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 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.

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 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:

Section 1. NRS 175.141 is hereby amended to read as follows:

175.141 The jury having been impaneled and sworn, the trial [~~shall~~] ***must*** proceed in the following order:

1. If the indictment or information be for a felony, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the State, must open the cause. The defendant or his counsel may then either make his opening statement or reserve it to be made immediately [~~prior to~~] ***before*** the presentation of evidence in his behalf.

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

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

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

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

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

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

175.554 In cases in which the death penalty is sought:

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

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

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

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

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

2. If the penalty hearing is conducted before a jury, the court shall instruct the jury at the end of the hearing, and shall include in its instructions the aggravating circumstances alleged by the prosecution upon which evidence has been presented during the trial or at the hearing. The court shall also instruct the jury as to the mitigating circumstances alleged by the defense upon which evidence has been presented during the trial or at the hearing ~~[.~~ ~~2.]~~ ***and shall specifically identify in writing any mitigating circumstance which is applicable pursuant to subsection 8 of NRS 200.035.***

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

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

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

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

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

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

Sec. 4. NRS 200.035 is hereby amended to read as follows:

200.035 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. ***The defendant suffers from a mental illness.***
8. Any other mitigating circumstance.