

ASSEMBLY BILL NO. 49—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure. (BDR 3-419)

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 criminal procedure; prescribing separate forms for certain postconviction petitions for a writ of habeas corpus; revising various provisions relating to postconviction petitions for a writ of habeas corpus; eliminating the requirement that the respondent to a postconviction petition for a writ of habeas corpus file a return with the court; revising provisions relating to a petition for a hearing to establish the factual innocence of a person; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes an offender who is convicted of a crime and under a
2 sentence of death or imprisonment to file a postconviction petition for a writ of
3 habeas corpus to challenge: (1) the validity of a judgment of conviction; or (2) the
4 computation of time that the person has served pursuant to a judgment of
5 conviction. (NRS 34.724) Existing law also authorizes a person who has been
6 convicted of a felony to file a petition for a hearing to establish the factual
7 innocence of the person based on newly discovered evidence. (NRS 34.960)
8 **Section 2** of this bill defines the term “prosecuting agency” for the purpose of
9 clarifying certain requirements relating to such petitions. **Sections 5, 10, 11, 13 and**
10 **20-24** of this bill make conforming changes to substitute the defined term where
11 appropriate.
12 **Sections 3 and 11** of this bill prescribe separate and distinct forms for a
13 petition for a writ of habeas corpus that challenges the computation of time that a
14 person has served pursuant to a judgment of conviction and a petition for a writ of
15 habeas corpus that challenges the validity of a judgment of conviction, respectively.
16 **Section 10** of this bill makes a conforming change by requiring each type of



17 petition to be: (1) appropriately titled; and (2) in substantially the form prescribed
18 by **sections 3 and 11. Sections 6, 7 and 17** of this bill make conforming changes to
19 indicate the proper placement of **section 3** in the Nevada Revised Statutes.

20 **Section 8** of this bill makes a nonsubstantive change to clarify that a person
21 may file a postconviction petition for a writ of habeas corpus without paying a
22 filing fee. **Sections 9, 10, 12-14, 16, 18 and 19** of this bill make certain other
23 nonsubstantive changes in statutes concerning postconviction petitions.

24 Existing law requires the respondent on a postconviction petition for a writ of
25 habeas corpus to file with the court: (1) a return, which includes certain information
26 relating to the basis on which the respondent has the petitioner in his or her custody
27 or power; and (2) an answer responding to the allegations of the petition. (NRS
28 34.430, 34.745) **Section 26** of this bill repeals the requirement that the respondent
29 file a return with the court. **Section 15** of this bill requires instead that the response
30 or answer filed by the respondent include the information contained in a return
31 under existing law. **Sections 13, 14 and 16** make conforming changes relating to
32 the elimination of the requirement that a respondent file a return with the court.

33 **Section 25** of this bill makes the amendatory provisions of this bill applicable
34 to a postconviction petition for a writ of habeas corpus filed on or after July 1,
35 2023.

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

1 **Section 1.** Chapter 34 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *As used in this chapter, “prosecuting agency” means:*

- 4 *1. The district attorney of the county in which the judgment*
5 *of conviction or sentence being challenged in a petition for a writ*
6 *of habeas corpus was obtained, if the district attorney or a deputy*
7 *district attorney prosecuted the petitioner in the original*
8 *proceeding which led to the judgment of conviction or sentence; or*
9 *2. The Attorney General, if the Attorney General or a deputy*
10 *attorney general prosecuted the petitioner in the original*
11 *proceeding which led to the judgment of conviction or sentence*
12 *being challenged in a petition for a writ of habeas corpus.*

13 **Sec. 3.** *A petition for a writ of habeas corpus that challenges*
14 *the computation of time that the petitioner has served pursuant to*
15 *a judgment of conviction must be in substantially the following*
16 *form, with appropriate modifications if the petition is filed in the*
17 *Court of Appeals or the Supreme Court:*

18
19 *Case No.*
20 *Dept. No.*

21
22 *IN THE JUDICIAL DISTRICT*
23 *COURT OF THE STATE OF NEVADA*
24 *IN AND FOR THE COUNTY OF*



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

.....

Petitioner,

v.

**PETITION FOR WRIT
OF HABEAS CORPUS
(COMPUTATION OF TIME)**

.....

Respondent.

INSTRUCTIONS:

(1) Use this form if you are currently serving a sentence pursuant to a judgment of conviction and are challenging the postconviction computation of your time served, the revocation of your parole or the forfeiture of your credits. Do not use this form if you are requesting relief from a judgment of conviction.

(2) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(3) You must include facts which support your grounds for relief. You do not need to cite law or authorities. You may submit additional pages if necessary with this form.

(4) If you want an attorney appointed, you must complete an Affidavit in Support of Request to Proceed in Forma Pauperis. An authorized officer at the prison must complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(5) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but:

(a) Within its custody, name the Director of the Department of Corrections.

(b) Under the supervision of the Division of Parole and Probation of the Department of Public Safety, name the probation officer or parole officer assigned to you at this time.

(6) You must include all grounds for relief which you may have regarding the computation of time served on your sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging the same computation of time issue.



(7) You must allege specific facts supporting the claims in this petition. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.

(8) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you are incarcerated, or, if you are incarcerated outside this State, the First Judicial District Court in and for Carson City. One copy must be mailed to the respondent and one copy must be mailed to the Attorney General's Office. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

2. Name and location of court that sentenced you:

3. Case number:

4. Date of judgment of conviction:

5. (a) Nature of the underlying offense involved in the sentence being challenged in this petition:

(b) Date on which the underlying offense involved in the sentence being challenged in this petition was committed: ..

6. Length of sentence being challenged in this petition:

7. Are you presently serving a sentence other than the sentence being challenged in this petition? Yes
No

If "yes," list each crime, case number and sentence being served at this time:

8. Have your sentences been aggregated? Yes
No

If "yes," list each case number and sentence, the terms of which have been aggregated:

9. Do you have any future sentences to serve after you complete the sentence being challenged in this petition



(whether in the same judgment or a different judgment)?

Yes No

If "yes," specify where and when it is to be served, if you know:

10. Have you had a parole hearing relating to the sentence you are challenging in this petition? Yes

No

If "yes," give the following information:

(a) Date of most recent parole hearing:

(b) Outcome of most recent parole hearing:

(c) Date on which the rehearing is to be held, if you know:

11. Are you challenging a decision of the State Board of Parole Commissioners to revoke your parole? Yes

No

If "yes," give the following information:

(a) Date of revocation hearing:

(b) Date on which your next parole hearing is scheduled, if you know:

(c) Did you forfeit any credit as a result of the revocation of parole? Yes No

(d) If you forfeited any credit as a result of the revocation of parole, has any of the credit forfeited been restored? Yes No

12. Are you challenging a disciplinary sanction? Yes No

If "yes," give the following information:

(a) Date on which you were served with a notice of the disciplinary offense charged:

(b) Date on which the disciplinary hearing involving the charged offense was conducted:

(c) Did you forfeit any credit as a result of the disciplinary hearing? Yes No

(d) If you forfeited any credit as a result of the disciplinary hearing, has any of the credit forfeited been restored? Yes No

13. Have you previously filed any petitions, applications or motions with respect to the challenge raised in this petition in any court, state or federal? Yes No

14. If your answer to No. 13 was "yes," give the following information:

(a) (1) Name of court:

(2) Nature of proceeding:

.....



(3) *Grounds raised:*

(4) *Did you receive an evidentiary hearing on your petition, application or motion? Yes No*

(5) *Result:*

(6) *Date of result:*

(7) *If known, citations of any written opinion or date of orders entered pursuant to such result:*

(b) *As to any second or subsequent additional petitions, applications or motions, give the same information as above, list them on a separate sheet and attach.*

(c) *Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?*

(1) *First petition, application or motion? Yes No*

Citation or date of decision:

(2) *Second or subsequent petitions, applications or motions? Yes No*

Citation or date of decision:

(d) *If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)*

15. *Do you have any petition or appeal now pending in any court, state or federal, regarding the computation of time you are challenging in this petition? Yes No*

If "yes," give the following information:

(a) *Name of court:*

(b) *Case number:*

16. *Have you filed a grievance raising the same computation of time issue as you are raising in this petition? Yes No*

17. *If your answer to No. 16 was "yes," answer the following:*

(a) *Number assigned to your grievance:*

(b) *Result of grievance:*

(c) *Did you complete all levels of the grievance procedure? Yes No*



(d) If you did not complete all levels of the grievance procedure, explain briefly why you did not:

18. If any of the grounds being raised in this petition have been submitted for review and resolution by way of the grievance process, explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. State concisely every ground on which you claim that the computation of time you have served has been improperly computed. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting the same.

(a) Ground one:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground three:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.



*EXECUTED at on the day of the month
of of the year*

.....
Signature of petitioner
.....

Address

.....
Signature of attorney (if any)
.....

Attorney for petitioner

.....
Address

VERIFICATION

*Under penalty of perjury, the undersigned declares that
the undersigned is the petitioner named in the foregoing
petition and knows the contents thereof; that the pleading is
true of the undersigned's own knowledge, except as to those
matters stated on information and belief, and as to such
matters the undersigned believes them to be true.*

.....
Petitioner
.....

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

*I,, hereby certify, pursuant to
N.R.C.P. 5(b), that on this day of the month of of
the year, I mailed a true and correct copy of the
foregoing PETITION FOR WRIT OF HABEAS CORPUS
(COMPUTATION OF TIME) addressed to:*

.....
Respondent prison or jail official
.....

Address

.....
Attorney General



100 North Carson Street
Carson City, Nevada 89701

.....
Signature of Petitioner

Sec. 4. NRS 34.370 is hereby amended to read as follows:

34.370 1. A petition for a writ of habeas corpus must be verified by the petitioner or the petitioner’s counsel. If the petition is verified by counsel, counsel shall also verify that the petitioner personally authorized counsel to commence the action.

2. A verified petition for issuance of a writ of habeas corpus must specify that the petitioner is imprisoned or restrained of the petitioner’s liberty, the officer or other person by whom the petitioner is confined or restrained, and the place where the petitioner is confined, naming all the parties if they are known, or describing them if they are not known.

3. If the petitioner claims that the imprisonment is illegal, the petitioner must state facts which show that the restraint or detention is illegal.

4. If the petition requests relief from a judgment of conviction or sentence in a criminal case, the petition must identify the proceedings in which the petitioner was convicted, give the date of entry of the final judgment and set forth which constitutional rights of the petitioner were violated and the acts constituting violations of those rights. Affidavits, records or other evidence supporting the allegations in the petition must be attached unless the petition recites the cause for failure to attach these materials. The petition must identify any previous proceeding in state or federal court initiated by the petitioner to secure relief from the petitioner’s *judgment of conviction* or sentence. Argument, citations and other supporting documents are unnecessary.

Sec. 5. NRS 34.700 is hereby amended to read as follows:

34.700 1. Except as provided in subsection 3, a pretrial petition for a writ of habeas corpus based on alleged lack of probable cause or otherwise challenging the court’s right or jurisdiction to proceed to the trial of a criminal charge may not be considered unless:

(a) The petition and all supporting documents are filed within 21 days after the first appearance of the accused in the district court; and

(b) The petition contains a statement that the accused:

(1) Waives the 60-day limitation for bringing an accused to trial; or

(2) If the petition is not decided within 15 days before the date set for trial, consents that the court may, without notice or



1 hearing, continue the trial indefinitely or to a date designated by the
2 court.

3 2. The arraignment and entry of a plea by the accused must not
4 be continued to avoid the requirement that a pretrial petition be filed
5 within the period specified in subsection 1.

6 3. The court may extend, for good cause, the time to file a
7 petition. Good cause shall be deemed to exist if the transcript of the
8 preliminary hearing or of the proceedings before the grand jury is
9 not available within 14 days after the accused's initial appearance
10 and the court shall grant an ex parte application to extend the time
11 for filing a petition. All other applications may be made only after
12 appropriate notice has been given to the prosecuting ~~attorney.~~
13 *agency.*

14 **Sec. 6.** NRS 34.720 is hereby amended to read as follows:

15 34.720 The provisions of NRS 34.720 to 34.830, inclusive, *and*
16 *section 3 of this act* apply only to petitions for writs of habeas
17 corpus in which the petitioner:

18 1. Requests relief from a judgment of conviction or sentence in
19 a criminal case; or

20 2. Challenges the computation of time that the petitioner has
21 served pursuant to a judgment of conviction.

22 **Sec. 7.** NRS 34.722 is hereby amended to read as follows:

23 34.722 As used in NRS 34.720 to 34.830, inclusive, *and*
24 *section 3 of this act*, unless the context otherwise requires,
25 "petition" means a ~~postconviction~~ petition ~~for habeas corpus~~ *to*
26 *obtain relief from a judgment of conviction or sentence or to*
27 *challenge the computation of time a person has served* filed
28 pursuant to NRS 34.724.

29 **Sec. 8.** NRS 34.724 is hereby amended to read as follows:

30 34.724 1. Any person convicted of a crime and under
31 sentence of death or imprisonment who claims that the conviction
32 was obtained, or that the sentence was imposed, in violation of the
33 Constitution of the United States or the Constitution or laws of this
34 State, or who, after exhausting all available administrative remedies,
35 claims that the time the person has served pursuant to the judgment
36 of conviction has been improperly computed [,] may ~~[-, without~~
37 ~~paying a filing fee,]~~ file a ~~postconviction~~ petition ~~for a writ of~~
38 ~~habeas corpus~~ *to obtain relief from the judgment of* conviction or
39 sentence or to challenge the computation of time that the person has
40 served. *A person must not be required to pay a filing fee to file*
41 *such a petition.*

42 2. Such a petition:

43 (a) Is not a substitute for and does not affect any remedies which
44 are incident to the proceedings in the trial court or the remedy of
45 direct review of the sentence or conviction.



1 (b) Comprehends and takes the place of all other common-law,
2 statutory or other remedies which have been available for
3 challenging the validity of the *judgment of* conviction or sentence,
4 and must be used exclusively in place of them.

5 (c) Is the only remedy available to an incarcerated person to
6 challenge the computation of time that the person has served
7 pursuant to a judgment of conviction, after all available
8 administrative remedies have been exhausted.

9 3. For the purposes of this section, a motion to withdraw a plea
10 of guilty, guilty but mentally ill or nolo contendere pursuant to NRS
11 176.165 that is made after sentence is imposed or imposition of
12 sentence is suspended is a remedy which is incident to the
13 proceedings in the trial court if:

14 (a) The person has not filed a prior motion to withdraw the plea
15 and has not filed a prior ~~[postconviction]~~ petition ; ~~for a writ of~~
16 ~~habeas corpus;~~

17 (b) The motion is filed within 1 year after the date on which the
18 person was convicted, unless the person pleads specific facts
19 demonstrating that some impediment external to the defense
20 precluded bringing the motion earlier;

21 (c) At the time the person files the motion to withdraw the plea,
22 the person is not incarcerated for the charge for which the person
23 entered the plea; and

24 (d) The motion is not barred by the doctrine of laches. A motion
25 filed more than 5 years after the date on which the person was
26 convicted creates a rebuttable presumption of prejudice to the State
27 on the basis of laches.

28 4. The court shall not appoint counsel to represent a person for
29 the purpose of subsection 3.

30 **Sec. 9.** NRS 34.726 is hereby amended to read as follows:

31 34.726 1. Unless there is good cause shown for delay, a
32 petition that challenges the validity of a judgment *of conviction* or
33 sentence must be filed within 1 year after entry of the judgment of
34 conviction or, if an appeal has been taken from the judgment, within
35 1 year after the appellate court of competent jurisdiction pursuant to
36 the rules fixed by the Supreme Court pursuant to Section 4 of
37 Article 6 of the Nevada Constitution issues its remittitur. For the
38 purposes of this subsection, good cause for delay exists if the
39 petitioner demonstrates to the satisfaction of the court:

40 (a) That the delay is not the fault of the petitioner; and

41 (b) That dismissal of the petition as untimely will unduly
42 prejudice the petitioner.

43 2. The execution of a sentence must not be stayed for the
44 period provided in subsection 1 solely because a petition may be



1 filed within that period. A stay of sentence must not be granted
2 unless:

- 3 (a) A petition is actually filed; and
- 4 (b) The petitioner establishes a compelling basis for the stay.

5 **Sec. 10.** NRS 34.730 is hereby amended to read as follows:

6 34.730 1. A petition must be verified by the petitioner or the
7 petitioner’s counsel. If the petition is verified by counsel, counsel
8 shall also verify that the petitioner personally authorized counsel to
9 commence the action.

10 2. *A petition that challenges:*

11 (a) *The computation of time that the petitioner has served*
12 *pursuant to a judgment of conviction must be titled “Petition for*
13 *Writ of Habeas Corpus (Computation of Time)” and be in*
14 *substantially the form set forth in section 3 of this act.*

15 (b) The ~~petition~~ *validity of a judgment of conviction or*
16 *sentence* must be titled “Petition for Writ of Habeas Corpus
17 ~~[(Postconviction)]~~ *(Validity of Judgment of Conviction or*
18 *Sentence)” and be in substantially the form set forth in NRS 34.735.*
19 ~~[The]~~

20 3. A petition must name as respondent and be served by mail
21 upon the officer or other person by whom the petitioner is confined
22 or restrained. A copy of the petition must be served by mail upon ~~f-~~

23 ~~—(a) The] the~~ Attorney General ~~[-]~~ and

24 ~~[(b) In the case of a petition challenging the validity of a~~
25 ~~judgment of conviction or sentence, the district attorney in the~~
26 ~~county in which the petitioner was convicted.] , if applicable, any~~
27 ~~other prosecuting agency.~~

28 ~~[3.]~~ 4. Except as otherwise provided in this subsection, the
29 clerk of the district court shall file a petition as a new action separate
30 and distinct from any original proceeding in which a conviction has
31 been had. If a petition challenges the validity of a *judgment of*
32 *conviction or sentence*, it must be:

33 (a) Filed with the record of the original proceeding to which it
34 relates; and

35 (b) Whenever possible, assigned to the original judge or court.

36 ~~[4.]~~ 5. No hearing upon the petition may be set until the
37 requirements of NRS 34.740 to 34.770, inclusive, are satisfied.

38 **Sec. 11.** NRS 34.735 is hereby amended to read as follows:

39 34.735 A petition *that challenges the validity of a judgment of*
40 *conviction or sentence* must be in substantially the following form,
41 with appropriate modifications if the petition is filed in the Court of
42 Appeals or the Supreme Court:

43
44 Case No.
45 Dept. No.



IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY
OF.....

.....
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
~~[(POSTCONVICTION)]~~
**(VALIDITY OF
JUDGMENT OF
CONVICTION
OR SENTENCE)**

.....
Respondent.

INSTRUCTIONS:

(1) *Use this form if you are currently serving a sentence pursuant to a judgment of conviction and are seeking relief from your judgment of conviction or sentence. Do not use this form if you are challenging the postconviction computation of your time served.*

(2) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

~~[(2)]~~ (3) Additional pages are not permitted except where noted or with respect to the facts ~~[which you rely upon to]~~ *that* support your grounds for relief. ~~[No citation of authorities need be furnished.]~~ *You are not required to cite to law or authorities.* If you *submit* briefs or arguments, ~~[are submitted,]~~ they ~~[should be submitted in the form of]~~ *must be in* a separate memorandum.

~~[(3)]~~ (4) If you want an attorney appointed, you must complete ~~[the]~~ *an* Affidavit in Support of Request to Proceed in Forma Pauperis. ~~[You must have an]~~ *An* authorized officer at the prison *must* complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

~~[(4)]~~ (5) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.



~~[(5)]~~ (6) You must include all grounds ~~[for claims]~~ for relief which you may have regarding your *judgment of conviction* or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your *judgment of conviction* and sentence.

~~[(6)]~~ (7) You must allege specific facts supporting the claims in ~~[the]~~ *this* petition . ~~[you file seeking relief from any conviction or sentence.]~~ Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

~~[(7)]~~ (8) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the ~~[district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence.]~~ *prosecuting agency*. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

2. Name and location of court which entered the judgment of conviction ~~[under attack:]~~ *being challenged:*

3. Date of judgment of conviction:

4. Case number:

5. (a) Length of sentence:

(b) If sentence is death, state any date upon which execution is scheduled:.....

6. Are you presently serving a sentence for a *judgment of conviction* other than the *judgment of conviction* ~~[under attack]~~ *you are challenging* in this ~~[motion?]~~ *petition?* Yes No



1 If "yes," list *each* crime, case number and sentence being
2 served at this time:

3
4
5 7. Nature of offense involved in *the judgment of*
6 conviction being challenged:

7
8 8. What was your plea? (check one)

9 (a) Not guilty

10 (b) Guilty

11 (c) Guilty but mentally ill

12 (d) Nolo contendere

13 9. If you entered a plea of guilty or guilty but mentally
14 ill to one count of an indictment or information, and a plea of
15 not guilty to another count of an indictment or information, or
16 if a plea of guilty or guilty but mentally ill was negotiated,
17 give details:

18
19
20 10. If you were found guilty or guilty but mentally ill
21 after a plea of not guilty, was the finding made by: (check
22 one)

23 (a) Jury

24 (b) Judge without a jury

25 11. Did you testify at the trial? Yes No

26 12. Did you appeal from the judgment of conviction?

27 Yes No

28 13. If you did appeal, answer the following:

29 (a) Name of court:

30 (b) Case number or citation:

31 (c) Result:

32 (d) Date of result:

33 (Attach copy of order or decision, if available.)

34 14. If you did not appeal, explain briefly why you did
35 not:

36
37
38 15. Other than a direct appeal from the judgment of
39 conviction, ~~[and sentence,]~~ have you previously filed any
40 petitions, applications or motions with respect to this
41 judgment in any court, state or federal? Yes No

42 16. If your answer to No. 15 was "yes," give the
43 following information:

44 (a) (1) Name of court:



- 1 (2) Nature of proceeding:
- 2
- 3 (3) Grounds raised:
- 4
- 5
- 6 (4) Did you receive an evidentiary hearing on your
- 7 petition, application or motion? Yes No
- 8 (5) Result:
- 9 (6) Date of result:
- 10 (7) If known, citations of any written opinion or date
- 11 of orders entered pursuant to such result:
- 12
- 13 (b) As to any second petition, application or motion, give
- 14 the same information:
- 15 (1) Name of court:
- 16 (2) Nature of proceeding:
- 17 (3) Grounds raised:
- 18 (4) Did you receive an evidentiary hearing on your
- 19 petition, application or motion? Yes No
- 20 (5) Result:
- 21 (6) Date of result:
- 22 (7) If known, citations of any written opinion or date
- 23 of orders entered pursuant to such result:
- 24
- 25 (c) As to any third or subsequent additional applications
- 26 or motions, give the same information as above, list them on
- 27 a separate sheet and attach.
- 28 (d) Did you appeal to the highest state or federal court
- 29 having jurisdiction, the result or action taken on any petition,
- 30 application or motion?
- 31 (1) First petition, application or motion? Yes
- 32 No
- 33 Citation or date of decision:
- 34 (2) Second petition, application or motion? Yes
- 35 No
- 36 Citation or date of decision:
- 37 (3) Third or subsequent petitions, applications or
- 38 motions? Yes No
- 39 Citation or date of decision:
- 40 (e) If you did not appeal from the adverse action on any
- 41 petition, application or motion, explain briefly why you did
- 42 not. (You must relate specific facts in response to this
- 43 question. Your response may be included on paper which is
- 44 8 1/2 by 11 inches attached to the petition. Your response



1 may not exceed five handwritten or typewritten pages in
2 length.)

3
4
5 17. Has any ground being raised in this petition been
6 previously presented to this or any other court by way of
7 petition for habeas corpus, motion, application or any other
8 postconviction proceeding? If so, identify:

9 (a) Which of the grounds is the same:

10
11 (b) The proceedings in which these grounds were raised:
12

13 (c) Briefly explain why you are again raising these
14 grounds. (You must relate specific facts in response to this
15 question. Your response may be included on paper which is 8
16 1/2 by 11 inches attached to the petition. Your response may
17 not exceed five handwritten or typewritten pages in length.) ..
18

19 18. If any of the grounds listed in Nos. 23(a), (b), (c) and
20 (d), or listed on any additional pages you have attached, were
21 not previously presented in any other court, state or federal,
22 list briefly what grounds were not so presented, and give your
23 reasons for not presenting them. (You must relate specific
24 facts in response to this question. Your response may be
25 included on paper which is 8 1/2 by 11 inches attached to the
26 petition. Your response may not exceed five handwritten or
27 typewritten pages in length.)
28

29 19. Are you filing this petition more than 1 year
30 following the filing of the judgment of conviction or the filing
31 of a decision on direct appeal? If so, state briefly the reasons
32 for the delay. (You must relate specific facts in response to
33 this question. Your response may be included on paper which
34 is 8 1/2 by 11 inches attached to the petition. Your response
35 may not exceed five handwritten or typewritten pages in
36 length.)
37

38 20. Do you have any petition or appeal now pending in
39 any court, either state or federal, as to the judgment **funder**
40 **attack?** *of conviction you are challenging in this petition?*
41 Yes No
42 If yes, state what court and the case number:
43



21. Give the name of each attorney who represented you in the proceeding resulting in your *judgment of conviction* and on direct appeal:

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment ~~under attack?~~ *of conviction you are challenging in this petition?* Yes No

If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting the same.

(a) Ground one:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground three:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.



EXECUTED at on the day of the month
of of the year

.....
Signature of petitioner
.....

.....
Address
.....

.....
Signature of attorney (if any)
.....

.....
Attorney for petitioner
.....

.....
Address
.....

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

.....
Petitioner
.....

.....
Attorney for petitioner
.....

CERTIFICATE OF SERVICE BY MAIL

I,, hereby certify, pursuant to N.R.C.P. 5(b), that on this day of the month of of the year, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS ***(VALIDITY OF JUDGMENT OF CONVICTION OR SENTENCE)*** addressed to:

.....
Respondent prison or jail official
.....

.....
Address
.....

.....
Attorney General
~~[Heroes' Memorial Building]~~



~~[Capitol Complex]~~ 100 North Carson Street
Carson City, Nevada ~~[89710]~~ 89701

.....
District Attorney of County of Conviction
.....

Address

.....
Signature of Petitioner

Sec. 12. NRS 34.738 is hereby amended to read as follows:

34.738 1. A petition that challenges the validity of a *judgment of conviction* or sentence must be filed with the clerk of the district court for the county in which the conviction occurred. Any other petition must be filed with the clerk of:

(a) The district court for the county in which the petitioner is incarcerated; or

(b) The First Judicial District Court in and for Carson City, if the petitioner is incarcerated outside this State while serving a term of imprisonment imposed by a court of this State.

2. A petition that is not filed in the district court for the appropriate county:

(a) Shall be deemed to be filed on the date it is received by the clerk of the district court in which the petition is initially lodged; and

(b) Must be transferred by the clerk of that court to the clerk of the district court for the appropriate county.

3. A petition must not challenge both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to ~~[that]~~ a judgment ~~[.]~~ of conviction. If a petition improperly challenges both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to ~~[that]~~ a judgment ~~[.]~~ of conviction, the district court for the appropriate county shall resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and dismiss the remainder of the petition without prejudice.

Sec. 13. NRS 34.745 is hereby amended to read as follows:

34.745 1. ~~If a petition challenges the validity of a judgment of conviction or sentence and is the first petition filed by the petitioner, the~~ The judge or justice shall order the ~~[district attorney or the Attorney General, whichever is appropriate,]~~ prosecuting agency to:

(a) File [:

~~— (1) A]~~ a response or an answer to the petition [; and



~~(2) If an evidentiary hearing is required pursuant to NRS 34.770, a return,~~

~~↪] within 45 days or a longer period fixed by the judge or justice; or~~

(b) Take other action that the judge or justice deems appropriate.

~~2. If a petition challenges the computation of time that the petitioner has served pursuant to a judgment of conviction, the judge or justice shall order the Attorney General to:~~

~~(a) File:~~

~~(1) A response or an answer to the petition; and~~

~~(2) A return,~~

~~↪ within 45 days or a longer period fixed by the judge or justice.~~

~~(b) Take other action that the judge or justice deems appropriate.~~

~~3.] An order entered pursuant to subsection 1 [or 2] must be in substantially the following form, with appropriate modifications if the order is entered by a judge of the Court of Appeals or a justice of the Supreme Court:~~

Case No.

Dept. No.

IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY
OF

.....
Petitioner,

v.

ORDER

.....
Respondent.

Petitioner filed a petition for a writ of habeas corpus on (month) (day), (year). The court has reviewed the petition and has determined that a response would assist the court in determining whether petitioner is illegally imprisoned and restrained of petitioner's liberty. Respondent shall, within 45 days after the date of this order, answer or otherwise respond to the petition ~~[and file a return]~~ in accordance with the provisions of NRS 34.360 to 34.830, inclusive ~~[,]~~, *and section 3 of this act.*



Dated (month) (day), (year)

.....
District Judge

↳ A copy of the order must be served on the petitioner or the petitioner’s counsel, the respondent, the Attorney General and ~~the district attorney of the county in which the petitioner was convicted. —4.]~~, if applicable, any other prosecuting agency.

3. If the petition is a second or successive petition challenging the validity of a judgment of conviction or sentence and if it plainly appears from the face of the petition or an amended petition and documents and exhibits that are annexed to it, or from records of the court that the petitioner is not entitled to relief based on any of the grounds set forth in subsection ~~2]~~ 3 of NRS 34.810, the judge or justice shall enter an order for its summary dismissal and cause the petitioner to be notified of the entry of the order.

~~5.]~~ 4. If the judge or justice relies on the records of the court in entering an order pursuant to this section, those records must be made a part of the record of the proceeding before entry of the order.

Sec. 14. NRS 34.750 is hereby amended to read as follows:

34.750 1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.

2. If the court determines that the petitioner is unable to pay all necessary costs and expenses incident to the proceedings of the trial court and the reviewing court, including court costs, stenographic services, printing and reasonable compensation for legal services, all costs must be paid from money appropriated to the office of the State Public Defender for that purpose. After appropriations for that purpose are exhausted, money must be allocated to the office of the State Public Defender from the Reserve for Statutory Contingency Account for the payment of the costs, expenses and compensation.

3. After appointment by the court, counsel for the petitioner may file and serve supplemental pleadings, exhibits, transcripts and documents within 30 days after:



1 (a) The date the court orders the filing of ~~an~~ *a response or*
2 answer ; ~~and a return;~~ or

3 (b) The date of counsel's appointment,
4 ↪ whichever is later. If it has not previously been filed, the
5 *response or* answer by the respondent must be filed within 15 days
6 after receipt of the supplemental pleadings and include any response
7 to the supplemental pleadings.

8 4. The petitioner shall respond within 15 days after service to a
9 motion by the State to dismiss the action.

10 5. No further pleadings may be filed except as ordered by the
11 court.

12 **Sec. 15.** NRS 34.760 is hereby amended to read as follows:

13 34.760 1. ~~The~~ *A response or* answer must ~~state~~ :

14 (a) *State plainly and unequivocally whether the respondent*
15 *has or had the petitioner in custody or under the respondent's*
16 *power or restraint and, if the respondent:*

17 (1) *Has the petitioner in custody or under his or her power*
18 *or restraint at the time of filing the response or answer, set forth*
19 *with specificity the basis for custody, including, without limitation,*
20 *the authority and cause of the imprisonment or restraint.*

21 (2) *Had the petitioner in custody or under the respondent's*
22 *power or restraint but no longer has the petitioner in custody or*
23 *under the respondent's power or restraint, state particularly to*
24 *whom, at what time and place, for what cause and by what*
25 *authority the transfer took place.*

26 (b) *Indicate* whether the petitioner has previously applied for
27 relief from the petitioner's *judgment of* conviction or sentence in
28 any proceeding in a state or federal court, including a direct appeal
29 or a petition for a writ of habeas corpus or other postconviction
30 relief.

31 2. ~~The~~ *If a petition challenges the validity of a judgment of*
32 *conviction or sentence, the response or* answer must indicate what
33 transcripts of pretrial, trial, sentencing and postconviction
34 proceedings are available, when these transcripts can be furnished
35 and what proceedings have been recorded and not transcribed. The
36 respondent shall attach to the *response or* answer any portions of the
37 transcripts, except those in the court's file, which the respondent
38 deems relevant. The court on its own motion or upon request of the
39 petitioner may order additional portions of existing transcripts to be
40 furnished or certain portions of the proceedings which were not
41 transcribed to be transcribed and furnished. If a transcript is not
42 available or procurable, the court may require a narrative summary
43 of the evidence to be submitted.

44 3. *If a petition challenges the computation of time that the*
45 *petitioner has served pursuant to a judgment of conviction,*



1 *the respondent shall attach a copy of the judgment of conviction to*
2 *the response or answer.*

3 4. If the petitioner appealed ~~from~~ the judgment of conviction
4 *or sentence* or any adverse judgment or order in a prior petition ,
5 ~~for a writ of habeas corpus or postconviction relief,~~ a copy of the
6 petitioner's brief on appeal and any opinion of the appellate court
7 must be filed by the respondent with the *response or* answer.

8 **Sec. 16.** NRS 34.770 is hereby amended to read as follows:

9 34.770 1. The judge or justice, upon review of the ~~return,~~
10 *response or* answer and all supporting documents which are filed,
11 shall determine whether an evidentiary hearing is required. A
12 petitioner must not be discharged or committed to the custody of a
13 person other than the respondent unless an evidentiary hearing is
14 held.

15 2. If the judge or justice determines that the petitioner is not
16 entitled to relief and an evidentiary hearing is not required, the judge
17 or justice shall dismiss the petition without a hearing.

18 3. If the judge or justice determines that an evidentiary hearing
19 is required, the judge or justice shall grant the writ and shall set a
20 date for the hearing.

21 **Sec. 17.** NRS 34.780 is hereby amended to read as follows:

22 34.780 1. The Nevada Rules of Civil Procedure, to the extent
23 that they are not inconsistent with NRS 34.360 to 34.830, inclusive,
24 *and section 3 of this act* apply to proceedings pursuant to NRS
25 34.720 to 34.830, inclusive ~~and~~, *and section 3 of this act.*

26 2. After the writ has been granted and a date set for the hearing,
27 a party may invoke any method of discovery available under the
28 Nevada Rules of Civil Procedure if, and to the extent that, the judge
29 or justice for good cause shown grants leave to do so.

30 3. A request for discovery which is available under the Nevada
31 Rules of Civil Procedure must be accompanied by a statement of the
32 interrogatories or requests for admission and a list of any documents
33 sought to be produced.

34 **Sec. 18.** NRS 34.800 is hereby amended to read as follows:

35 34.800 1. A petition may be dismissed if delay in the filing of
36 the petition:

37 (a) Prejudices the respondent or the State of Nevada in
38 responding to the petition, unless the petitioner shows that the
39 petition is based upon grounds of which the petitioner could not
40 have had knowledge by the exercise of reasonable diligence before
41 the circumstances prejudicial to the State occurred; or

42 (b) Prejudices the State of Nevada in its ability to conduct a
43 retrial of the petitioner, unless the petitioner demonstrates that a
44 fundamental miscarriage of justice has occurred in the proceedings
45 resulting in the judgment of conviction . ~~or sentence.~~



1 2. A period exceeding 5 years between the filing of a judgment
2 of conviction, an order imposing a sentence of imprisonment or a
3 decision on direct appeal of a judgment of conviction and the filing
4 of a petition challenging the validity of a judgment of conviction
5 creates a rebuttable presumption of prejudice to the State. In a
6 motion to dismiss the petition based on that prejudice, the
7 respondent or the State of Nevada must specifically plead laches.
8 The petitioner must be given an opportunity to respond to the
9 allegations in the pleading before a ruling on the motion is made.

10 **Sec. 19.** NRS 34.810 is hereby amended to read as follows:

11 34.810 1. The court shall dismiss a petition *that challenges*
12 *the validity of a judgment of conviction or sentence* if the court
13 determines that:

14 (a) The petitioner's conviction was upon a plea of guilty or
15 guilty but mentally ill and the petition is not based upon an
16 allegation that the plea was involuntarily or unknowingly entered or
17 that the plea was entered without effective assistance of counsel.

18 (b) The petitioner's conviction was the result of a trial and the
19 grounds for the petition could have been:

20 (1) Presented to the trial court;

21 (2) Raised in a direct appeal or a prior petition for a writ of
22 habeas corpus or postconviction relief; or

23 (3) Raised in any other proceeding that the petitioner has
24 taken to secure relief from the petitioner's *judgment of* conviction
25 and sentence,

26 ↪ unless the court finds both cause for the failure to present the
27 grounds and actual prejudice to the petitioner.

28 2. *The court shall dismiss a petition that challenges the*
29 *computation of time served pursuant to a judgment of conviction*
30 *without prejudice if the court determines that the petitioner did not*
31 *exhaust all available administrative remedies to resolve such a*
32 *challenge as required by NRS 34.724.*

33 3. A second or successive petition must be dismissed if the
34 judge or justice determines that it fails to allege new or different
35 grounds for relief and that the prior determination was on the merits
36 or, if new and different grounds are alleged, the judge or justice
37 finds that the failure of the petitioner to assert those grounds in a
38 prior petition constituted an abuse of the writ.

39 ~~[3.]~~ 4. Pursuant to subsections 1 and ~~[2.]~~ 3, the petitioner has
40 the burden of pleading and proving specific facts that demonstrate:

41 (a) Good cause for the petitioner's failure to present the claim or
42 for presenting the claim again; and

43 (b) Actual prejudice to the petitioner.



1 ↪ The petitioner shall include in the petition all prior proceedings in
2 which the petitioner challenged the same *judgment of* conviction or
3 sentence.

4 ~~[4. The court shall dismiss a petition without prejudice if:~~

5 ~~—(a) The petition challenges the computation of time that the~~
6 ~~petitioner has served pursuant to a judgment of conviction; and~~

7 ~~—(b) The court determines that the petitioner did not exhaust all~~
8 ~~available administrative remedies to resolve such a challenge as~~
9 ~~required by NRS 34.724.]~~

10 5. The court may dismiss a petition that fails to include any
11 prior proceedings of which the court has knowledge through the
12 record of the court or through the pleadings submitted by the
13 respondent.

14 **Sec. 20.** NRS 34.820 is hereby amended to read as follows:

15 34.820 1. If a petitioner has been sentenced to death and the
16 petition is the first one challenging the validity of the petitioner's
17 *judgment of* conviction or sentence, the court shall:

18 (a) Appoint counsel to represent the petitioner; and

19 (b) Stay execution of the judgment pending disposition of the
20 petition and the appeal.

21 2. The petition must include the date upon which execution is
22 scheduled, if it has been scheduled. The petitioner is not entitled to
23 an evidentiary hearing unless the petition states that:

24 (a) Each issue of fact to be considered at the hearing has not
25 been determined in any prior evidentiary hearing in a state or federal
26 court; or

27 (b) For each issue of fact which has been determined in a prior
28 evidentiary hearing, the hearing was not a full and fair consideration
29 of the issue. The petition must specify all respects in which the
30 hearing was inadequate.

31 3. If the petitioner has previously filed a petition for relief or
32 for a stay of the execution in the same court, the petition must be
33 assigned to the judge or justice who considered the previous matter.

34 4. The court shall inform the petitioner and the petitioner's
35 counsel that all claims which challenge the *judgment of* conviction
36 or imposition of the sentence must be joined in a single petition and
37 that any matter not included in the petition will not be considered in
38 a subsequent proceeding.

39 5. If relief is granted or the execution is stayed, the clerk shall
40 forthwith notify the respondent ~~[, the Attorney General]~~ and the
41 ~~[district attorney of the county in which the petitioner was~~
42 ~~convicted.]~~ *prosecuting agency.*

43 6. If a district judge conducts an evidentiary hearing, a daily
44 transcript must be prepared for the purpose of appellate review.



1 7. The judge or justice who considers a petition filed by a
2 petitioner who has been sentenced to death shall make all reasonable
3 efforts to expedite the matter and shall render a decision within 60
4 days after submission of the matter for decision.

5 **Sec. 21.** NRS 34.830 is hereby amended to read as follows:

6 34.830 1. Any order that finally disposes of a petition,
7 whether or not an evidentiary hearing was held, must contain
8 specific findings of fact and conclusions of law supporting the
9 decision of the court.

10 2. A copy of any decision or order discharging the petitioner
11 from the custody or restraint under which the petitioner is held,
12 committing the petitioner to the custody of another person,
13 dismissing the petition or denying the requested relief must be
14 served by the clerk of the court upon the petitioner and the
15 petitioner's counsel, if any, the respondent ~~[, the Attorney General]~~
16 and the ~~[district attorney of the county in which the petitioner was~~
17 ~~convicted.] prosecuting agency.~~

18 3. Whenever a decision or order described in this section is
19 entered by the district court, the clerk of the court shall prepare a
20 notice in substantially the following form and mail a copy of the
21 notice to each person listed in subsection 2:

22
23 Case No.

24 Dept. No.

25 IN THE JUDICIAL DISTRICT COURT OF THE
26 STATE OF NEVADA IN AND FOR THE COUNTY
27 OF

28
29
30 Petitioner,

31
32 v. NOTICE OF ENTRY OF
33 DECISION OR ORDER

34
35
36 Respondent.

37
38 PLEASE TAKE NOTICE that on (month) (day)
39 (year), the court entered a decision or order in this matter,
40 a true and correct copy of which is attached to this notice.

41 You may appeal to the appellate court of competent
42 jurisdiction pursuant to the rules fixed by the Supreme Court
43 from the decision or order of this court. If you wish to appeal,
44 you must file a notice of appeal with the clerk of this court



1 within 33 days after the date this notice is mailed to you. This
2 notice was mailed on (month) (day) (year)
3 Dated (month) (day) (year)
4

Clerk of court

6 (SEAL) By

7 Deputy

8 **Sec. 22.** NRS 34.960 is hereby amended to read as follows:

9 34.960 1. At any time after the expiration of the period
10 during which a motion for a new trial based on newly discovered
11 evidence may be made pursuant to NRS 176.515, a person who has
12 been convicted of a felony may petition the district court in the
13 county in which the person was convicted for a hearing to establish
14 the factual innocence of the person based on newly discovered
15 evidence. A person who files a petition pursuant to this subsection
16 shall serve notice and a copy of the petition upon the ~~district~~
17 ~~attorney of the county in which the conviction was obtained and the~~
18 ~~Attorney General.] prosecuting agency.~~

19 2. A petition filed pursuant to subsection 1 must contain an
20 assertion of factual innocence under oath by the petitioner and must
21 aver, with supporting affidavits or other credible documents, that:

22 (a) Newly discovered evidence exists that is specifically
23 identified and, if credible, establishes a bona fide issue of factual
24 innocence;

25 (b) The newly discovered evidence identified by the petitioner:

26 (1) Establishes innocence and is material to the case and the
27 determination of factual innocence;

28 (2) Is not merely cumulative of evidence that was known, is
29 not reliant solely upon recantation of testimony by a witness against
30 the petitioner and is not merely impeachment evidence; and

31 (3) Is distinguishable from any claims made in any previous
32 petitions;

33 (c) If some or all of the newly discovered evidence alleged in
34 the petition is a biological specimen, that a genetic marker analysis
35 was performed pursuant to NRS 176.0918, 176.09183 and
36 176.09187 and the results were favorable to the petitioner; and

37 (d) When viewed with all other evidence in the case, regardless
38 of whether such evidence was admitted during trial, the newly
39 discovered evidence demonstrates the factual innocence of the
40 petitioner.

41 3. In addition to the requirements set forth in subsection 2, a
42 petition filed pursuant to subsection 1 must also assert that:

43 (a) Neither the petitioner nor the petitioner's counsel knew of
44 the newly discovered evidence at the time of trial or sentencing or in
45 time to include the evidence in any previously filed post-trial motion



1 or postconviction petition, and the evidence could not have been
2 discovered by the petitioner or the petitioner's counsel through the
3 exercise of reasonable diligence; or

4 (b) A court has found ineffective assistance of counsel for
5 failing to exercise reasonable diligence in uncovering the newly
6 discovered evidence.

7 4. The court shall review the petition and determine whether
8 the petition satisfies the requirements of subsection 2. If the court
9 determines that the petition:

10 (a) Does not meet the requirements of subsection 2, the court
11 shall dismiss the petition without prejudice, state the basis for the
12 dismissal and send notice of the dismissal to the petitioner ~~[-, the~~
13 ~~district attorney]~~ and the ~~[Attorney General;]~~ *prosecuting agency*.

14 (b) Meets the requirements of subsection 2, the court shall
15 determine whether the petition satisfies the requirements of
16 subsection 3. If the court determines that the petition does not meet
17 the requirements of subsection 3, the court may:

18 (1) Dismiss the petition without prejudice, state the basis for
19 the dismissal and send notice of the dismissal to the petitioner ~~[-, the~~
20 ~~district attorney]~~ and the ~~[Attorney General;]~~ *prosecuting agency;*
21 or

22 (2) Waive the requirements of subsection 3 if the court finds
23 the petition should proceed to a hearing and that there is other
24 evidence that could have been discovered through the exercise of
25 reasonable diligence by the petitioner or the petitioner's counsel at
26 trial, and the other evidence:

27 (I) Was not discovered by the petitioner or the petitioner's
28 counsel;

29 (II) Is material upon the issue of factual innocence; and

30 (III) Has never been presented to a court.

31 5. Any second or subsequent petition filed by a person must be
32 dismissed if the court determines that the petition fails to identify
33 new or different evidence in support of the factual innocence claim
34 or, if new and different grounds are alleged, the court finds that the
35 failure of the petitioner to assert those grounds in a prior petition
36 filed pursuant to this section constituted an abuse of the writ.

37 6. The court shall provide a written explanation of its order to
38 dismiss or not to dismiss the petition based on the requirements set
39 forth in subsections 2 and 3.

40 7. A person who has already obtained postconviction relief that
41 vacated or reversed the person's conviction or sentence may also
42 file a petition pursuant to subsection 1 in the same manner and form
43 as described in this section if no retrial or appeal regarding the
44 offense is pending.



1 8. After a petition is filed pursuant to subsection 1, any
2 prosecuting ~~[attorney.]~~ *agency*, law enforcement agency or forensic
3 laboratory that is in possession of any evidence that is the subject of
4 the petition shall preserve such evidence and any information
5 necessary to determine the sufficiency of the chain of custody of
6 such evidence.

7 9. A petition filed pursuant to subsection 1 must include the
8 underlying criminal case number.

9 10. Except as otherwise provided in NRS 34.900 to 34.990,
10 inclusive, the Nevada Rules of Civil Procedure govern all
11 proceedings concerning a petition filed pursuant to subsection 1.

12 11. As used in this section:

13 (a) "Biological specimen" has the meaning ascribed to it in
14 NRS 176.09112.

15 (b) "Forensic laboratory" has the meaning ascribed to it in
16 NRS 176.09117.

17 (c) "Genetic marker analysis" has the meaning ascribed to it in
18 NRS 176.09118.

19 **Sec. 23.** NRS 34.970 is hereby amended to read as follows:

20 34.970 1. If the court does not dismiss a petition after
21 reviewing the petition in accordance with NRS 34.960, the court
22 shall order the ~~[district attorney or the Attorney General]~~
23 *prosecuting agency* to file a response to the petition. The court's
24 order must:

25 (a) Specify which claims identified in the petition warrant a
26 response from the ~~[district attorney or the Attorney General;]~~
27 *prosecuting agency*; and

28 (b) Specify which newly discovered evidence identified in the
29 petition, if credible, might establish a bona fide issue of factual
30 innocence.

31 2. The ~~[district attorney or the Attorney General]~~ *prosecuting*
32 *agency* shall, not later than 120 days after receipt of the court's
33 order requiring a response, or within any additional period the court
34 allows, respond to the petition and serve a copy upon the petitioner
35 and, if the *prosecuting agency is the* district attorney , ~~[is~~
36 ~~responding to the petition.]~~ the Attorney General.

37 3. Not later than 30 days after the date the ~~[district attorney or~~
38 ~~the Attorney General]~~ *prosecuting agency* responds to the petition,
39 the petitioner may reply to the response. Not later than 30 days after
40 the expiration of the period during which the petitioner may reply
41 to the response, the court shall consider the petition, any response by
42 the ~~[district attorney or the Attorney General]~~ *prosecuting agency*
43 and any reply by the petitioner. If the court determines that the
44 petition meets the requirements of NRS 34.960 and that there is a
45 bona fide issue of factual innocence regarding the charges of which



1 the petitioner was convicted, the court shall order a hearing on the
2 petition. If the court does not make such a determination, the court
3 shall enter an order denying the petition. For the purposes of this
4 subsection, a bona fide issue of factual innocence does not exist if
5 the petitioner is merely relitigating facts, issues or evidence
6 presented in a previous proceeding or if the petitioner is unable to
7 identify with sufficient specificity the nature and reliability of the
8 newly discovered evidence that establishes the factual innocence of
9 the petitioner. Unless stipulated to by the parties, the court may not
10 grant a hearing on the petition during any period in which criminal
11 proceedings in the matter are pending before any trial or appellate
12 court.

13 4. If the court grants a hearing on the petition, the hearing must
14 be held and the final order must be entered not later than 150 days
15 after the expiration of the period during which the petitioner may
16 reply to the response to the petition by the ~~district attorney or the~~
17 ~~Attorney General~~ *prosecuting agency* pursuant to subsection 3
18 unless the court determines that additional time is required for good
19 cause shown.

20 5. If the court grants a hearing on the petition, the court shall,
21 upon the request of the petitioner, order the preservation of all
22 material and relevant evidence in the possession or control of this
23 State or any agent thereof during the pendency of the proceeding.

24 6. If the parties stipulate that the evidence establishes the
25 factual innocence of the petitioner, the court may affirm the factual
26 innocence of the petitioner without holding a hearing. If the
27 prosecuting ~~attorney~~ *agency* does not stipulate that the evidence
28 establishes the factual innocence of the petitioner, a determination
29 of factual innocence must not be made by the court without a
30 hearing.

31 7. If the parties stipulate that the evidence establishes the
32 factual innocence of the petitioner, the prosecuting ~~attorney~~
33 *agency* makes a motion to dismiss the original charges against the
34 petitioner or, after a hearing, the court determines that the petitioner
35 has proven his or her factual innocence by clear and convincing
36 evidence, the court shall:

37 (a) Vacate the petitioner's conviction and issue an order of
38 factual innocence and exoneration; and

39 (b) Order the sealing of all documents, papers and exhibits in the
40 person's record, minute book entries and entries on dockets and
41 other documents relating to the case in the custody of such other
42 agencies and officers as are named in the court's order.

43 8. The court shall provide a written explanation of its
44 determination that the petitioner proved or failed to prove his or her
45 factual innocence by clear and convincing evidence.



1 9. Any order granting or denying a hearing on a petition
2 pursuant to this section may be appealed by either party.

3 **Sec. 24.** NRS 34.990 is hereby amended to read as follows:

4 34.990 After a petition is filed pursuant to NRS 34.960, if any
5 victim of the crime for which the petitioner was convicted has
6 indicated a desire to be notified regarding any postconviction
7 proceedings, the ~~district attorney~~ *prosecuting agency* shall make
8 reasonable efforts to provide notice to such a victim that the petition
9 has been filed and that indicates the time and place for any hearing
10 that may be held as a result of the petition and the disposition
11 thereof.

12 **Sec. 25.** The amendatory provisions of this act do not apply to
13 a postconviction petition for habeas corpus filed pursuant to NRS
14 34.724 before July 1, 2023.

15 **Sec. 26.** NRS 34.430 is hereby repealed.

16 **Sec. 27.** 1. This section becomes effective upon passage and
17 approval.

18 2. Sections 1 to 26, inclusive, of this act become effective:

19 (a) Upon passage and approval for the purpose of adopting any
20 regulations and performing any other preparatory administrative
21 tasks that are necessary to carry out the provisions of this act; and

22 (b) On July 1, 2023, for all other purposes.

TEXT OF REPEALED SECTION

34.430 Return and answer: Service and filing; contents; signature and verification.

1. Except as otherwise provided in subsection 1 of NRS 34.745, the respondent shall serve upon the petitioner and file with the court a return and an answer that must respond to the allegations of the petition within 45 days or a longer period fixed by the judge or justice.

2. The return must state plainly and unequivocally whether the respondent has the party in custody, or under the respondent's power or restraint. If the respondent has the petitioner in the respondent's custody or power, or under the respondent's restraint, the respondent shall state the authority and cause of the imprisonment or restraint, setting forth with specificity the basis for custody.

3. If the petitioner is detained by virtue of any judgment, writ, warrant or other written authority, a certified or exemplified copy must be annexed to the return.



4. If the respondent has the petitioner in the respondent's power or custody or under the respondent's restraint before or after the date of the writ of habeas corpus but has transferred custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority the transfer took place.

5. The return must be signed by the respondent and, unless the respondent is a sworn public officer who makes the return in the respondent's official capacity, verified under oath or affirmation.

⑩



