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REGARDING ASSEMBLY BILL NO. 15—COMMITTEE ON JUDICIARY

SUMMARY—Prohibits sentence of death for person who is mentally retarded

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

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; providing procedures to be used in death penalty cases where there is a belief that the defendant may be mentally retarded; and providing other matters relating thereto.

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

Section 1. NRS 178.441 is hereby amended to read as follows:

***NRS 178.441 Mentally retarded persons cannot be executed***

***A person may not be executed if he is mentally retarded. 'Mental retardation' is defined in NRS 433.174.***

Section 2. NRS 178.443 is hereby amended to read as follows:

***NRS 178.443 Notice to declare defendant mentally retarded; suspension of proceedings***

***1. In any case where the state has filed notice of intent to seek the death penalty, a defendant may, no later than 10 days prior to trial, file a motion to declare that he is mentally retarded.***

***2. If the defendant in his motion satisfies the court that there is doubt as to whether the defendant is mentally retarded, the court shall suspend the proceedings until the question of mental retardation is determined.***

Section 3. NRS 178.445 is hereby amended to read as follows:

***NRS 178.445 Appointment of persons to examine defendant; hearing; findings; striking of notice of intent to seek death; appellate rights; use of evidence in mitigation***

***1. Except as otherwise provided in this subsection, the court shall appoint two psychiatrists, two psychologists, or one psychiatrist and one psychologist, to examine the defendant. If the appointed experts disagree as to whether the defendant is mentally***

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*retarded, the court may appoint a third expert to examine the defendant. Results of these examinations shall be provided to the state and the defendant.*

*2. At a hearing in open court, the judge shall receive the report of the examination and shall permit counsel for both sides to examine the person or persons appointed to examine the defendant. The prosecuting attorney and the defendant may introduce other evidence and cross-examine one another's witnesses. The defendant bears the burden of establishing mental retardation by a preponderance of the evidence.*

*3. The court shall then make and enter its finding regarding whether the defendant is mentally retarded.*

*(a) If the court finds the defendant is mentally retarded, the court shall strike the state's notice of intent to seek the death penalty. The state may appeal a finding of mental retardation pursuant to NRS 177.015.*

*(b) If, at the hearing, the defendant fails to demonstrate mental retardation, proceedings shall resume. Nothing in this section prohibits the defendant from presenting evidence of his mental condition in mitigation of his sentence pursuant to NRS 175.552 or NRS 200.035.*

Section 4. NRS 178.447 is hereby amended to read as follows:

*NRS 178.447 Court to inquire into mental retardation of defendant; waiver; imposition of alternate sentence*

*In the event of a conviction and sentence of death when no previous finding has been made regarding mental retardation prior to trial, the trial court shall, after a sentence of death, appoint doctors to examine defendant and hold a hearing pursuant to NRS 178.445, unless the defendant knowingly and intelligently waives such examination on the record. If pursuant to this section the court finds defendant to be mentally retarded, the court shall set aside the sentence of death and impose a sentence of life without the possibility of parole. If the court finds defendant is not mentally retarded, the court shall impose the sentence of death.*

Section 5. NRS 178.449 is hereby amended to read as follows:

*NRS 178.449 Retroactive application*

*Inmates currently under a sentence of death have one (1) year from the effective date of this section to bring a new petition for writ of habeas corpus in the district court raising issues regarding mental retardation.*

Section 6. NRS 177.015 is hereby amended to read as follows:

*NRS 177.015 Appeals to district and supreme court.*

1. Whether that party is the state or the defendant:
  - (a) To the district court of the county from a final judgment of the justice's court.
  - (b) To the supreme court from an order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.
2. The State may, upon good cause shown, appeal to the supreme court from a pretrial order of the district court granting or denying a motion to suppress evidence made pursuant to NRS 174.125 *or from a pretrial finding of mental retardation made pursuant to NRS 178.445*. Notice of the appeal must be filed with the clerk of the district court within 2 judicial days and with the clerk of the supreme court within 5 judicial days after the ruling by the district court. The clerk of the district court shall notify counsel for the defendant or, in the case of a defendant without counsel, the defendant within 2 judicial days after the filing of the notice of appeal. The supreme court may establish such procedures as it determines proper in requiring the appellant to make a preliminary showing of the propriety of the appeal and whether there may be a miscarriage of justice if the appeal is not entertained. If the supreme court entertains the appeal, or if it otherwise appears necessary, it may enter an order staying the trial for such time as may be required.
3. The defendant only may appeal from a final judgment or verdict in a criminal case.
4. Except as otherwise provided in subsection 3 of NRS 174.035, the defendant in a criminal case shall not appeal a final judgment or a verdict resulting from a plea of guilty, guilty but mentally ill or nolo contendere that the defendant entered into voluntarily and with a full understanding of the nature of the charge and the consequences of the plea, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings. The supreme court may establish procedures to require the defendant to make a preliminary showing of the propriety of the appeal.