

ASSEMBLY BILL NO. 13—COMMITTEE ON JUDICIARY

(ON BEHALF OF LEGISLATIVE COMMITTEE TO STUDY
DEATH PENALTY AND RELATED DNA TESTING
(A.C.R. 3 OF THE 17TH SPECIAL SESSION))

JANUARY 27, 2003

Referred to Committee on Judiciary

SUMMARY—Eliminates panel of judges in certain penalty hearings in which death penalty is sought and requires district attorneys to report certain information concerning certain homicides to Supreme Court. (BDR 14-197)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; eliminating the panel of judges that conducts the penalty hearing in certain cases in which the death penalty is sought; requiring district attorneys to submit certain information to the Supreme Court concerning cases involving homicide; requiring the Supreme Court to prepare and submit an annual report providing a summary and analysis of that information to the Legislature; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 175.552 is hereby amended to read as follows:
2 175.552 1. Except as otherwise provided in subsection 2, in
3 every case in which there is a finding that a defendant is guilty of
4 murder of the first degree, whether or not the death penalty is
5 sought, the court shall conduct a separate penalty hearing. The
6 separate penalty hearing must be conducted as follows:



* A B 1 3 R 1 *

1 (a) If the finding is made by a jury, the separate penalty hearing
2 must be conducted in the trial court before the trial jury, as soon as
3 practicable.

4 (b) If the finding is made upon a plea of guilty or guilty but
5 mentally ill or a trial without a jury and the death penalty is sought,
6 the separate penalty hearing must be conducted before a ~~panel of~~
7 ~~three district judges.~~ *jury impaneled for that purpose*, as soon as
8 practicable.

9 (c) If the finding is made upon a plea of guilty or guilty but
10 mentally ill or a trial without a jury and the death penalty is not
11 sought, the separate penalty hearing must be conducted before the
12 judge who conducted the trial or who accepted the plea, as soon as
13 practicable.

14 2. In a case in which the death penalty is not sought, the parties
15 may by stipulation waive the separate penalty hearing required in
16 subsection 1. When stipulating to such a waiver, the parties may
17 also include an agreement to have the sentence, if any, imposed by
18 the trial judge. Any stipulation pursuant to this subsection must be
19 in writing and signed by the defendant, his attorney, if any, and the
20 prosecuting attorney.

21 3. In the hearing, evidence may be presented concerning
22 aggravating and mitigating circumstances relative to the offense,
23 defendant or victim and on any other matter which the court deems
24 relevant to sentence, whether or not the evidence is ordinarily
25 admissible. Evidence may be offered to refute hearsay matters. No
26 evidence which was secured in violation of the Constitution of the
27 United States or the Constitution of the State of Nevada may be
28 introduced. The State may introduce evidence of additional
29 aggravating circumstances as set forth in NRS 200.033, other than
30 the aggravated nature of the offense itself, only if it has been
31 disclosed to the defendant before the commencement of the penalty
32 hearing.

33 4. In a case in which the death penalty is not sought, the jury or
34 the trial judge shall determine whether the defendant should be
35 sentenced to life with the possibility of parole or life without the
36 possibility of parole.

37 **Sec. 2.** NRS 175.554 is hereby amended to read as follows:
38 175.554 In cases in which the death penalty is sought:

39 1. ~~If the penalty hearing is conducted before a jury, the~~ *The*
40 court shall instruct the jury at the end of the *penalty* hearing, and
41 shall include in its instructions the aggravating circumstances
42 alleged by the prosecution upon which evidence has been presented
43 during the trial or at the hearing. The court shall also instruct the
44 jury as to the mitigating circumstances alleged by the defense upon
45 which evidence has been presented during the trial or at the hearing.



1 2. The jury ~~for the panel of judges~~ shall determine:
 2 (a) Whether an aggravating circumstance or circumstances are
 3 found to exist;
 4 (b) Whether a mitigating circumstance or circumstances are
 5 found to exist; and
 6 (c) Based upon these findings, whether the defendant should be
 7 sentenced to *imprisonment for a definite term of 50 years*, life
 8 imprisonment with the possibility of parole, life imprisonment
 9 without the possibility of parole or death.

10 3. The jury ~~for the panel of judges~~ may impose a sentence of
 11 death only if it finds at least one aggravating circumstance and
 12 further finds that there are no mitigating circumstances sufficient to
 13 outweigh the aggravating circumstance or circumstances found.

14 4. If a jury ~~for a panel of judges~~ imposes a sentence of death,
 15 ~~the court shall enter its finding in the record, or~~ the jury shall
 16 render a written verdict signed by the foreman. The ~~finding or~~
 17 verdict must designate the aggravating circumstance or
 18 circumstances which were found beyond a reasonable doubt, and
 19 must state that there are no mitigating circumstances sufficient to
 20 outweigh the aggravating circumstance or circumstances found.

21 **Sec. 3.** NRS 175.556 is hereby amended to read as follows:

22 175.556 1. In a case in which the death penalty is sought, if a
 23 jury is unable to reach a unanimous verdict upon the sentence to be
 24 imposed, ~~the Supreme Court shall appoint two district judges from~~
 25 ~~judicial districts other than the district in which the plea is made,~~
 26 ~~who shall with~~ the district judge who conducted the trial ~~or his~~
 27 ~~successor in office, conduct the required penalty hearing to~~
 28 ~~determine the presence of aggravating and mitigating circumstances,~~
 29 ~~and give sentence accordingly. A sentence of death may be given~~
 30 ~~only by unanimous vote of the three judges, but any other sentence~~
 31 ~~may be given by the vote of a majority.]~~ *or accepted the plea of*
 32 *guilty shall sentence the defendant to life without the possibility of*
 33 *parole.*

34 2. In a case in which the death penalty is not sought, if a jury is
 35 unable to reach a unanimous verdict upon the sentence to be
 36 imposed, the trial judge shall impose the sentence.

37 **Sec. 4.** NRS 176.495 is hereby amended to read as follows:

38 176.495 1. If for any reason a judgment of death has not been
 39 executed, and it remains in force, the court in which the conviction
 40 was had must, upon the application of the Attorney General or the
 41 district attorney of the county in which the conviction was had,
 42 cause another warrant to be drawn, signed by the judge and attested
 43 by the clerk under the seal of the court, and delivered to the Director
 44 of the Department of Corrections.



1 2. The warrant must state the conviction and judgment and
2 appoint a week, the first day being Monday and the last day being
3 Sunday, within which the judgment is to be executed. The first day
4 of that week must be not less than 15 days nor more than 30 days
5 after the date of the warrant. The Director shall execute a sentence
6 of death within the week the judgment is to be executed, as
7 designated by the district court. The Director may execute the
8 judgment at any time during that week if a stay of execution is not
9 entered by a court of appropriate jurisdiction.

10 ~~[3. Where sentence was imposed by a district court composed~~
11 ~~of three judges, the district judge before whom the confession or~~
12 ~~plea was made, or his successor in office, shall designate the week~~
13 ~~of execution, the first day being Monday and the last day being~~
14 ~~Sunday, and sign the warrant.]~~

15 **Sec. 5.** NRS 177.055 is hereby amended to read as follows:

16 177.055 1. When upon a plea of not guilty a judgment of
17 death is entered, an appeal is deemed automatically taken by the
18 defendant without any action by him or his counsel, unless the
19 defendant or his counsel affirmatively waives the appeal within 30
20 days after the rendition of the judgment.

21 2. Whether or not the defendant or his counsel affirmatively
22 waives the appeal, the sentence must be reviewed on the record by
23 the Supreme Court, which shall consider, in a single proceeding if
24 an appeal is taken:

- 25 (a) Any errors enumerated by way of appeal;
- 26 (b) Whether the evidence supports the finding of an aggravating
27 circumstance or circumstances;
- 28 (c) Whether the sentence of death was imposed under the
29 influence of passion, prejudice or any arbitrary factor; and
- 30 (d) Whether the sentence of death is excessive, considering both
31 the crime and the defendant.

32 3. The Supreme Court, when reviewing a death sentence, may:

- 33 (a) Affirm the sentence of death;
- 34 (b) Set the sentence aside and remand the case for a new penalty
35 hearing ~~;~~

36 ~~(1) If the original penalty hearing was before a jury,] before a~~
37 ~~newly impaneled jury; or~~

38 ~~[(2) If the original penalty hearing was before a panel of~~
39 ~~judges, before a panel of three district judges which must consist,~~
40 ~~insofar as possible, of the members of the original panel; or]~~

41 (c) Set aside the sentence of death and impose the sentence of
42 imprisonment for life without possibility of parole.



1 **Sec. 6.** Chapter 178 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *The district attorney for each county shall prepare and*
4 *submit a report to the Supreme Court not later than February 1 of*
5 *each year concerning each case filed during the previous calendar*
6 *year that included a charge for murder or voluntary*
7 *manslaughter. The district attorney shall exclude from the report*
8 *any charge for manslaughter that resulted from a death in an*
9 *accident or collision involving a motor vehicle.*

10 2. *The report required pursuant to subsection 1 must include,*
11 *without limitation:*

12 (a) *The age, gender and race of the defendant;*

13 (b) *The age, gender and race of any codefendant or other*
14 *person charged or suspected of having participated in the*
15 *homicide and in any alleged related offense;*

16 (c) *The age, gender and race of the victim of the homicide and*
17 *any alleged related offense;*

18 (d) *The date of the homicide and of any alleged related*
19 *offense;*

20 (e) *The date of filing of the information or indictment;*

21 (f) *The name of each court in which the case was prosecuted;*

22 (g) *Whether or not the prosecutor filed a notice of intent to*
23 *seek the death penalty and, if so, when the prosecutor filed the*
24 *notice;*

25 (h) *The final disposition of the case and whether or not the*
26 *case was tried before a jury;*

27 (i) *The race, ethnicity and gender of each member of the jury,*
28 *if the case was tried by a jury; and*

29 (j) *The identity of:*

30 (1) *Each prosecuting attorney who participated in the*
31 *decision to file the initial charges against the defendant;*

32 (2) *Each prosecuting attorney who participated in the*
33 *decision to offer or accept a plea, if applicable;*

34 (3) *Each prosecuting attorney who participated in the*
35 *decision to seek the death penalty, if applicable; and*

36 (4) *Each person outside the office of the district attorney*
37 *who was consulted in determining whether to seek the death*
38 *penalty or to accept or reject a plea, if any.*

39 3. *If all the information required pursuant to subsection 1*
40 *cannot be provided because the case is still in progress, an*
41 *additional report must be filed with the Supreme Court each time*
42 *a subsequent report is filed until all the information, to the extent*
43 *available, has been provided.*



1 **Sec. 7.** Chapter 2 of NRS is hereby amended by adding thereto
2 a new section to read as follows:

3 *Not later than March 1 of each odd-numbered year, the*
4 *Supreme Court shall prepare and submit to the Director of the*
5 *Legislative Counsel Bureau for distribution to each regular*
6 *session of the Legislature a report of the information submitted to*
7 *the Supreme Court by the district attorneys during the preceding*
8 *biennium pursuant to section 6 of this act.*

9 **Sec. 8.** NRS 175.558 and 175.562 are hereby repealed.

10 **Sec. 9.** This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

175.558 Procedure when person is convicted upon plea of guilty or guilty but mentally ill or upon trial without jury and death penalty is sought. When any person is convicted of murder of the first degree upon a plea of guilty or guilty but mentally ill, or a trial without a jury, and the death penalty is sought, the Supreme Court shall appoint two district judges from judicial districts other than the district in which the plea is made, who shall with the district judge before whom the plea is made, or his successor in office, conduct the required penalty hearing to determine the presence of aggravating and mitigating circumstances, and give sentence accordingly. A sentence of death may be given only by unanimous vote of the three judges, but any other sentence may be given by the vote of a majority.

175.562 Procedure when panel of judges unable to obtain concurrence of majority for sentence less than death. If the concurrence of a majority cannot be had for any sentence less than death, the Supreme Court shall appoint a new panel of three district judges, none of whom was a member of the original panel, or a succession of such new panels if required. The new panel may in its discretion either give sentence upon the record of the evidence heard before the original panel or supplement the record by recalling the former witnesses or calling new ones. If the panel calls new witnesses, the State and the defendant are each entitled to call new witnesses or offer other evidence relevant to the new testimony. The same vote is required for the giving of sentence by the new panel as by the original panel.

