

SENATE BILL NO. 400—COMMITTEE ON JUDICIARY

MARCH 12, 1999

Referred to Committee on Judiciary

SUMMARY—Revises jury instruction that defines reasonable doubt in criminal actions.
(BDR 14-1533)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 criminal actions; revising the jury instruction that defines reasonable doubt in criminal actions; and providing other matters properly relating thereto.

1 WHEREAS, NRS 175.211 currently provides for an instruction to the jury
2 that defines and explains reasonable doubt in criminal actions; and

3 WHEREAS, The supreme court of Nevada has repeatedly held that the
4 instruction contained in NRS 175.211 is constitutional in its current form;
5 and

6 WHEREAS, The Nevada legislature continues to believe that the
7 instruction contained in NRS 175.211 is constitutional in its current form
8 and that the instruction does not need to be revised based upon any
9 principles of constitutional law; and

10 WHEREAS, The Nevada legislature declares that the provisions of this
11 bill must not be construed to support a finding that the instruction contained
12 in NRS 175.211 is unconstitutional in its current form; and

13 WHEREAS, The Nevada legislature continues to believe that the
14 instruction contained in NRS 175.211 adequately defines and explains
15 reasonable doubt in criminal actions; and

16 WHEREAS, The Nevada legislature recognizes, however, that the
17 instruction contained in NRS 175.211 is based upon statutory language that
18 was drafted in 1889; and

19 WHEREAS, Members of the judiciary and the State Bar of Nevada have
20 encouraged the use of more contemporary language in the instruction
21 contained in NRS 175.211; and

1 WHEREAS, The supreme court of Nevada, in *Bollinger v. State*, 111
2 Nev. 1110, 1115 n.2 (1995), encouraged the Nevada legislature to adopt
3 the definition and explanation of reasonable doubt endorsed by the Federal
4 Judicial Center; and

5 WHEREAS, In a concurring opinion in *Victor v. Nebraska*, 511 U.S. 1,
6 27 (1994), Justice Ginsburg of the United States Supreme Court opined that
7 the instruction endorsed by the Federal Judicial Center stated “the
8 reasonable doubt standard succinctly and comprehensibly”; and

9 WHEREAS, The Nevada legislature believes that the use of more
10 contemporary language in the instruction contained in NRS 175.211 would
11 further enhance the administration of justice in this state; now, therefore,
12

13 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
14 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
15

16 **Section 1.** NRS 175.211 is hereby amended to read as follows:

17 175.211 1. ~~[A reasonable doubt is one based on reason. It is not mere~~
18 ~~possible doubt, but is such a doubt as would govern or control a person in~~
19 ~~the more weighty affairs of life. If the minds of the jurors, after the entire~~
20 ~~comparison and consideration of all the evidence, are in such a condition~~
21 ~~that they can say they feel an abiding conviction of the truth of the charge,~~
22 ~~there is not a reasonable doubt. Doubt to be reasonable must be actual, not~~
23 ~~mere possibility or speculation.~~

24 ~~—2.— No other definition of reasonable doubt may be given by the court to~~
25 ~~juries in criminal actions in this state.]~~ *In any criminal action that is tried*
26 *before a jury to determine the guilt of the defendant:*

27 *(a) The court is not required to give any instruction that defines or*
28 *explains reasonable doubt, unless such an instruction is requested by the*
29 *jury or a party.*

30 *(b) If the court gives an instruction that defines or explains*
31 *reasonable doubt, the following instruction must be given to the jury, and*
32 *the court shall not give any other instruction that defines or explains*
33 *reasonable doubt:*

34
35 *The prosecution has the burden of proving the defendant guilty*
36 *beyond a reasonable doubt. Some of you may have served as jurors*
37 *in civil cases, where you were told that it is only necessary to prove*
38 *that a fact is more likely true than not true. In criminal cases, the*
39 *prosecution’s proof must be more powerful than that. It must be*
40 *beyond a reasonable doubt.*

41
42 *Proof beyond a reasonable doubt is proof that leaves you firmly*
43 *convinced of the defendant’s guilt. There are very few things in this*

1 *world that we know with absolute certainty, and in criminal cases*
2 *the law does not require proof that overcomes every possible doubt.*
3 *If, based on your consideration of the evidence, you are firmly*
4 *convinced that the defendant is guilty of the crime charged, you*
5 *must find the defendant guilty. If, on the other hand, you think there*
6 *is a real possibility that the defendant is not guilty, you must give the*
7 *defendant the benefit of the doubt and find the defendant not guilty.*
8

9 **2.** *In any penalty hearing conducted before a jury in which the*
10 *prosecution is required by the constitution or laws of this state or the*
11 *Constitution of the United States to prove beyond a reasonable doubt the*
12 *existence of any aggravating circumstance, allegation or other matter:*

13 *(a) The court is not required to give any instruction that defines or*
14 *explains reasonable doubt, unless such an instruction is requested by the*
15 *jury or a party.*

16 *(b) If the court gives an instruction that defines or explains*
17 *reasonable doubt, the instruction that is given to the jury must be, to the*
18 *extent practicable, substantially similar in form and content to the*
19 *instruction set forth in paragraph (b) of subsection 1, and the court shall*
20 *not give any other instruction that defines or explains reasonable doubt.*

21 **3.** *The provisions of this section apply to all proceedings related to a*
22 *criminal action or penalty hearing in which one or more prospective*
23 *jurors, regular jurors or alternate jurors are examined, selected or*
24 *present.*

25 **Sec. 2.** The amendatory provisions of this act apply to all criminal
26 actions and penalty hearings in which the initial examination of prospective
27 jurors for the criminal action or penalty hearing commences on or after
28 July 1, 1999, regardless of when the offense was committed.

29 **Sec. 3.** This act becomes effective on July 1, 1999.