

ASSEMBLY BILL NO. 618—COMMITTEE ON JUDICIARY

(ON BEHALF OF ATTORNEY GENERAL)

MARCH 18, 1999

Referred to Committee on Judiciary

SUMMARY—Authorizes certain persons to petition for post-conviction writ of habeas corpus on behalf of real party in interest under certain circumstances. (BDR 3-295)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to writs of habeas corpus; authorizing certain persons to petition for a post-conviction writ of habeas corpus on behalf of a real party in interest under certain circumstances; and providing other matters properly relating thereto.

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 thereto
2 the provisions set forth as sections 2 to 16, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 16, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *7, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
- 7 **Sec. 3.** *“Application” means an application for authorization to*
8 *submit a petition on behalf of a real party in interest.*
- 9 **Sec. 4.** *“Disability” means a condition similar to inaccessibility or*
10 *mental incompetence that actually prevents an offender from filing a*
11 *petition or authorizing counsel to file petition.*
- 12 **Sec. 5.** *“Mentally incompetent” means:*
- 13 1. *Having an insufficient present ability, because of a mental disease*
14 *or defect, to authorize counsel to file a petition; or*

2. Lacking an understanding, because of a mental disease or defect, that proceedings may be undertaken to challenge a conviction or sentence.

Sec. 6. "Petition" means a post-conviction petition for a writ of habeas corpus.

Sec. 7. "Real party in interest" means an offender who:

1. Has been sentenced to death or imprisonment; and
2. Is not able to file a petition because of inaccessibility, mental incompetence or another disability.

Sec. 8. 1. A person who is 18 years of age or older may file an application.

2. An application must be filed with the clerk of the district court in the county in which the conviction of the real party in interest occurred.

If an applicant files an application in a different court, that court:

- (a) Shall not transfer the application to the appropriate court;
- (b) Shall not enter a stay of the carrying out of the sentence of the real party in interest; and
- (c) Shall summarily dismiss the application without prejudice.

3. An application must:

- (a) Be signed and sworn to under penalty of perjury by the applicant.
- (b) Name as respondent, and be served upon, the officer or other person by whom the real party in interest is confined or restrained. A copy of the application and any supporting documentation must be served by mail upon the attorney general and the district attorney in the county in which the real party in interest was convicted.

4. The clerk of the district court shall file an application:

- (a) As a new action that is distinct from the original proceeding pursuant to which the real party in interest was convicted.
- (b) With the record of the original proceeding pursuant to which the real party in interest was convicted.

5. An application must, if possible, be assigned to the judge or court of the original proceeding pursuant to which the real party in interest was convicted.

6. The district judge shall summarily dismiss with prejudice any:

- (a) Application submitted by a person who is less than 18 years of age;
- (b) Incomplete application; or
- (c) Application that is not signed and sworn to under penalty of perjury by the applicant.

Sec. 9. An application must be in substantially the following form:

Case No.

Dept. No.

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

3
4 **....., Applicant, on behalf of**
5 **....., Real Party in Interest,**

6
7 **APPLICATION TO SUBMIT PETITION**
8 **v. FOR WRIT OF HABEAS CORPUS ON**
9 **BEHALF OF REAL PARTY IN INTEREST**

10
11 **Respondent.**

12
13 **INSTRUCTIONS:**

14 **1. This application must be legibly handwritten or typewritten and**
15 **signed by the applicant under penalty of perjury.**

16 **2. Additional pages are not permitted except where noted or with**
17 **respect to the facts or bases upon which you rely to support your claim of**
18 **standing. An application will be dismissed if you are less than 18 years of**
19 **age, you fail to specifically answer a question or complete a portion of**
20 **the application, or you fail to sign and swear to the application under**
21 **penalty of perjury.**

22 **3. You must name as respondent the person by whom the real party**
23 **in interest is confined or restrained. If the real party in interest is in a**
24 **specific institution of the department of prisons, you must name the**
25 **warden or head of the institution. If the real party in interest is not in a**
26 **specific institution of the department but is within the custody of the**
27 **department, you must name the director of the department of prisons.**

28 **4. You must specify in your application any fact that you believe will**
29 **support your claim of standing to file a petition for a writ of habeas**
30 **corpus on behalf of the real party in interest. Failure to allege specific**
31 **facts rather than just conclusions will cause your petition to be dismissed.**
32 **After this application has been filed with the appropriate district court,**
33 **you will not be allowed to amend the application or assert any new fact**
34 **or basis supporting your claim of standing. The district court will not**
35 **consider any fact or basis supporting your claim of standing other than**
36 **the facts and bases included in this application.**

37 **5. After the application is fully completed, the original application**
38 **and one copy of the application must be filed with any supporting**
39 **documentation or exhibits with the clerk of the district court for the**
40 **county in which the conviction of the real party in interest occurred. One**
41 **copy of the application, together with a copy of any supporting**
42 **documentation and exhibits, must be mailed to:**

43 **(a) The respondent;**

- 1 **(b) The attorney general; and**
2 **(c) The district attorney of the county in which the real party in**
3 **interest was convicted.**
4 **Copies of the application and any supporting documentation and exhibits**
5 **must conform in all particulars to the original application,**
6 **documentation and exhibits submitted to the district court for filing.**

7
8 **APPLICATION**

9 **1. Name of the institution and county in which the real party in**
10 **interest is presently imprisoned or where and how the real party in**
11 **interest is presently restrained of his liberty:.....**

12
13 **2. Name and location of the court that entered the judgment of**
14 **conviction pursuant to which the real party in interest is presently**
15 **restrained:**

16
17 **3. Date of the judgment of conviction:.....**

18 **4. Case number:.....**

19 **5. (a) Length of the sentence:.....**

20
21 **(b) If the sentence is death, state any date upon which execution is**
22 **scheduled:.....**

23 **6. Is the real party in interest presently serving a sentence for a**
24 **conviction other than the conviction that you will seek to**
25 **attack? Yes No**

26 **If "yes," list the crime, case number and sentence being served at this**
27 **time by the real party in interest:**

28
29
30 **7. Nature of the offense involved in the conviction that you intend to**
31 **challenge:**

32
33 **8. What was the plea of the real party in interest? (check one)**

34 **(a) Not guilty**

35 **(b) Guilty**

36 **(c) Guilty but mentally ill**

37 **(d) Nolo contendere**

38 **9. If the real party in interest entered a plea of guilty or guilty but**
39 **mentally ill to one count of an indictment or information, and a plea of**
40 **not guilty to another count of an indictment or information, or if a plea of**
41 **guilty or guilty but mentally ill was negotiated, give the details:**
42
43

1 **10. If the real party in interest was found guilty after a plea of not**
2 **guilty, was the finding made by: (check one)**

3 **(a) Jury**

4 **(b) Judge without a jury**

5 **11. Did the real party in interest testify at the trial?**

6 **Yes No**

7 **12. Did you testify at the trial? Yes No**

8 **13. Did the real party in interest appeal from the judgment of**
9 **conviction? Yes No**

10 **14. If the real party in interest did appeal, answer the following:**

11 **(a) Name of the court:**

12 **(b) Case number or citation:**

13 **(c) Result:**

14 **(d) Date of the result:**

15 **(Attach a copy of the order or decision, if available.)**

16 **15. If the real party in interest did not appeal, explain in detail,**
17 **including all the information available to you and citing the sources for**
18 **your information, why the real party in interest did not appeal:**
19
20

21 **16. Have you ever before sought or applied for next friend status on**
22 **behalf of the real party in interest or another person or filed any other**
23 **applications pursuant to this chapter or a law of another jurisdiction on**
24 **behalf of the real party in interest or another person? Yes No**

25 **If “yes,” list all other applications and instances in which you sought**
26 **next friend status. Provide the complete caption of the case, including,**
27 **without limitation, the name of any real party in interest, the name of the**
28 **respondent or defendant, the name of the jurisdiction and the court, and**
29 **the case number. State the basis upon which the application was made or**
30 **the next friend status was sought. If any appeal from a denial was made,**
31 **provide the complete caption of the case on appeal. State the result of any**
32 **appeal. Attach a copy of any dispositive court order relating to those**
33 **applications or instances in which you sought next friend status:**
34
35

36 **17. Have you made any other application on behalf of the real party**
37 **in interest pursuant to this chapter? Yes No**

38 **If “yes,” provide the complete caption of the case, including, without**
39 **limitation, the name of the court and the case number or citation. State**
40 **the result of the application, including, without limitation, whether the**
41 **case is still pending:.....**
42
43

1 **18. Are you aware of an application in another jurisdiction in which a**
2 **person sought next friend status for the real party in**
3 **interest? Yes No**

4 **If “yes,” provide the complete caption of the case, including, without**
5 **limitation, the name of the applicant in the other jurisdiction, the name**
6 **of the respondent or defendant, the name of the jurisdiction and the**
7 **court, and the case number. Attach a copy of any dispositive court order**
8 **relating to such an application or instance in which another person**
9 **sought next friend status on behalf of the real party in interest:**

10
11
12 **19. Does the real party in interest have any petition or appeal now**
13 **pending in any court, either state or federal, as to the judgment sought to**
14 **be attacked? Yes No**

15 **If yes, state what court and the case number:**

16
17 **20. Give the name of each attorney who represented the real party in**
18 **interest in the proceeding resulting in the conviction of the real party in**
19 **interest:**

20
21 **21. Does the real party in interest have any future sentences to serve**
22 **after he completes the sentence imposed by the judgment sought to be**
23 **attacked? Yes No**

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

25
26
27 **22. State every fact upon which you claim that the real party in**
28 **interest cannot, because of inaccessibility, mental incompetence or**
29 **another disability, appear on his own behalf to pursue a petition for a**
30 **post-conviction writ of habeas corpus pursuant to NRS 34.720 to 34.830,**
31 **inclusive. Attach any supporting documentation and exhibits to the**
32 **application:**

33
34
35 **23. State every fact upon which you claim that the real party in**
36 **interest is unrepresented and is incompetent or otherwise unable to**
37 **authorize his counsel to submit a petition on his behalf:**

38
39 **24. State every fact upon which you claim that you are acting**
40 **dedicated to the best interests of the real party in interest. Attach any**
41 **supporting documentation and exhibits to the application:**

42
43

1 25. State every fact upon which you claim that you are related to the
2 real party in interest in the first degree of consanguinity. Attach any
3 supporting documentation and exhibits to the application:
4

5 WHEREFORE, the applicant prays that the court grant the applicant
6 next friend status and authorize the applicant to submit a petition for a
7 writ of habeas corpus pursuant to NRS 34.720 to 34.830, inclusive, on
8 behalf of the real party in interest.

9 EXECUTED at on the day of, 19....
10

11
12 Signature of petitioner
13

14 Address
15

16 Signature of attorney (if any)
17

18 Attorney for applicant
19

20 Address
21

22 **VERIFICATION**

23 Under penalty of perjury, the undersigned applicant declares that he is
24 the applicant named in the foregoing application and knows the contents
25 thereof; that the pleading is true of his own knowledge, except as to those
26 matters stated on information and belief, and as to such matters he
27 believes them to be true.
28

29
30 Applicant
31

32 Notary
33

34 **VERIFICATION OF ATTORNEY (IF ANY)**

35 Under penalty of perjury, the undersigned attorney declares that he is
36 the attorney for the applicant named in the foregoing application and
37 knows the contents thereof; that the pleading is true of his own
38 knowledge, except as to those matters stated on information and belief,
39 and as to such matters he believes them to be true.
40

41 Attorney for petitioner
42

43 Notary

CERTIFICATE OF SERVICE BY MAIL

I,, hereby certify pursuant to N.R.C.P. 5(b), that on this day of, 19....., I mailed a true and correct copy of the foregoing APPLICATION TO SUBMIT PETITION FOR WRIT OF HABEAS CORPUS ON BEHALF OF REAL PARTY IN INTEREST addressed to:

Respondent prison or jail official

Address

**Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710**

District Attorney of County of Conviction

Address

Signature of Applicant

Sec. 10. 1. There is a presumption that an applicant does not have standing to file a petition on behalf of the party in real interest.

2. Before an applicant may petition a court for a writ of habeas corpus on behalf of the real party in interest, the applicant must establish standing by proving by clear and convincing evidence that:

(a) The real party in interest:

(1) Is not able to appear on his own behalf to petition the court for the writ of habeas corpus because of inaccessibility, mental incompetence or another disability; and

(2) Is not represented by counsel and is incompetent or otherwise unable to authorize counsel to petition on his behalf; and

(b) The applicant is:

**(1) Dedicated to the best interests of the real party in interest; and
(2) Related to the real party in interest in the first degree of consanguinity.**

3. The applicant:

(a) Shall describe in detail the evidence upon which he claims standing;

1 (b) Shall include with the application all evidence that supports the
2 claim of standing, including, without limitation, affidavits, other
3 documentary evidence and exhibits; and

4 (c) May not amend the application or the supporting evidence after
5 the application has been filed.

6 **Sec. 11. 1.** After an application has been properly filed with a
7 district court, the clerk of the court shall promptly present the application
8 to the appropriate district judge.

9 2. The district judge shall examine the application not later than 5
10 days after the date on which the application was filed to determine
11 whether the application:

12 (a) Was filed by an applicant who is 18 years of age or older;

13 (b) Is complete;

14 (c) Contains assertions of standing, which, if true, would be sufficient
15 as a matter of law to establish standing;

16 (d) Describes in detail the evidence that supports each of the
17 assertions of standing;

18 (e) Includes evidence that supports each of the assertions of standing;
19 and

20 (f) Is signed and sworn to under penalty of perjury by the applicant.

21 3. If any of the items listed in subsection 2 is missing or insufficient,
22 the judge shall summarily dismiss the application with prejudice.

23 4. If the judge determines that all the items listed in subsection 2 are
24 present and sufficiently detailed, the judge shall order the district
25 attorney to answer or otherwise respond to the application not later than
26 28 days after being so ordered by the court, unless the court grants the
27 district attorney additional time for good cause shown. The order must be
28 in substantially the following form:

29
30 Case No.

31 Dept. No.

32
33 IN THE.....JUDICIAL DISTRICT COURT OF THE
34 STATE OF NEVADA IN AND FOR THE COUNTY OF.....

35
36, Applicant, on behalf of
37, Real Party in Interest,

38
39 v. ORDER

40
41
42 Respondent.

1 Applicant filed a petition to pursue a writ of habeas corpus on behalf of
2 the real party in interest on, 19.... The court has reviewed the
3 petition and has determined that a response would assist the court in
4 determining whether the applicant has standing to pursue such a
5 petition. Respondent shall, within days after the date of this order,
6 answer or otherwise respond to the application and file a return in
7 accordance with the provisions of NRS 34.360 to 34.830, inclusive.

8
9 Dated, 19....

10
11 District Judge

12
13 A copy of the order must be served on the applicant or his counsel, if any,
14 the respondent, the attorney general and the district attorney of the
15 county in which the real party in interest was convicted.

16 5. If the application alleges that the real party in interest is mentally
17 incompetent, the judge shall appoint three licensed psychologists or
18 psychiatrists who have not previously examined the real party in interest
19 to examine the real party in interest to determine whether he is mentally
20 incompetent. The psychologists or psychiatrists shall report their findings
21 to the court, the district attorney and the applicant.

22 6. After the district attorney has filed his answer or response and any
23 findings from psychologists and psychiatrists have been reported, the
24 judge shall examine the application, answer or response, any findings
25 from an examination by a psychologist or psychiatrist of the real party in
26 interest and any other supporting documents or exhibits to determine
27 whether an evidentiary hearing is necessary.

28 7. If the judge determines that:

29 (a) The applicant, as a matter of law, does not have standing, the
30 judge shall summarily dismiss the application with prejudice and without
31 a hearing.

32 (b) An evidentiary hearing is necessary, the judge shall conduct the
33 hearing expeditiously and limit the hearing to a determination of whether
34 the applicant has standing. The evidentiary hearing must be recorded.
35 The judge shall require the authentication of any material submitted in
36 support of a claim of standing. The judge shall render a decision
37 regarding the application within 60 days after the date the application
38 was filed.

39 8. The judge shall not grant a request from the applicant for
40 discovery.

41 **Sec. 12.** Regardless of whether an evidentiary hearing was held
42 pursuant to section 11 of this act, a final decision or order concerning an
43 application must:

1 1. *Contain specific findings of fact and conclusions of law*
2 *supporting the decision of the court; and*

3 2. *Be served by the clerk of the court upon the applicant and his*
4 *counsel, if any, the respondent, the attorney general and the district*
5 *attorney of the county in which the real party in interest was convicted.*

6 **Sec. 13.** *If the district court determines that an applicant has*
7 *standing to file a petition on behalf of a real party in interest:*

8 1. *The court shall allow the applicant to proceed in the same manner*
9 *that the real party in interest could proceed pursuant to NRS 34.720 to*
10 *34.830, inclusive.*

11 2. *Counsel may be appointed for the applicant pursuant to NRS*
12 *34.750 or 34.820 as if the applicant were the real party in interest. A*
13 *district judge shall not appoint counsel for an applicant before the*
14 *district court has determined that the applicant has standing.*

15 3. *No right to counsel or to effective assistance of counsel is created*
16 *by this section.*

17 **Sec. 14.** 1. *A judge or justice may not stay the carrying out of a*
18 *sentence of a real party in interest pursuant to the submission of an*
19 *application until:*

20 (a) *The district judge has determined that the applicant has standing;*
21 *and*

22 (b) *The applicant has filed a petition on behalf of the real party in*
23 *interest.*

24 2. *A judge or justice may not stay the carrying out of a sentence of a*
25 *real party in interest pending an appeal of an application.*

26 3. *Any stay granted pursuant to this section must not be contrary to*
27 *any other provision of law.*

28 **Sec. 15.** 1. *An applicant who has been denied standing to submit a*
29 *petition on behalf of a real party in interest may appeal the decision to*
30 *the supreme court not later than 30 days after receiving notice of the*
31 *decision.*

32 2. *The State of Nevada is an interested party in the proceedings for*
33 *an application made pursuant to sections 2 to 16, inclusive, of this act. If*
34 *the district court finds that the applicant has standing to file a petition on*
35 *behalf of the real party in interest, the district attorney of the county in*
36 *which the applicant was submitted or the attorney general may appeal*
37 *the decision to the supreme court not later than 30 days after receiving*
38 *notice of the decision.*

39 3. *If the applicant, district attorney or attorney general appeals the*
40 *decision of the district court:*

41 (a) *The clerk of the district court shall certify and transmit to the*
42 *supreme court:*

1 (1) *The application and the accompanying evidence that supports*
2 *each of the assertions of standing; and*

3 (2) *If either party requests it, a transcript of any evidentiary hearing*
4 *held pursuant to section 11 of this act.*

5 (b) *The court, if necessary, shall direct the court reporter to expedite*
6 *the preparation of the transcript of the evidentiary hearing in preference*
7 *to any request for a transcript of a civil action.*

8 (c) *The parties may not submit legal briefs or present oral argument*
9 *unless specifically ordered to do so by the supreme court.*

10 **Sec. 16.** *The filing of an application pursuant to sections 2 to 16,*
11 *inclusive, of this act does not:*

12 1. *Toll for the real party in interest any period of time or limitation*
13 *for the filing of an action, petition or appeal.*

14 2. *Defeat any procedural bar that would have existed if the real party*
15 *in interest had filed a petition pursuant to NRS 34.360 to 34.830,*
16 *inclusive.*

17 **Sec. 17.** The amendatory provisions of this act apply to applications to
18 submit a petition for a writ of habeas corpus on behalf of a real party in
19 interest that are filed on or after October 1, 1999.