

ASSEMBLY BILL NO. 160—ASSEMBLYMAN OHRENSCHALL

FEBRUARY 21, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the death penalty.
(BDR 14-2)

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 criminal procedure; revising provisions concerning sentencing in cases in which the death penalty is sought; revising provisions concerning the circumstances by which murder of the first degree may be aggravated; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a jury is unable to reach a unanimous verdict upon the sentence to be imposed in a case in which the death penalty is sought, the district judge who conducted the trial or accepted the plea of guilty must sentence the defendant to life imprisonment without the possibility of parole or must impanel a new jury to determine the sentence. (NRS 175.556) **Section 1** of this bill provides that in such a situation when a jury is unable to reach a unanimous verdict upon the sentence to be imposed, the district judge must sentence the defendant to life imprisonment without the possibility of parole, life imprisonment with the possibility of parole or a definite term of 50 years.

Existing law also provides that during the penalty hearing of a defendant who has been found guilty or guilty but mentally ill of murder of the first degree, the State generally may introduce evidence of certain additional aggravating circumstances. The jury may only impose a sentence of death if it finds at least one aggravating circumstance and finds that no mitigating circumstances exist which are sufficient to outweigh any aggravating circumstance that is found. (NRS 175.552, 175.554) Existing law sets forth the circumstances by which murder of the first degree may be aggravated. (NRS 200.033) **Section 2** of this bill revises various provisions concerning these aggravating circumstances.



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

Section 1. NRS 175.556 is hereby amended to read as follows:

175.556 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, the district judge who conducted the trial or accepted the plea of guilty shall sentence the defendant to **imprisonment:**

(a) For life ~~{imprisonment}~~ without the possibility of parole ~~{or impanel a new jury to determine the sentence-}~~ ;

(b) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(c) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

2. 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.

Sec. 2. NRS 200.033 is hereby amended to read as follows:

200.033 The only circumstances by which murder of the first degree may be aggravated are:

1. The murder was committed by a person ~~{under sentence of imprisonment-}~~ **incarcerated in a correctional institution or facility.**

2. The murder was committed by a person who, **in a separate proceeding**, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:

(a) Another murder and the provisions of subsection 12 do not otherwise apply to that other murder; or

(b) ~~{A felony}~~ **Two or more felonies** involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to ~~{that felony-}~~ **those felonies.**

➔ For the purposes of this subsection, a person shall be deemed to have been convicted at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

3. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

4. The murder was committed while the person was engaged, alone or with others, in the commission of, or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, ~~{burglary-}~~ invasion of the home or kidnapping in the first degree, and the person charged ~~{-~~

~~—(a) Killed}~~ **killed** or attempted to kill the person murdered . ~~{-or~~



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~~1 (b) Knew or had reason to know that life would be taken or~~
~~2 lethal force used.~~ *3 This subsection may not be invoked to aggravate*
4 a conviction of murder of the first degree that is obtained, in
5 whole or in part, predicated on a felony-murder theory of liability.

~~6 5. The murder was committed to~~ ~~avoid or prevent a lawful~~
~~arrest or to~~ effect an escape from custody.

6. The murder was committed by a person, for himself or
herself or another, to receive money or any other thing of monetary
value ~~H~~ *from a third party in exchange for the commission of the*
killing.

7. The murder was committed upon a peace officer or
firefighter who was killed while engaged in the performance of his
or her official duty or because of an act performed in his or her
official capacity, and the defendant knew or reasonably should have
known that the victim was a peace officer or firefighter. For the
purposes of this subsection, "peace officer" means:

(a) An employee of the Department of Corrections who does not
exercise general control over offenders imprisoned within the
institutions and facilities of the Department, but whose normal
duties require the employee to come into contact with those
offenders when carrying out the duties prescribed by the Director of
the Department.

(b) Any person upon whom some or all of the powers of a peace
officer are conferred pursuant to NRS 289.150 to 289.360, inclusive,
when carrying out those powers.

8. The murder involved torture ~~for the mutilation~~ of the
victim. *For the purposes of this subsection, "torture" requires a*
calculated intent to inflict pain, beyond the killing itself, for
revenge, extortion or persuasion or for any other sadistic purpose.

9. The murder was committed upon one or more persons at
random and without apparent motive.

10. The murder was committed upon a person less than 14
years of age.

11. The murder was committed upon a person because of the
actual or perceived race, color, religion, national origin, physical or
mental disability or sexual orientation of that person.

12. The defendant has, in the immediate proceeding, been
convicted of more than one offense of murder in the first or second
degree. For the purposes of this subsection, a person shall be
deemed to have been convicted of a murder at the time the jury
verdict of guilt is rendered or upon pronouncement of guilt by a
judge or judges sitting without a jury.

13. The person, alone or with others, subjected or attempted to
subject the victim of the murder to nonconsensual sexual penetration



1 immediately before, during or immediately after the commission of
2 the murder. For the purposes of this subsection:

3 (a) "Nonconsensual" means against the victim's will or under
4 conditions in which the person knows or reasonably should know
5 that the victim is mentally or physically incapable of resisting,
6 consenting or understanding the nature of his or her conduct,
7 including, but not limited to, conditions in which the person knows
8 or reasonably should know that the victim is dead.

9 (b) "Sexual penetration" means cunnilingus, fellatio or any
10 intrusion, however slight, of any part of the victim's body or any
11 object manipulated or inserted by a person, alone or with others, into
12 the genital or anal openings of the body of the victim, whether or
13 not the victim is alive. The term includes, but is not limited to, anal
14 intercourse and sexual intercourse in what would be its ordinary
15 meaning.

16 14. The murder was committed on the property of a public or
17 private school, at an activity sponsored by a public or private school
18 or on a school bus while the bus was engaged in its official duties by
19 a person who intended to create a great risk of death or substantial
20 bodily harm to more than one person by means of a weapon, device
21 or course of action that would normally be hazardous to the lives of
22 more than one person. For the purposes of this subsection, "school
23 bus" has the meaning ascribed to it in NRS 483.160.

24 15. The murder was committed with the intent to commit,
25 cause, aid, further or conceal an act of terrorism. For the purposes of
26 this subsection, "act of terrorism" has the meaning ascribed to it in
27 NRS 202.4415.

