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ASSEMBLY BILL NO. 14—COMMITTEE ON JUDICIARY

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

PREFILED JANUARY 27, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes to penalty hearing when death penalty is sought and revises aggravating and mitigating circumstances for murder of first degree. (BDR 14-198)

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

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

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AN ACT relating to crimes; revising the order in which the arguments are presented during the penalty hearing when the death penalty is sought; revising the aggravating circumstances for murder of the first degree; revising provisions concerning mitigating circumstances in cases of murder of the first degree; 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 175.141 is hereby amended to read as follows:  
2     175.141 The jury having been impaneled and sworn, the trial  
3     ~~shall~~ *must* proceed in the following order:  
4     1. If the indictment or information be for a felony, the clerk  
5     must read it and state the plea of the defendant to the jury. In all  
6     other cases this formality may be dispensed with.  
7     2. The district attorney, or other counsel for the State, must  
8     open the cause. The defendant or his counsel may then either make



1 his opening statement or reserve it to be made immediately ~~prior to~~  
2 *before* the presentation of evidence in his behalf.

3 3. The State must then offer its evidence in support of the  
4 charge, and the defendant may then offer evidence in his defense.

5 4. The parties may then respectively offer rebutting testimony  
6 only, unless the court, for good reasons, in furtherance of justice,  
7 ~~permit~~ *permits* them to offer evidence upon their original cause.

8 5. ~~When~~ *Except as otherwise provided in NRS 175.554,*  
9 *when* the evidence is concluded, unless the case is submitted to the  
10 jury on either side, or on both sides, without argument, the district  
11 attorney, or other counsel for the State, must open and must  
12 conclude the argument.

13 **Sec. 2.** NRS 175.151 is hereby amended to read as follows:

14 175.151 If the indictment or information be for an offense  
15 punishable with death, two counsel on each side may argue the case  
16 to the jury, but in such case, as well as in all others, *except as*  
17 *otherwise provided in NRS 175.554,* the counsel for the State must  
18 open and conclude the argument. If it be for any other offense, the  
19 court may, in its discretion, restrict the argument to one counsel on  
20 each side.

21 **Sec. 3.** NRS 175.554 is hereby amended to read as follows:

22 175.554 In cases in which the death penalty is sought:

23 1. *The penalty hearing must proceed in the following order:*

24 (a) *The district attorney, or other counsel for the State, shall*  
25 *open the argument;*

26 (b) *The defendant or his counsel may then respond;*

27 (c) *The district attorney, or other counsel for the State, may*  
28 *then argue in rebuttal; and*

29 (d) *The defendant or his counsel may then conclude the*  
30 *argument in surrebuttal.*

31 2. If the penalty hearing is conducted before a jury, the court  
32 shall instruct the jury at the end of the hearing, and shall include in  
33 its instructions the aggravating circumstances alleged by the  
34 prosecution upon which evidence has been presented during the trial  
35 or at the hearing. The court shall also instruct the jury as to the  
36 mitigating circumstances alleged by the defense upon which  
37 evidence has been presented during the trial or at the hearing ~~f~~

38 ~~2.]~~ *and shall specifically identify in writing any mitigating*  
39 *circumstance which is applicable pursuant to subsection 8 of NRS*  
40 *200.035.*

41 3. The jury or the panel of judges shall determine:

42 (a) Whether an aggravating circumstance or circumstances are  
43 found to exist;

44 (b) Whether a mitigating circumstance or circumstances are  
45 found to exist; and



1 (c) Based upon these findings, whether the defendant should be  
2 sentenced to life imprisonment with the possibility of parole, life  
3 imprisonment without the possibility of parole or death.

4 ~~[3.]~~ 4. The jury or the panel of judges may impose a sentence  
5 of death only if it finds at least one aggravating circumstance and  
6 further finds that there are no mitigating circumstances sufficient to  
7 outweigh the aggravating circumstance or circumstances found.

8 ~~[4.]~~ 5. If a jury or a panel of judges imposes a sentence of  
9 death, the court shall enter its finding in the record, or the jury shall  
10 render a written verdict signed by the foreman. The finding or  
11 verdict must designate the aggravating circumstance or  
12 circumstances which were found beyond a reasonable doubt, and  
13 must state that there are no mitigating circumstances sufficient to  
14 outweigh the aggravating circumstance or circumstances found.

15 **Sec. 4.** NRS 200.033 is hereby amended to read as follows:  
16 200.033 The only circumstances by which murder of the first  
17 degree may be aggravated are:

18 1. The murder was committed by a person under sentence of  
19 imprisonment.

20 2. The murder was committed by a person who, at any time  
21 before a penalty hearing is conducted for the murder pursuant to  
22 NRS 175.552, is or has been convicted of:

23 (a) Another murder and the provisions of subsection ~~[H2]~~ *II* do  
24 not otherwise apply to that other murder; or

25 (b) A felony involving the use or threat of violence to the person  
26 of another and the provisions of subsection ~~[4]~~ *3* do not otherwise  
27 apply to that felony.

28 For the purposes of this subsection, a person shall be deemed to  
29 have been convicted at the time the jury verdict of guilt is rendered  
30 or upon pronouncement of guilt by a judge or judges sitting without  
31 a jury.

32 3. ~~[The murder was committed by a person who knowingly  
33 created a great risk of death to more than one person by means of a  
34 weapon, device or course of action which would normally be  
35 hazardous to the lives of more than one person.~~

36 ~~—4.]~~ The murder was committed while the person was engaged,  
37 alone or with others, in the commission of or an attempt to commit  
38 or flight after committing or attempting to commit, any robbery,  
39 arson in the first degree, burglary, invasion of the home or  
40 kidnapping in the first degree, and the person charged:

41 (a) Killed or attempted to kill the person murdered; or

42 (b) Knew or had reason to know that life would be taken or  
43 lethal force used.

44 ~~[5.]~~ 4. The murder was committed to avoid or prevent a lawful  
45 arrest or to effect an escape from custody.



1 ~~[6.]~~ 5. The murder was committed by a person, for himself or  
2 another, to receive money or any other thing of monetary value.

3 ~~[7.]~~ 6. The murder was committed upon a peace officer or  
4 ~~[fireman]~~ *firefighter* who was killed while engaged in the  
5 performance of his official duty or because of an act performed in  
6 his official capacity, and the defendant knew or reasonably should  
7 have known that the victim was a peace officer or ~~[fireman.]~~  
8 *firefighter*. For the purposes of this subsection, "peace officer"  
9 means:

10 (a) An employee of the Department of Corrections who does not  
11 exercise general control over offenders imprisoned within the  
12 institutions and facilities of the Department but whose normal duties  
13 require him to come into contact with those offenders, when  
14 carrying out the duties prescribed by the Director of the Department.

15 (b) Any person upon whom some or all of the powers of a peace  
16 officer are conferred pursuant to NRS 289.150 to 289.360, inclusive,  
17 when carrying out those powers.

18 ~~[8.]~~ 7. The murder involved torture or the mutilation of the  
19 victim.

20 ~~[9.]~~ 8. The murder was committed upon one or more persons at  
21 random and without apparent motive.

22 ~~[10.]~~ 9. The murder was committed upon a person less than 14  
23 years of age.

24 ~~[11.]~~ 10. The murder was committed upon a person because of  
25 the actual or perceived race, color, religion, national origin, physical  
26 or mental disability or sexual orientation of that person.

27 ~~[12.]~~ 11. The defendant has, in the immediate proceeding, been  
28 convicted of more than one offense of murder in the first or second  
29 degree. For the purposes of this subsection, a person shall be  
30 deemed to have been convicted of a murder at the time the jury  
31 verdict of guilt is rendered or upon pronouncement of guilt by a  
32 judge or judges sitting without a jury.

33 ~~[13.]~~ 12. The person, alone or with others, subjected or  
34 attempted to subject the victim of the murder to nonconsensual  
35 sexual penetration immediately before, during or immediately after  
36 the commission of the murder. For the purposes of this subsection:

37 (a) "Nonconsensual" means against the victim's will or under  
38 conditions in which the person knows or reasonably should know  
39 that the victim is mentally or physically incapable of resisting,  
40 consenting or understanding the nature of his conduct, including, but  
41 not limited to, conditions in which the person knows or reasonably  
42 should know that the victim is dead.

43 (b) "Sexual penetration" means cunnilingus, fellatio or any  
44 intrusion, however slight, of any part of the victim's body or any  
45 object manipulated or inserted by a person, alone or with others, into



1 the genital or anal openings of the body of the victim, whether or  
2 not the victim is alive. The term includes, but is not limited to, anal  
3 intercourse and sexual intercourse in what would be its ordinary  
4 meaning.

5 ~~H4.~~ **13.** The murder was committed on the property of a  
6 public or private school, at an activity sponsored by a public or  
7 private school or on a school bus while the bus was engaged in its  
8 official duties by a person who intended to create a great risk of  
9 death or substantial bodily harm to more than one person by means  
10 of a weapon, device or course of action that would normally be  
11 hazardous to the lives of more than one person. For the purposes of  
12 this subsection, "school bus" has the meaning ascribed to it in  
13 NRS 483.160.

14 **Sec. 5.** NRS 200.035 is hereby amended to read as follows:  
15 200.035 Murder of the first degree may be mitigated by any of  
16 the following circumstances, even though the mitigating  
17 circumstance is not sufficient to constitute a defense or reduce the  
18 degree of the crime:

19 1. The defendant has no significant history of prior criminal  
20 activity.

21 2. The murder was committed while the defendant was under  
22 the influence of extreme mental or emotional disturbance.

23 3. The victim was a participant in the defendant's criminal  
24 conduct or consented to the act.

25 4. The defendant was an accomplice in a murder committed by  
26 another person and his participation in the murder was relatively  
27 minor.

28 5. The defendant acted under duress or under the domination of  
29 another person.

30 6. The youth of the defendant at the time of the crime.

31 7. *The defendant suffers from a mental illness or has a*  
32 *history of psychological disturbance.*

33 8. Any other mitigating circumstance.

