
SENATE BILL NO. 361—COMMITTEE ON JUDICIARY

(ON BEHALF OF ATTORNEY GENERAL)

MARCH 10, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning writs of habeas corpus. (BDR 3-309)

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; specifying the circumstances under which a court may summarily dismiss a petition for a writ of habeas corpus; revising the provisions governing the effectiveness of counsel in a post-conviction proceeding; making various other changes to the provisions governing writs of habeas corpus; providing that credits against the sentence of an offender may be forfeited for the filing of a frivolous petition for a writ of habeas corpus; 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.** NRS 34.430 is hereby amended to read as follows:
2 34.430 1. ~~[Within the period specified in an order by the district~~
3 ~~court or supreme court pursuant to]~~ ***Except as otherwise provided in***
4 ***subsection 1 of*** NRS 34.745, the respondent shall serve upon the petitioner
5 and file with the court a return and an answer ~~[which]~~ ***that*** must respond to
6 the allegations of the petition ~~[]~~ ***within 45 days or a longer period fixed by***
7 ***the judge or justice.***
8 2. The return must state plainly and unequivocally whether the
9 respondent has ~~[or has not]~~ the party in custody, or under his power or
10 restraint. If the respondent has the petitioner in his custody or power, or
11 under his restraint, he shall state the authority and cause of the
12 imprisonment or restraint, setting forth with specificity the basis for
13 custody.

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

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

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

12 **Sec. 2.** NRS 34.570 is hereby amended to read as follows:

13 34.570 Until judgment is given on ~~{the return,}~~ **a petition**, the judge
14 before whom any party may be brought on ~~{such writ may commit}~~ **the**
15 **petition may:**

16 1. **Commit** him to the custody of the sheriff of the county ~~{, or place}~~ ;
17 **or**

18 2. **Place** him in such care or under such custody as his age or
19 circumstances may require.

20 **Sec. 3.** NRS 34.738 is hereby amended to read as follows:

21 34.738 1. A petition that challenges the validity of a conviction or
22 sentence must be filed with the clerk of the district court for the county in
23 which the conviction occurred. Any other petition must be filed with the
24 clerk of the district court for the county in which the petitioner is
25 incarcerated.

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

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

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

32 3. A petition must not challenge both the validity of a judgment of
33 conviction **or sentence** and the computation of time that the petitioner has
34 served pursuant to that judgment . ~~{unless the conviction occurred in the~~
35 ~~judicial district in which the petitioner is incarcerated.}~~ If a petition
36 improperly challenges both the validity of a judgment of conviction **or**
37 **sentence** and the computation of time that the petitioner has served
38 pursuant to that judgment, the district court for the appropriate county shall
39 resolve that portion of the petition that challenges the validity of the
40 judgment of conviction **or sentence** and dismiss the remainder of the
41 petition without prejudice.

Sec. 4. 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 judge or justice shall order the ~~respondent~~ *district attorney or the attorney general, whichever is appropriate*, to:

(a) File:

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

(2) ~~IA~~ *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 ~~such~~ other action ~~as~~ *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 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, 19....

The court has reviewed the petition and has determined that a response would assist the court in determining whether petitioner is illegally

1 imprisoned and restrained of his liberty. Respondent shall, within 45 days
2 after the date of this order, answer or otherwise respond to the petition and
3 file a return in accordance with the provisions of NRS 34.360 to 34.830,
4 inclusive.

5
6 Dated, 19....

7
8
9 District Judge

10
11 A copy of the order must be served on the petitioner or his counsel, the
12 respondent, the attorney general and the district attorney of the county in
13 which the petitioner was convicted.

14 ~~{3.}~~ 4. If the petition is a second or successive petition challenging the
15 validity of a judgment of conviction or sentence ~~{1}~~ and if it plainly appears
16 from the face of the petition or an amended petition and ~~{any}~~ documents
17 and exhibits *that are* annexed to it, or from ~~{any of the}~~ records of the court
18 ~~{1}~~ that the petitioner is not entitled to relief ~~{1}~~ *based on any of the*
19 *grounds set forth in subsection 2 of NRS 34.810*, the judge or justice shall
20 enter an order for its summary dismissal and cause the petitioner to be
21 notified of the entry of the order.

22 ~~{4.}~~ 5. If the judge or justice relies on the records of the court in
23 entering an order pursuant to this section, those records must be made a
24 part of the record of the proceeding before entry of the order.

25 **Sec. 5.** NRS 34.750 is hereby amended to read as follows:

26 34.750 1. A petition may allege that the petitioner is unable to pay
27 the costs of the proceedings or to employ counsel. If the court is satisfied
28 that the allegation of indigency is true and the petition is not dismissed
29 summarily, the court may appoint counsel to represent the petitioner. In
30 making its determination, the court may consider, among other things, the
31 severity of the consequences facing the petitioner and whether:

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

35 2. *The ineffectiveness or incompetence of counsel during a state or*
36 *federal collateral post-conviction proceeding:*

- 37 (a) *Is not a ground for relief;*
38 (b) *Is not cause to excuse the failure to raise any claim that could*
39 *have been raised in a prior proceeding, but was not; and*
40 (c) *Is not cause to raise an issue that was raised in a prior*
41 *proceeding,*
42 *unless the representation by counsel was of such low caliber as to reduce*
43 *the proceeding to a sham, farce or pretense.*

1 **3.** If the court determines that the petitioner is unable to pay all
2 necessary costs and expenses incident to the proceedings of the trial court
3 and the reviewing court, including court costs, stenographic services,
4 printing and reasonable compensation for legal services, all costs must be
5 paid from money appropriated to the office of the state public defender for
6 that purpose. After appropriations for that purpose are exhausted, money
7 must be allocated to the office of the state public defender from the reserve
8 for statutory contingency fund for the payment of the costs, expenses and
9 compensation.

10 ~~**3.**~~ **4.** After appointment by the court, counsel for the petitioner may
11 file and serve supplemental pleadings, exhibits, transcripts and documents
12 within 30 days after:

13 (a) The date the court orders the filing of an answer and a return; or

14 (b) The date of his appointment,

15 whichever is later. If it has not previously been filed, the answer by the
16 respondent must be filed within 15 days after receipt of the supplemental
17 pleadings and include any response to the supplemental pleadings.

18 ~~**4.**~~ **5.** The petitioner shall respond within 15 days after service to a
19 motion by the state to dismiss the action.

20 ~~**5.**~~ **6.** No further pleadings may be filed except as ordered by the
21 court.

22 **Sec. 6.** NRS 34.820 is hereby amended to read as follows:

23 34.820 1. If a petitioner has been sentenced to death and the petition
24 is the first one challenging the validity of the petitioner's conviction or
25 sentence, the court shall:

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

27 (b) Stay execution of the judgment pending disposition of the petition
28 and the appeal.

29 2. *The ineffectiveness or incompetence of counsel during a state or
30 federal collateral post-conviction proceeding:*

31 *(a) Is not a ground for relief;*

32 *(b) Is not cause to excuse the failure to raise any claim that could
33 have been raised in a prior proceeding, but was not; and*

34 *(c) Is not cause to raise an issue that was raised in a prior
35 proceeding,*

36 *unless the representation by counsel was of such low caliber as to reduce
37 the proceeding to a sham, farce or pretense.*

38 **3.** The petition must include the date upon which execution is
39 scheduled, if it has been scheduled. The petitioner is not entitled to an
40 evidentiary hearing unless the petition states that:

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

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

~~3.1~~ 4. If the petitioner has previously filed a petition for relief or for a stay of the execution in the same court, the petition must be assigned to the judge or justice who considered the previous matter.

~~4.1~~ 5. The court shall inform the petitioner and his counsel that all claims which challenge the conviction or imposition of the sentence must be joined in a single petition and that any matter not included in the petition will not be considered in a subsequent proceeding.

~~5.1~~ 6. If relief is granted or the execution is stayed, the clerk shall forthwith notify the respondent, the attorney general and the district attorney of the county in which the petitioner was convicted.

~~6.1~~ 7. If a district judge conducts an evidentiary hearing, a daily transcript must be prepared for the purpose of appellate review.

~~7.1~~ 8. The judge or justice who considers a petition filed by a petitioner who has been sentenced to death shall make all reasonable efforts to expedite the matter and shall render a decision within 60 days after submission of the matter for decision.

Sec. 7. NRS 209.451 is hereby amended to read as follows:

209.451 1. If an offender:

(a) Commits an assault upon his keeper or a foreman, officer, offender or other person, or otherwise endangers life;

(b) Is guilty of a flagrant disregard of the regulations of the department or of the terms and conditions of his residential confinement;

(c) Commits a misdemeanor, gross misdemeanor or felony; or

(d) In a civil action, in state or federal court, is found by the court to have presented a pleading, written motion or other document in writing to the court which:

(1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

(3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation,

he forfeits all deductions of time earned by him before the commission of that offense or act, or forfeits such part of those deductions as the director considers

just.

1 2. If an offender commits a serious violation of the regulations of the
2 department or of the terms and conditions of his residential confinement or
3 if an offender violates subsection 4 of NRS 209.367, he may forfeit all or
4 part of such deductions, in the discretion of the director.

5 3. A forfeiture may be made only by the director after proof of the
6 commission of an act prohibited pursuant to this section and notice to the
7 offender in the manner prescribed in the regulations of the department. The
8 decision of the director regarding a forfeiture is final.

9 4. The director may restore credits forfeited for such reasons as he
10 considers proper.

11 5. *As used in this section, "civil action" includes a petition for a writ*
12 *of habeas corpus filed in state or federal court.*

13 **Sec. 8.** The amendatory provisions of this act apply to post-conviction
14 proceedings that are commenced on or after October 1, 1999.

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