

ASSEMBLY BILL NO. 353—ASSEMBLYMEN LESLIE, ANDERSON,
GIUNCHIGLIANI, ARBERRY AND WILLIAMS

MARCH 14, 2001

JOINT SPONSOR: SENATOR NEAL

Referred to Committee on Judiciary

SUMMARY—Prohibits sentence of death for person who is mentally retarded.
(BDR 14-801)

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 crimes; prohibiting a sentence of death for a person who is mentally retarded; 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.** Chapter 174 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 1. *A defendant who is charged with murder of the first degree may,*
4 *before his trial, file a motion to declare that he is mentally retarded.*
5 2. *If a defendant files a motion pursuant to this section the court*
6 *shall hold a hearing within a reasonable time before the trial to*
7 *determine whether the defendant is mentally retarded.*
8 3. *At a hearing conducted pursuant to this section:*
9 (a) *The court shall allow the defendant and the prosecution to present*
10 *evidence concerning the motion;*
11 (b) *The defendant has the burden of proving by a preponderance of*
12 *the evidence that he is mentally retarded; and*
13 (c) *There is a rebuttable presumption that the defendant is mentally*
14 *retarded if the results of a reliably administered intelligence quotient test*
15 *indicate that his intelligence quotient is 70 or below.*
16 4. *If the court concludes based on the evidence presented at a*
17 *hearing conducted pursuant to this section that the defendant is mentally*
18 *retarded, it shall make a finding that the defendant may not receive a*
19 *sentence of death.*



1 **5. For the purposes of this section, a person is “mentally retarded” if**
2 **before the age of 18 years he manifests:**

3 **(a) Intellectual functioning that is significantly substandard; and**

4 **(b) Substantial impairment of his adaptive behavior.**

5 **Sec. 2.** NRS 175.552 is hereby amended to read as follows:

6 175.552 1. Except as otherwise provided in subsection 2, in every
7 case in which there is a finding that a defendant is guilty of murder of the
8 first degree, whether or not the death penalty is sought, the court shall
9 conduct a separate penalty hearing. The separate penalty hearing must be
10 conducted as follows:

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

13 (b) If the finding is made upon a plea of guilty or guilty but mentally ill
14 or a trial without a jury and the death penalty is sought, the separate
15 penalty hearing must be conducted before a panel of three district judges,
16 as soon as practicable.

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

21 2. In a case in which the death penalty is not sought ~~or~~ **or in which a**
22 **court has found pursuant to section 1 of this act that the defendant may**
23 **not receive a sentence of death,** the parties may by stipulation waive the
24 separate penalty hearing required in subsection 1. When stipulating to such
25 a waiver, the parties may also include an agreement to have the sentence, if
26 any, imposed by the trial judge. Any stipulation pursuant to this subsection
27 must be in writing and signed by the defendant, his attorney, if any, and the
28 prosecuting attorney.

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

39 4. In a case in which the death penalty is not sought ~~or~~ **or in which a**
40 **court has found pursuant to section 1 of this act that the defendant may**
41 **not receive a sentence of death,** the jury or the trial judge shall determine
42 whether the defendant should be sentenced to life with the possibility of
43 parole or life without the possibility of parole.

44 **Sec. 3.** NRS 177.055 is hereby amended to read as follows:

45 177.055 1. When upon a plea of not guilty a judgment of death is
46 entered, an appeal is deemed automatically taken by the defendant without
47 any action by him or his counsel, unless the defendant or his counsel
48 affirmatively waives the appeal within 30 days after the rendition of the
49 judgment.



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- 1 2. Whether or not the defendant or his counsel affirmatively waives the
2 appeal, the sentence must be reviewed on the record by the supreme court,
3 which shall consider, in a single proceeding if an appeal is taken:
4 (a) Any errors enumerated by way of appeal;
5 (b) *If a court concluded at a hearing held pursuant to section 1 of this*
6 *act that the defendant was not mentally retarded, whether that*
7 *conclusion of the court was correct;*
8 (c) Whether the evidence supports the finding of an aggravating
9 circumstance or circumstances;
10 ~~(e)~~ (d) Whether the sentence of death was imposed under the
11 influence of passion, prejudice or any arbitrary factor; and
12 ~~(d)~~ (e) Whether the sentence of death is excessive, considering both
13 the crime and the defendant.
14 3. The supreme court, when reviewing a death sentence, may:
15 (a) Affirm the sentence of death;
16 (b) Set the sentence aside and remand the case for a new penalty
17 hearing:
18 (1) If the original penalty hearing was before a jury, before a newly
19 impaneled jury; or
20 (2) If the original penalty hearing was before a panel of judges,
21 before a panel of three district judges which must consist, insofar as
22 possible, of the members of the original panel; or
23 (c) Set aside the sentence of death and impose the sentence of
24 imprisonment for life without possibility of parole.
25 **Sec. 4.** NRS 200.030 is hereby amended to read as follows:
26 200.030 1. Murder of the first degree is murder which is:
27 (a) Perpetrated by means of poison, lying in wait or torture, or by any
28 other kind of willful, deliberate and premeditated killing;
29 (b) Committed in the perpetration or attempted perpetration of sexual
30 assault, kidnapping, arson, robbery, burglary, invasion of the home, sexual
31 abuse of a child, sexual molestation of a child under the age of 14 years or
32 child abuse;
33 (c) Committed to avoid or prevent the lawful arrest of any person by a
34 peace officer or to effect the escape of any person from legal custody; or
35 (d) Committed on the property of a public or private school, at an
36 activity sponsored by a public or private school or on a school bus while
37 the bus was engaged in its official duties by a person who intended to
38 create a great risk of death or substantial bodily harm to more than one
39 person by means of a weapon, device or course of action that would
40 normally be hazardous to the lives of more than one person.
41 2. Murder of the second degree is all other kinds of murder.
42 3. The jury before whom any person indicted for murder is tried shall,
43 if they find him guilty thereof, designate by their verdict whether he is
44 guilty of murder of the first or second degree.
45 4. A person convicted of murder of the first degree is guilty of a
46 category A felony and shall be punished:
47 (a) By death, only if one or more aggravating circumstances are found
48 and any mitigating circumstance or circumstances which are found do not
49 outweigh the aggravating circumstance or circumstances ~~†~~ , *unless a*



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1 *court has found pursuant to section 1 of this act that the defendant may*
2 *not receive a sentence of death; or*
3 (b) By imprisonment in the state prison:
4 (1) For life without the possibility of parole;
5 (2) For life with the possibility of parole, with eligibility for parole
6 beginning when a minimum of 20 years has been served; or
7 (3) For a definite term of 50 years, with eligibility for parole
8 beginning when a minimum of 20 years has been served.
9 A determination of whether aggravating circumstances exist is not
10 necessary to fix the penalty at imprisonment for life with or without the
11 possibility of parole.
12 5. A person convicted of murder of the second degree is guilty of a
13 category A felony and shall be punished by imprisonment in the state
14 prison:
15 (a) For life with the possibility of parole, with eligibility for parole
16 beginning when a minimum of 10 years has been served; or
17 (b) For a definite term of 25 years, with eligibility for parole beginning
18 when a minimum of 10 years has been served.
19 6. As used in this section:
20 (a) "Child abuse" means physical injury of a nonaccidental nature to a
21 child under the age of 18 years;
22 (b) "School bus" has the meaning ascribed to it in NRS 483.160;
23 (c) "Sexual abuse of a child" means any of the acts described in NRS
24 432B.100; and
25 (d) "Sexual molestation" means any willful and lewd or lascivious act,
26 other than acts constituting the crime of sexual assault, upon or with the
27 body, or any part or member thereof, of a child under the age of 14 years,
28 with the intent of arousing, appealing to, or gratifying the lust, passions or
29 sexual desires of the perpetrator or of the child.
30 **Sec. 5.** The amendatory provisions of this act do not apply to offenses
31 committed before October 1, 2001.

