that are willful, deliberate, and premeditated and in which the victim was a peace officer, are considered first degree murder.

Existing law defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Penal Code § 187 (a).)

Existing law states that malice may be express or implied. It is express when a deliberate intent to unlawfully take away the life of another is manifested. It is implied when no considerable provocation appears, or the circumstances of the killing indicate an abandoned and malignant heart. (Penal Code § 188.)

Existing law provides that an unlawful killing the commission of which is willful, deliberate, premeditated, and with express malice aforethought, is first degree murder. To prove the killing was deliberate and premeditated, it is not necessary to prove the defendant maturely and meaningfully reflected on the gravity of his or her act. (Penal Code § 189.)

Existing law states that first degree murder can also be committed by means of a destructive device or explosive, by means of a weapon of mass destruction, by poison, by lying in wait for the victim, or by torture, or by knowing use of armor-piercing ammunition, or perpetrated by discharging a firearm from a motor vehicle with the intent to kill, or when a killing occurs in the perpetration or attempted perpetration of certain enumerated felonies (felony murder). (Penal Code § 189.)

Existing law provides that first degree murder is punishable by death, imprisonment in state prison for life without the possibility of parole (LWOP), or imprisonment in state prison for a term of 25 years to life. The penalty is death or imprisonment in the state prison for life without the possibility of parole (LWOP) if one or more special circumstances is found to be true, including:

- The victim was a peace officer, as defined by statute, 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, or a former peace officer as defined, and was intentionally killed in retaliation for the performance of his or her official duties; or,
- 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. (Penal Code §§ 190 (a), 190.2 (a)(5) & (a)(7).)

Existing law provides that except as specified, second degree murder is punishable by imprisonment in the state prison for a term of 15 years to life. (Penal Code § 190 (a).)

Existing law specifies that second degree murder shall be punished by imprisonment in state prison for a term of 25 years to life if the victim was a peace officer, as defined, 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. (Penal Code § 190 (b).)

Existing law specifies that second degree murder shall be punished by a term of imprisonment of LWOP if the victim was a peace officer, as defined, 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:

- The defendant specifically intended to kill the peace officer;
- The defendant specifically intended to inflict great bodily injury, as defined in statute, on a peace officer;

- The defendant personally used a dangerous or deadly weapon in the commission of the offense; or,
- The defendant personally used a firearm in the commission of the offense. (Penal Code, § 190 (c).)

This bill states that the Legislature finds and declares that all unlawful killings that are willful, deliberate, and premeditated and in which the victim was a peace officer, as defined in Section 830, who was killed while engaged in the performance of his or her duties, where the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, are considered murder of the first degree for all purposes, including the gravity of the offense and the support of the survivors.

This bill states that the above is declarative of existing law.

This bill also makes the following uncodified legislative findings and declarations:

- Last year, 144 peace officers died in the line of duty in the United States, the highest number in five years.
- Nearly one-half of these officers were fatally shot.
- In California, 11 officers died in the line of duty last year, a 50-percent increase from the year before.
- The Legislature recognizes the dangers faced by men and women who serve as peace officers in the state.
- In enacting this legislation, it is intent of the Legislature to reiterate that California law protects all victims of violent crime, including when the victim is a peace officer.

COMMENTS

1. Need for This Bill

According to the author:

Every day, peace officers across our great state serve and protect our communities from harm. Peace officers willingly put their lives in harm's way to protect us but sadly, since 2012, 22 California peace officers have been killed by intentional gunfire. Nationwide, 235 peace officers have suffered that same fate in the same time period. Given the level of violence inflicted upon peace officers in recent years, it makes sense to ensure clarity when dealing justice for the murder of a peace officer. AB 1459 reinforces the state's commitment to provide justice for our fallen peace officers while performing their duties.

2. Declares Existing Law

Murder is defined as the unlawful killing of a human being with malice aforethought. (Pen. Code, § 187, subd. (a).) Malice may be express or implied. (Pen. Code, § 188.) Express malice is equated with an intent to unlawfully kill. (*People v. Saille* (1991) 54 Cal.3d 1103, 1114 [“once the trier of fact finds a deliberate intention unlawfully to kill, no other mental state need be shown to establish malice aforethought”]; *People v. Moon* (2005) 37 Cal.4th 1, 29 [an intent to

kill is the functional equivalent of express malice].)

Under current law, an unlawful killing (a killing without legal justification or excuse) of a peace officer that is willful, deliberate, and premeditated is first degree murder. (Pen. Code, §§ 187-189; Pen. Code, §§ 196 & 196 [justifiable homicides – e.g., lawful self-defense], § 195 [excusable homicides – e.g., accident or misfortune].) Willful means the killing was intentional. (*People v. Moon, supra*, 37 Cal.4th at p. 29.) Deliberate means the killing was the result of careful thought and weighing of considerations. (*People v. Stress* (1988) 205 Cal.App.3d 1259, 1269; see also *People v. Anderson* (1968) 70 Cal.2d 15, 24-26.) Premeditated means the killing was considered beforehand. (*People v. Thomas* (1945) 25 Cal.2d 880, 899; see also *People v. Anderson, supra*, 70 Cal.2d at pp. 24-26.)

The types of evidence that the California Supreme Court has considered in finding premeditation and deliberation fall into three basic categories: [1] planning activity; [2] motive; and [3] manner of the killing from which a preconceived plan can be inferred. (*People v. Anderson, supra*, 70 Cal.2d at pp. 26-27.)

An unlawful killing with malice aforethought (express or implied) but without deliberation and premeditation is second degree murder. (Pen. Code, § 189.) As discussed above, express malice is equated with the intent to kill. (*People v. Saille, supra*, 54 Cal.3d at p. 1114.) If a defendant intends to kill a peace officer without deliberation and premeditation, it is second degree murder absent legal justification or excuse. Implied malice has three components: [1] the killing resulted from an intentional act; [2] the natural consequences of the act are dangerous to human life; and [3] the defendant actually knew of those natural consequences and acted anyway with a “conscious disregard” for human life. (*People v. Patterson* (1989) 49 Cal.3d 615, 626.) If a peace officer is killed unintentionally, without premeditation and deliberation, but these three components are present, it is second degree murder absent legal justification or excuse.

This bill restates existing law regarding first degree murder of a peace officer for purposes of the gravity of the offense and support of the survivors. This bill does not change existing law but is merely a section making legislative findings and declarations that what is currently the law is the law. The Committee may wish to consider whether a declaration of what is clearly existing law is necessary or merely adds to the cluttering of the Penal Code

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