

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 1, 1977

Meeting reconvened at 12:45 p.m. Senator Close was in the Chair. All were present but Senator Sheerin and Senator Dodge.

SB 220 Provides conditions for imposition of capital punishment.

Geno Manchetti and Larry Hicks continued testimony on this bill (see minutes of 3/31/77). Also see exhibit A for comments on first reprint.

Mr. Hicks stated on the question of circumstances he felt it should perhaps be "and shall include in it's instructions the agravating circumstances alleged by the prosecution and upon which evidence has been presented during the trial or at the hearing. The court shall instruct the jury as to any mitigating circumstances claimed by the defense upon which evidence has been presented during the trial or at the hearing".

Senator Raggio stated that he was concerned about the language "shall include in it's instructions the agravating circumstances" as the instructions are law and the only thing the court can instruct on is law, whether it is the main part of the hearing or the penalty hearing. What you should say is "the law pertaining to the agravating circumstances". For example, if one of the agravating circumstances is having been previously convicted of a felony, the court is going to have to give the law as to what constitutes that particular agravating circumstance. The language just isn't right.

Mr. Manchetti stated that this is an evidenciary proceeding and it is unlike a seperate proceeding wherein the court would indicate to the jury these are the agravating circumstances which are provided for by law, upon which there is some evidence and which you can consider.

Senator Raggio stated that they should say the law pertinent to the agravating circumstances. I don't want some judge to pick this up and start commenting on the evidence. He has the right to determine which agravating circumstances by law have been given to the law pertinent to those.

The Committee agreed that the judge should in some manner mention to the jury these circumstances and we should have have the evidence presented on them.

Senator Bryan stated he felt it should be made clear that they only comment on the circumstances of agravation.

Mr. Hicks stated he had a couple of other things he wanted clarification on. He felt that on page 5 the word sufficient

was not needed, what is sufficient, for purposes of what? They are already going to be aware that they can impose a sentence of death only if they find at least one aggravating circumstance sufficient to outweigh the mitigating circumstances.

The Committee after some discussion agreed that it read better.

Mr. Hicks stated that on page 3, talking about the Supreme Court functions, I feel that there it is necessary, that this language has no provision for sending it back to a new penalty hearing. If they set aside the death penalty and they find that it would still be available, it seems to me that you would want to be able to send it back for a new penalty hearing. So I would propose that paragraph B at line 27 it would read "the Supreme Court when reviewing a death sentence, may affirm the sentence of death; (b) set the sentence aside and remand the case for a new penalty hearing or for re-sentencing by the trial judge".

Senator Raggio stated they had discussed this before and this is where it should state "for a new penalty hearing before a new jury".

Mr. Hicks stated then they would have four subsections for a new penalty hearing the new one being; before a newly empanelled jury, or three judge panel whichever heard the case first or however you want to word it.

Senator Close questioned why they have enlarged upon the definition of a Peace Officer from what was enacted two years ago.

Mr. Manchetti stated that it is defined because you just say Peace Officer and refer to chapter 169, which includes game wardens where they are enforcing fish and game violations, etc.

Senator Bryan stated that the laundry list before made it mandatory in this situation, these are circumstances that can be considered in aggravation.

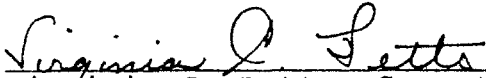
Dave Frank from the Supreme Court stated that Judge Batjer's position is simply that the court should not be forced to second guess, that the trial court at the penalty phase work in the dark. They should be allowed to consider similar cases, to determine whether or not the death penalty in the case before the court at the trial level would be successive or disproportionate. That would then be a part of the record on appeal it would be a part of the record in terms of the automatic review of the sentence which this bill calls for. The Supreme Court would then be left to only review the question of whether or not the trial court abused its discretion in making a determination.

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Senator Close stated they would then have the language drafted on these points and the Committee would then review it again to see if they wished to accept it.

There being no further business at this time, the meeting was adjourned at 1:30 p.m.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, CHAIRMAN



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
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ROBERT LIST
ATTORNEY GENERAL

March 31, 1977

The Honorable Melvin D. Close, Jr.
Chairman, Senate Judiciary Committee
Legislative Building
Carson City, Nevada 89710

re: S.B. 220

Dear Senator Close:

With regard to the First Reprint of S.B. 220, the following is submitted:

On page 3, line 7, "peace officer" is not defined. I raise this issue because "peace officer" was significantly defined in NRS 200.030, subsection 1(a)(2).

On page 3, line 15, it states that "Murder of the first degree is mitigated by" It is my feeling that the word "is" should be replaced by "may be", which I think more accurately reflects the intent of that section.

On page 3, line 37, I believe "district attorney" should be replaced by "prosecuting attorney".

On page 4, there is no specific provision that there can be oral argument for or against the imposition of the death penalty. Since this is a somewhat new proceeding, it might be prudent to include a statement to that effect, if it is the desire of the committee to allow such argument.

I also note that the bill fails to make provision for what shall be the disposition of death sentences if the bill is subsequently ruled unconstitutional. Perhaps verbiage to the effect that "if the punishment of death is set aside or otherwise not carried out, except in the case of pardon or commutation, the substituted punishment shall be imprisonment in the state prison for life without possibility of parole" would be appropriate.

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The committee may also wish to consider a statement regarding severability of the provisions, should one or more of the new provisions be held unconstitutional.

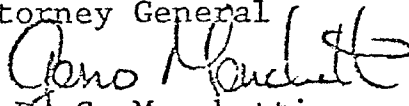
The review provisions on page 5 seem to present two problems, the first of which is that there is a failure to provide a procedure for the obtaining of standardization information on lines 22 to 24. Lastly, a provision for a review by the trial court judge of this information before the death penalty is imposed by him would provide a basis for the state Supreme Court to review the same information for standardization. It is my interpretation of the recent U. S. Supreme Court decisions that such a state-wide review is required.

I have attached a copy of one of the suggestions prepared by Dave Frank of the Judicial Planning Office. I have hand-written in a couple of changes, but this would seem to be sufficient to solve all our review problems.

I also have a six-page brief with regard to the requirement for state-wide review, which I will be glad to provide the committee if they desire.

Sincerely,

ROBERT LIST
Attorney General

By 
J. G. Menchetti
Deputy Attorney General
Chief, Criminal Division

DGM:lt
Enc.

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Sec. Chapter 177 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. When a jury or panel of judges has ~~imposed~~ ^{reversed} the death sentence, the judge who accepted the guilty plea or conducted the trial shall review the sentence to determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases in this state, if any, considering both the crime and the defendant. → Returned

2. The department of parole and probation shall assist the district court in its review of the propriety of a death sentence by furnishing the court with a synopsis of the facts for each case in which the death sentence was imposed during the 3-year period preceding the date of the verdict in the case under review.

3. The synopses of death penalty cases shall include:

(a) The title and docket number of the case, and a citation to the opinion of the supreme court, if rendered;

(b) The name of the defendant and the name and address of his attorney;

(c) A narrative statement of the offense as shown in the record;

(d) The mitigating circumstances found, if any;

(e) The aggravating circumstance or circumstances found;

(f) The judgment of conviction and the sentence;

(g) The decision on review; and

(h) Any other information which the court may prescribe.

4. The department shall furnish the state and the defendant with copies of the synopses.

5. If the judge determines that the sentence of death is excessive or disproportionate to the penalty imposed in similar cases in this state, he shall set ~~the~~ ^{impose} the sentence aside and ~~forward the case for resentencing to the jury or panel of judges.~~ ^{impose a sentence of life without possibility of parole.} If the judge determines that the sentence of death is not excessive or disproportionate to the penalty imposed in similar cases, the sentence shall be ~~affirmed.~~ ^{imposed.}

~~imposed~~ 6. Whenever a sentence of death is set aside or ~~affirmed~~ ^{imposed} under the provisions of this section, the court shall specify in its order those similar cases which it considered and shall append to the order the synopses of those cases. ?