

SENATE BILL NO. 283—SENATOR GUSTAVSON

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the appointment of counsel for a postconviction petition for habeas corpus in which the petitioner has been sentenced to death. (BDR 3-1059)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to postconviction relief; revising provisions governing the appointment of counsel for a postconviction petition for habeas corpus in which the petitioner has been sentenced to death; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a person who has been sentenced to death files a postconviction petition for habeas corpus to challenge the validity of the person's conviction or sentence, and the petition is the first petition for habeas corpus that challenges such validity, the court is required to: (1) appoint counsel to represent the petitioner; and (2) stay execution of the judgment pending the disposition of the petition and appeal. (NRS 34.820)

The Supreme Court of the United States has held that states are not required to provide counsel in postconviction proceedings. (*Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987)) The Court has also specified that this holding applies to both capital and noncapital cases. (*Murray v. Giarratano*, 492 U.S. 1, 10 (1989)) This bill provides that when the first postconviction petition for habeas corpus is filed by a petitioner who has been sentenced to death, the court is not required to but may appoint counsel to represent the petitioner.



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

Section 1. NRS 34.820 is hereby amended to read as follows:

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

~~—(a) Appoint} :~~

(a) **May appoint** counsel to represent the petitioner ~~{}~~ **pursuant to NRS 34.750;** and

(b) ~~{Stay}~~ **Shall stay** execution of the judgment pending disposition of the petition and the appeal.

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

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

(b) For each issue of fact which 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. 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. The court shall inform the petitioner and the petitioner's 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. 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. If a district judge conducts an evidentiary hearing, a daily transcript must be prepared for the purpose of appellate review.

7. 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. 2. The amendatory provisions of this act apply to a petition that is filed on or after October 1, 2011.

