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**OVERVIEW: SENTENCING PROCEDURES  
AFTER FINDING OF GUILTY OF FIRST DEGREE MURDER**

Following is an overview of the statutory procedures regarding the required penalty hearing following a finding of guilty of first-degree murder. The guilty finding may be made by a jury, upon a plea of guilty, or a trial without a jury. (NRS 175.552-175.562)

Finding of guilty of first-degree murder, a Category A felony.  
Possible penalties (NRS 200.030 & 175.554):

- Death, if one or more aggravating circumstances are found & any mitigating circumstances do not outweigh the aggravating circumstance(s);
- Life without parole;
- Life with parole eligibility after a 20 year minimum;
- A definite term of 50 years with parole eligibility after a 20-year minimum.

Separate Penalty Hearing  
(NRS 175.552)

- Required whether or not the death penalty is sought.
- Evidence presented concerning aggravating and mitigating circumstances. (List of these circumstances under NRS 200.033 & 200.335 is attached.)

Guilty finding upon a guilty plea or trial without a jury and death penalty is NOT sought:  
Penalty hearing conducted by judge who conducted trial or accepted plea. (NRS 175.552)

Guilty finding upon a plea of guilty or a trial without a jury and death penalty is sought:  
Penalty hearing conducted before a panel of three judges to determine presence of aggravating and mitigating circumstances. Death sentence may only be imposed by unanimous vote of panel. Any other sentence may be given by majority vote. If majority vote not obtained, Supreme Court appoints new panel. (NRS 175.558 & 175.562)

Additional Notes:

- Parties may waive the required penalty hearing in cases in which the death penalty is NOT sought, and when stipulating to such a waiver, parties may include an agreement to have the sentence, if any, imposed by the trial judge.
- Initial panels of three judges consist of two district court judges from another jurisdiction appointed by the Supreme Court and the district judge who conducted the trial. Subsequent panels, if required, are appointed by the Supreme Court and none may be members of the original panel. (NRS 175.556 & 175.562)

Guilty finding by a jury:  
Penalty hearing conducted before the trial jury. (NRS 175.552)

No unanimous verdict and death penalty is sought: Three-judge panel conducts the penalty hearing to determine presence of aggravating and mitigating circumstances. Death may be imposed only by unanimous vote of panel. Any other sentence may be imposed by majority vote. If majority vote not obtained, Supreme Court appoints new panel.

No unanimous verdict and death penalty is NOT sought: Trial judge imposes sentence. (NRS 175.556)

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**NRS 200.033 Circumstances aggravating first degree murder.** The only circumstances by which murder of the first degree may be aggravated are:

1. The murder was committed by a person under sentence of imprisonment.
  2. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:
    - (a) Another murder and the provisions of subsection 12 do not otherwise apply to that other murder; or
    - (b) A felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony.

For the purposes of this subsection, a person shall be deemed to have been convicted at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.
  3. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.
  4. The murder was committed while the person was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, burglary, invasion of the home or kidnapping in the first degree, and the person charged:
    - (a) Killed or attempted to kill the person murdered; or
    - (b) Knew or had reason to know that life would be taken or lethal force used.
  5. The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.
  6. The murder was committed by a person, for himself or another, to receive money or any other thing of monetary value.
  7. The murder was committed upon a peace officer or fireman who was killed while engaged in the performance of his official duty or because of an act performed in his official capacity, and the defendant knew or reasonably should have that the victim was a peace officer or fireman. For the purposes of this subsection, "peace officer" means:
    - (a) An employee of the department of corrections who does not exercise general control over offenders imprisoned within the institutions and facilities of the department but whose normal duties require him to come into contact with those offenders, when carrying out the duties prescribed by the director of the department.
    - (b) Any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive, when carrying out those powers.
  8. The murder involved torture or the mutilation of the victim.
  9. The murder was committed upon one or more persons at random and without apparent motive.
  10. The murder was committed upon a person less than 14 years of age.
  11. The murder was committed upon a person because of the actual or perceived race, color, religion, national origin, physical or mental disability or sexual orientation of that person.
  12. The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.
  13. The person, alone or with others, subjected or attempted to subject the victim of the murder to nonconsensual sexual penetration immediately before, during or immediately after the commission of the murder. For the purposes of this subsection:
    - (a) "Nonconsensual" means against the victim's will or under conditions in which the person knows or reasonably should know that the victim is mentally or physically incapable of resisting, consenting or understanding the nature of his conduct, including, but not limited to, conditions in which the person knows or reasonably should know that the victim is dead.
    - (b) "Sexual penetration" means cunnilingus, fellatio or any intrusion, however slight, of any part of the victim's body or any object manipulated or inserted by a person, alone or with others, into the genital or anal openings of the body of the victim, whether or not the victim is alive. The term includes, but is not limited to, anal intercourse and sexual intercourse in what would be its ordinary meaning.
  14. The murder was committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person. For the purposes of this subsection, "school bus" has the meaning ascribed to it in NRS 483.160.
- (Added to NRS by 1977, 1542; A 1981, 521, 2011; 1983, 286; 1985, 1979; 1989, 1451; 1993, 76; 1995, 2, 138, 1490, 2705; 1997, 1293; 1999, 1336; 2001 Special Session, 229)

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**NRS 200.035 Circumstances mitigating first degree murder.** Murder of the first degree may be mitigated by any of the following circumstances, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime:

1. The defendant has no significant history of prior criminal activity.
  2. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.
  3. The victim was a participant in the defendant's criminal conduct or consented to the act.
  4. The defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.
  5. The defendant acted under duress or under the domination of another person.
  6. The youth of the defendant at the time of the crime.
  7. Any other mitigating circumstance.
- (Added to NRS by 1977, 1543)

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