

SENATE BILL NO. 246—SENATOR OHRENSCHALL

MARCH 1, 2019

JOINT SPONSOR: ASSEMBLYMAN FUMO

Referred to Committee on Judiciary

SUMMARY—Eliminates the possibility of the imposition of a sentence of death on persons convicted of first degree murder. (BDR 15-963)

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; eliminating the possibility of the imposition of a sentence of death on a person convicted of first degree murder; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a sentence of death may be imposed on a person convicted of first degree murder under certain circumstances. (NRS 200.030) **Section 4** of this bill eliminates the possibility of the imposition of a sentence of death on a person convicted of first degree murder on or after the effective date of this act. **Sections 2-19** of this bill make conforming changes.

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

Section 1. NRS 193.120 is hereby amended to read as follows:
193.120 1. A crime is an act or omission forbidden by law and punishable upon conviction by ~~death,~~ imprisonment, fine or other penal discipline.
2. Every crime ~~which may be punished~~ *punishable* by death or by imprisonment in the state prison is a felony.



* S B 2 4 6 *

3. Every crime punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not more than 6 months, is a misdemeanor.

4. Every other crime is a gross misdemeanor.

Sec. 2. NRS 193.130 is hereby amended to read as follows:

193.130 1. Except when a person is convicted of a category A felony, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.

2. Except as otherwise provided by specific statute, for each felony committed on or after ~~July 1, 1995;~~ *the effective date of this act:*

(a) A category A felony is a felony for which a sentence of ~~death or~~ imprisonment in the state prison for life with or without the possibility of parole may be imposed, as provided by specific statute.

(b) A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years, as provided by specific statute.

(c) A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.

(d) A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater fine is authorized or required by statute.

(e) A category E felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. Except as otherwise provided in paragraph (b) of subsection 1 of NRS 176A.100, upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to



1 serve a term of confinement of not more than 1 year in the county
2 jail. In addition to any other penalty, the court may impose a fine of
3 not more than \$5,000, unless a greater penalty is authorized or
4 required by statute.

5 **Sec. 3.** NRS 194.010 is hereby amended to read as follows:

6 194.010 All persons are liable to punishment except those
7 belonging to the following classes:

8 1. Children under the age of 8 years.

9 2. Children between the ages of 8 years and 10 years, unless
10 the child is charged with murder or a sexual offense as defined in
11 NRS 62F.100.

12 3. Children between the ages of 8 years and 14 years, in the
13 absence of clear proof that at the time of committing the act charged
14 against them they knew its wrongfulness.

15 4. Persons who committed the act charged or made the
16 omission charged in a state of insanity.

17 5. Persons who committed the act or made the omission
18 charged under an ignorance or mistake of fact, which disproves any
19 criminal intent, where a specific intent is required to constitute the
20 offense.

21 6. Persons who committed the act charged without being
22 conscious thereof.

23 7. Persons who committed the act or made the omission
24 charged, through misfortune or by accident, when it appears that
25 there was no evil design, intention or culpable negligence.

26 8. Persons, unless the crime is ~~punishable with death,~~ **murder**
27 **of the first degree**, who committed the act or made the omission
28 charged under threats or menaces sufficient to show that they had
29 reasonable cause to believe, and did believe, their lives would be
30 endangered if they refused, or that they would suffer great bodily
31 harm.

32 **Sec. 4.** NRS 200.030 is hereby amended to read as follows:

33 200.030 1. Murder of the first degree is murder which is:

34 (a) Perpetrated by means of poison, lying in wait or torture, or
35 by any other kind of willful, deliberate and premeditated killing;

36 (b) Committed in the perpetration or attempted perpetration of
37 sexual assault, kidnapping, arson, robbery, burglary, invasion of the
38 home, sexual abuse of a child, sexual molestation of a child under
39 the age of 14 years, child abuse or abuse of an older person or
40 vulnerable person pursuant to NRS 200.5099;

41 (c) Committed to avoid or prevent the lawful arrest of any
42 person by a peace officer or to effect the escape of any person from
43 legal custody;

44 (d) Committed on the property of a public or private school, at
45 an activity sponsored by a public or private school or on a school



1 bus while the bus was engaged in its official duties by a person who
2 intended to create a great risk of death or substantial bodily harm to
3 more than one person by means of a weapon, device or course of
4 action that would normally be hazardous to the lives of more than
5 one person; or

6 (e) Committed in the perpetration or attempted perpetration of
7 an act of terrorism.

8 2. Murder of the second degree is all other kinds of murder.

9 3. The jury before whom any person indicted for murder is
10 tried shall, if they find the person guilty thereof, designate by their
11 verdict whether the person is guilty of murder of the first or second
12 degree.

13 4. A person convicted of murder of the first degree is guilty of
14 a category A felony and shall be punished:

15 (a) ~~By~~ *Except as otherwise provided in subsection 6, by* death,
16 only if one or more aggravating circumstances are found and any
17 mitigating circumstance or circumstances which are found do not
18 outweigh the aggravating circumstance or circumstances, unless a
19 court has made a finding pursuant to NRS 174.098 that the
20 defendant is a person with an intellectual disability and has stricken
21 the notice of intent to seek the death penalty; or

22 (b) By imprisonment in the state prison:

23 (1) For life without the possibility of parole;

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

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

28 ➤ A determination of whether aggravating circumstances exist is
29 not necessary to fix the penalty at imprisonment for life with or
30 without the possibility of parole.

31 5. A person convicted of murder of the second degree is guilty
32 of a category A felony and shall be punished by imprisonment in the
33 state prison:

34 (a) For life with the possibility of parole, with eligibility for
35 parole beginning when a minimum of 10 years has been served; or

36 (b) For a definite term of 25 years, with eligibility for parole
37 beginning when a minimum of 10 years has been served.

38 6. *A person convicted of murder of the first degree on or after*
39 *the effective date of this act shall not be punished by death.*

40 7. As used in this section:

41 (a) "Act of terrorism" has the meaning ascribed to it in
42 NRS 202.4415;

43 (b) "Child abuse" means physical injury of a nonaccidental
44 nature to a child under the age of 18 years;

45 (c) "School bus" has the meaning ascribed to it in NRS 483.160;



(d) "Sexual abuse of a child" means any of the acts described in NRS 432B.100; and

(e) "Sexual molestation" means any willful and lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or of the child.

Sec. 5. NRS 171.198 is hereby amended to read as follows:

171.198 1. Except as otherwise provided in subsection 2, a magistrate shall employ a certified court reporter to take down all the testimony and the proceedings on the hearing or examination and, within such time as the court may designate, have such testimony and proceedings transcribed into typewritten transcript.

2. A magistrate who presides over a preliminary hearing in a justice court ~~[- in any case other than in a case in which the death penalty is sought,]~~ may employ a certified court reporter to take down all the testimony and the proceedings on the hearing or appoint a person to use sound recording equipment to record all the testimony and the proceedings on the hearing. If the magistrate appoints a person to use sound recording equipment to record the testimony and proceedings on the hearing, the testimony and proceedings must be recorded and transcribed in the same manner as set forth in NRS 4.390 to 4.420, inclusive. Any transcript of the testimony and proceedings produced from a recording conducted pursuant to this subsection is subject to the provisions of this section in the same manner as a transcript produced by a certified court reporter.

3. When the testimony of each witness is all taken and transcribed by the reporter, the reporter shall certify to the transcript in the same manner as for a transcript of testimony in the district court, which certificate authenticates the transcript for all purposes of this title.

4. Before the date set for trial, either party may move the court before which the case is pending to add to, delete from or otherwise correct the transcript to conform with the testimony as given and to settle the transcript so altered.

5. The compensation for the services of a reporter employed as provided in this section are the same as provided in NRS 3.370, to be paid out of the county treasury as other claims against the county are allowed and paid.

6. Testimony reduced to writing and authenticated according to the provisions of this section must be filed by the examining magistrate with the clerk of the district court of the magistrate's county, and if the prisoner is subsequently examined upon a writ of



habeas corpus, such testimony must be considered as given before such judge or court. A copy of the transcript must be furnished to the defendant and to the district attorney.

7. The testimony so taken may be used:

(a) By the defendant; or

(b) By the State if the defendant was represented by counsel or affirmatively waived his or her right to counsel,

upon the trial of the cause, and in all proceedings therein, when the witness is sick, out of the State, dead, or persistent in refusing to testify despite an order of the judge to do so, or when the witness's personal attendance cannot be had in court.

Sec. 6. NRS 174.065 is hereby amended to read as follows:

174.065 Except as otherwise provided in NRS 174.061:

1. On a plea of guilty or guilty but mentally ill to an information or indictment accusing a defendant of a crime divided into degrees, when consented to by the prosecuting attorney in open court and approved by the court, the plea may specify the degree, and in such event the defendant shall not be punished for a higher degree than that specified in the plea.

2. On a plea of guilty or guilty but mentally ill to an indictment or information for murder of the first degree, when consented to by the prosecuting attorney in open court and approved by the court, the plea may specify a punishment . ~~less than death.~~ The specified punishment, or any lesser punishment, may be imposed by a single judge.

Sec. 7. NRS 175.011 is hereby amended to read as follows:

175.011 1. In a district court, cases required to be tried by jury must be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the State. A defendant who pleads not guilty to the charge of ~~[a capital offense]~~ **murder in the first degree** must be tried by jury.

2. In a Justice Court, a case must be tried by jury only if the defendant so demands in writing not less than 30 days before trial. Except as otherwise provided in NRS 4.390 and 4.400, if a case is tried by jury, a reporter must be present who is a certified court reporter and shall report the trial.

Sec. 8. NRS 175.051 is hereby amended to read as follows:

175.051 1. If the offense charged is punishable by ~~[death or by]~~ imprisonment for life, each side is entitled to eight peremptory challenges.

2. If the offense charged is punishable by imprisonment for any other term or by fine or by both fine and imprisonment, each side is entitled to four peremptory challenges.



3. The State and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived.

Sec. 9. NRS 175.151 is hereby amended to read as follows:

175.151 If the indictment or information ~~{be for an offense punishable with death,}~~ **is for murder in the first degree**, two counsel on each side may argue the case to the jury, but in such case, as well as in all others, the counsel for the State must open and conclude the argument. If ~~{it be}~~ **the indictment or information is** for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

Sec. 10. NRS 175.552 is hereby amended to read as follows:

175.552 1. Except as otherwise provided in subsection 2, in every case in which there is a finding that a defendant is guilty or guilty but mentally ill 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 separate penalty hearing must be conducted in the trial court before the trial jury, as soon as practicable.

(b) ~~{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 sought, the separate penalty hearing must be conducted before a jury impaneled for that purpose, as soon as practicable.}~~

~~{(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 as soon as practicable before the judge who conducted the trial or who accepted the plea.

2. ~~{In a case in which the death penalty is not sought or in which a court has made a finding that the defendant is intellectually disabled and has stricken the notice of intent to seek the death penalty pursuant to NRS 174.098, the}~~ **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, the defendant's attorney, if any, and the prosecuting attorney.

3. During 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 the 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 or in which a court has found the defendant to be intellectually disabled and has stricken the notice of intent to seek the death penalty pursuant to NRS 174.098, the}~~ **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.

Sec. 11. 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 life imprisonment without the possibility of parole or impanel a new jury to determine the sentence.~~

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

Sec. 12. NRS 176.025 is hereby amended to read as follows:

176.025 A sentence of ~~{death or}~~ life imprisonment without the possibility of parole must not be imposed or inflicted upon any person convicted of a crime now punishable by ~~{death or}~~ life imprisonment without the possibility of parole who at the time of the commission of the crime was less than 18 years of age. As to such a person, the maximum punishment that may be imposed is life imprisonment with the possibility of parole.

Sec. 13. NRS 176.035 is hereby amended to read as follows:

176.035 1. Except as otherwise provided in subsection 3, whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed. Except as otherwise provided in subsections 3 and 4, if the court makes no order with reference thereto, all such subsequent sentences run concurrently. For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment pursuant to subsection 2, unless the defendant is sentenced to life imprisonment without the possibility of parole. ~~{for death.}~~



2. When aggregating terms of imprisonment pursuant to subsection 1:

(a) If at least one sentence imposes a maximum term of imprisonment for life with the possibility of parole, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment, and the maximum aggregate term of imprisonment shall be deemed to be imprisonment in the state prison for life with the possibility of parole.

(b) If all the sentences impose a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment.

3. Except as otherwise provided in this subsection, whenever a person under sentence of imprisonment for committing a felony commits another crime constituting a felony and is sentenced to another term of imprisonment for that felony, the latter term must not begin until the expiration of all prior terms, including the expiration of any prior aggregated terms. If the person is a probationer at the time the subsequent felony is committed, the court may provide that the latter term of imprisonment run concurrently with any prior terms or portions thereof. If the person is sentenced to a term of imprisonment for life without the possibility of parole, the sentence must be executed without reference to the unexpired term of imprisonment and without reference to eligibility for parole.

4. Whenever a person under sentence of imprisonment commits another crime constituting a misdemeanor or gross misdemeanor, the court shall provide expressly whether the sentence subsequently pronounced runs concurrently or consecutively with the one first imposed.

5. Whenever a person under sentence of imprisonment commits ~~{another} the~~ crime ~~{for which the punishment is death,} of murder of the first degree~~, the sentence must be executed without reference to the unexpired term of imprisonment.

6. This section does not prevent the State Board of Parole Commissioners from paroling a person under consecutive sentences of imprisonment from a current term of imprisonment to a subsequent term of imprisonment.

Sec. 14. NRS 178.388 is hereby amended to read as follows:

178.388 1. Except as otherwise provided in this title, the defendant must be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the



verdict, and at the imposition of sentence. A corporation may appear by counsel for all purposes.

2. In prosecutions for offenses ~~[not punishable by death:]~~ *other than murder of the first degree:*

(a) The defendant's voluntary absence after the trial has been commenced in the defendant's presence must not prevent continuing the trial to and including the return of the verdict.

(b) If the defendant was present at the trial through the time the defendant pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill but at the time of sentencing is incarcerated in another jurisdiction, the defendant may waive the right to be present at the sentencing proceedings and agree to be sentenced in this State in his or her absence. The defendant's waiver is valid only if it is:

(1) Made knowingly, intelligently and voluntarily after consulting with an attorney licensed to practice in this State;

(2) Signed and dated by the defendant and notarized by a notary public or judicial officer;

(3) Signed and dated by the defendant's attorney after it has been signed by the defendant and notarized; and

(4) Accompanied by a waiver of the issuance and service of a warrant of arrest and all other procedures incidental to extradition proceedings.

3. In prosecutions for offenses punishable by fine or by imprisonment for not more than 1 year, or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence, if the court determines that the defendant was fully aware of the applicable constitutional rights when the defendant gave consent.

4. The presence of the defendant is not required at the arraignment or any preceding stage if the court has provided for the use of a closed-circuit television to facilitate communication between the court and the defendant during the proceeding. If closed-circuit television is provided for, members of the news media may observe and record the proceeding from both locations unless the court specifically provides otherwise.

5. The defendant's presence is not required at the settling of jury instructions.

Sec. 15. NRS 178.750 is hereby amended to read as follows:

178.750 1. The district attorney for each county shall prepare and submit a report, on a form approved by the Attorney General, to the Attorney General not later than February 1 of each year concerning each case filed during the previous calendar year that included a charge for murder or voluntary manslaughter. The district



attorney shall exclude from the report any charge for manslaughter that resulted from a death in a crash involving a motor vehicle.

2. The report required pursuant to subsection 1 must include, without limitation:

(a) The age, gender and race of the defendant;

(b) The age, gender and race of any codefendant or other person charged or suspected of having participated in the homicide and in any alleged related offense;

(c) The age, gender and race of the victim of the homicide and any alleged related offense;

(d) The date of the homicide and of any alleged related offense;

(e) The date of filing of the information or indictment;

(f) The name of each court in which the case was prosecuted;

~~(g) Whether or not the prosecutor filed a notice of intent to seek the death penalty and, if so, when the prosecutor filed the notice;~~

~~(h)~~ The final disposition of the case and whether or not the case was tried before a jury;

~~(i)~~ (h) The race, ethnicity and gender of each member of the jury, if the case was tried by a jury; and

~~(j)~~ (i) The identity of:

(1) Each prosecuting attorney who participated in the decision to file the initial charges against the defendant;

(2) Each prosecuting attorney who participated in the decision to offer or accept a plea, if applicable;

~~(3) Each prosecuting attorney who participated in the decision to seek the death penalty, if applicable;~~ and

~~(4)~~ (3) Each person outside the office of the district attorney who was consulted in determining whether ~~to seek the death penalty or~~ to accept or reject a plea, if any.

3. If all the information required pursuant to subsection 1 cannot be provided because the case is still in progress, an additional report must be filed with the Attorney General each time a subsequent report is filed until all the information, to the extent available, has been provided.

Sec. 16. NRS 212.050 is hereby amended to read as follows:

212.050 1. If any person who has been sentenced to confinement in the state prison, by any court having competent authority within this State, escapes therefrom ~~;~~ or is charged with murder , ~~for the perpetration of any crime punishable with death,~~ the Governor may, upon satisfactory evidence of the guilt of the accused, offer a reward for information that leads to his or her apprehension. The reward offered by the Governor must not exceed the sum of \$5,000, and must be paid out of the Reserve for Statutory Contingency Account upon approval by the State Board of Examiners.



2. If any person who has been sentenced to confinement in a jail, branch county jail or other local detention facility by any court having competent authority within this State, escapes therefrom ~~{}~~ or is charged with murder , ~~for the perpetration of any crime punishable with death,~~ the board of county commissioners of the county, the governing body of the city or other local government responsible for the operation of the facility may, upon satisfactory evidence of the guilt of the accused, offer a reward for information that leads to his or her apprehension. The reward offered by the board, governing body or other local government must not exceed the sum of \$5,000.

Sec. 17. NRS 353.094 is hereby amended to read as follows:

353.094 Claims may be made against the Counties' Trial Assistance Account in the State General Fund by the board of county commissioners of any county as other claims against the State are made for jury fees, witness fees and necessary subsistence expenses attendant to any criminal trial for ~~{a capital offense}~~ *murder in the first degree* where:

1. It is not established that the crime was actually committed in the county where the indictment was found or the information filed;

2. The victim or victims of the crime were not residents of the county where the indictment was found or the information filed; and

3. The trial is conducted in a county other than the county in which the indictment was found or the information filed.

Sec. 18. NRS 453.333 is hereby amended to read as follows:

453.333 If the death of a person is proximately caused by a controlled substance which was sold, given, traded or otherwise made available to him or her by another person in violation of this chapter, the person who sold, gave or traded or otherwise made the substance available to him or her is guilty of murder. If convicted of murder in the second degree, the person is guilty of a category A felony and shall be punished as provided in subsection 5 of NRS 200.030. If convicted of murder in the first degree, the person is guilty of a category A felony and shall be punished as provided in subsection 4 of NRS 200.030 . ~~{, except that the punishment of death may be imposed only if the requirements of paragraph (a) of subsection 4 of that section have been met and if the defendant is or has previously been convicted of violating NRS 453.3385, 453.339 or 453.3395 or a law of any other jurisdiction which prohibits the same conduct.}~~

Sec. 19. NRS 171.194, 178.3971, 200.033 and 200.035 are hereby repealed.

Sec. 20. This act becomes effective upon passage and approval.



LEADLINES OF REPEALED SECTIONS

- 171.194 Procedure when arrest for capital offense.**
**178.3971 Appointment of defense team for defendant
accused of murder of first degree.**
200.033 Circumstances aggravating first degree murder.
200.035 Circumstances mitigating first degree murder.

