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REGARDING ASSEMBLY BILL NO. 13—COMMITTEE ON JUDICIARY

SUMMARY—Abolishes three-judge panel following hung jury, preserves three-judge panel as option for defendant following plea. (BDR 14-197)

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

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

AN ACT relating to criminal procedure; retaining three-judge panel as defendant's option following plea, abolishing three judge-panel following hung jury, removing the requirement of a separate penalty hearing for a defendant who is convicted of murder of the first degree where the death penalty is not sought; 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 175.552 is hereby amended to read as follows:

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

(a) If ~~[the finding is made by a jury]~~ ***the death penalty is sought***, the separate penalty hearing must be conducted ***as soon as practicable*** in the trial court before ***either the trial jury or, if there was no trial jury, before a newly impaneled jury***, ~~as soon as practicable or a panel of three district judges, at the election of the defendant.~~

(b) ~~If the finding is made upon a plea of guilty or a trial without a jury and the death penalty is sought, the separate penalty hearing must be conducted before a panel of three district judges, as soon as practicable.~~ ***If the finding is made by a jury and the death penalty is not sought, the separate penalty hearing must be conducted in the trial court before the trial jury.***

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

2. In a case in which the death penalty is not sought, the parties may by stipulation waive the separate penalty hearing required in subsection 1. When stipulating to such a waiver, the parties may also include an agreement to have the sentence, if any, imposed by the trial judge. Any stipulation pursuant to this subsection must be in writing and signed by the defendant, his attorney, and the prosecuting attorney.

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SUBMITTED BY: Clark Peterson

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

4. In a case in which the death penalty is not sought, the jury or the trial judge shall determine whether the defendant should be sentenced to life with the possibility of parole or life without the possibility of parole.

Section 2. NRS 175.556 is hereby amended to read as follows:

175.556. Procedure when jury unable to reach unanimous verdict, *procedure for constituting three judge panel*

1. In a case in which the death penalty is sought, if a jury is unable to reach a unanimous verdict upon the sentence to be imposed, *a new penalty hearing shall be held as soon as practicable in the trial court before either a newly impaneled jury or a panel of three district judges.*

2. If the defendant elects to have the penalty hearing conducted in the trial court by a panel of three district judges, the supreme court shall appoint two district judges from judicial districts other than the district in which the plea is made, who shall with the district judge who conducted the trial, or his successor in office, conduct the required penalty hearing to determine the presence of aggravating and mitigating circumstances, and give sentence accordingly. A sentence of death may be given only by unanimous vote of the three judges, but any other sentence may be given by the vote of a majority.

~~[2.]~~ 3. In a case in which the death penalty is not sought, if a jury is unable to reach a unanimous verdict upon the sentence to be imposed, the trial judge shall impose the sentence.

Section 3. NRS 175.558 is hereby amended to read as follows:

~~**175.558.** Procedure when person is convicted upon plea of guilty or upon trial without jury and death penalty is sought~~

~~[When any person is convicted of murder of the first degree upon a plea of guilty or a trial without a jury and the death penalty is sought, the supreme court shall appoint two district judges from judicial districts other than the district in which the plea is made, who shall with the district judge before whom the plea is made, or his successor in office, conduct the required penalty hearing to determine the presence of aggravating and mitigating circumstances, and give sentence accordingly. A sentence of death may be given only by unanimous vote of the three judges, but any other sentence may be given by the vote of a majority.]~~

Section 4. NRS 177.055 is hereby amended to read as follows:

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

2. Whether or not the defendant or his counsel affirmatively waives the appeal, the sentence must be reviewed on the record and by the supreme court, which shall consider, in a single proceeding if an appeal is taken:

- (a) Any errors enumerated by way of appeal;
- (b) Whether the evidence supports the finding of an aggravating circumstance or circumstances;
- (c) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and
- (d) Whether the sentence of death is excessive, considering both the crime and the defendant.

3. The supreme court, when reviewing a death sentence, may:

- (a) Affirm the sentence of death;
- (b) Set the sentence aside and remand the case for a new penalty hearing *to be held either* ~~[(1) If the original penalty hearing was before a jury,]~~ before a newly impaneled jury; or ~~[(2) If the original penalty hearing was before a panel of judges,]~~ before a panel of three district judges which must consist, insofar as possible, of the members of the original panel, *at the election of the defendant;* or
- (c) Set aside the sentence of death and impose the sentence of imprisonment for life without possibility of parole.