

Senate Bill No. 361–Committee on Judiciary

CHAPTER.....

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; 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:

Section 1. NRS 34.430 is hereby amended to read as follows:

34.430 1. ~~Within the period specified in an order by the district court or supreme court pursuant to~~ *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 ~~which~~ *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 ~~for has not~~ the party in custody, or under his power or restraint. If the respondent has the petitioner in his custody or power, or under his restraint, he 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 ~~any~~ other written authority, a certified or exemplified copy must be annexed to the return.

4. If the respondent has the petitioner in his power or custody or under his 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 his official capacity, verified under oath or affirmation.

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

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

1. *Commit* him to the custody of the sheriff of the county ~~or place~~ ;
or

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

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

34.738 1. A petition that challenges the validity of a 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 the district court for the county in which the petitioner is incarcerated.

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 judgment . ~~{unless the conviction occurred in the judicial district in which the petitioner is incarcerated.}~~ 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 judgment, 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. 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) ~~{A}~~ *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
imprisoned and restrained of his 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.

Dated, 19....

.....
District Judge

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

~~[3.]~~ 4. 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 ~~[any]~~ documents
and exhibits *that are* annexed to it, or from ~~[any of the]~~ records of the court
~~[.]~~ that the petitioner is not entitled to relief ~~[.]~~ *based on any of the*
grounds set forth in subsection 2 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.

~~[4.]~~ 5. 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. 5. 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.

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

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

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

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

Sec. 6. The amendatory provisions of this act apply to post-conviction proceedings that are commenced on or after October 1, 1999.

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