

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; 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 ~~for 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 209.451 is hereby amended to read as follows:

26 209.451 1. If an offender:

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

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

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

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

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

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

1 (3) Contains allegations or information presented as fact for which
2 evidentiary support is not available or is not likely to be discovered after
3 further investigation,
4 he forfeits all deductions of time earned by him before the commission of
5 that offense or act, or forfeits such part of those deductions as the director
6 considers just.

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

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

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

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

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