

## ASSEMBLY BILL NO. 184—ASSEMBLYMAN OHRENSCHALL

PREFILED FEBRUARY 13, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning the withdrawal of certain pleas. (BDR 3-286)

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 criminal procedure; revising provisions concerning the withdrawal of certain pleas after sentence is imposed or imposition of sentence is suspended; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes a person convicted of a crime and under sentence of death or imprisonment to file a postconviction petition for a writ of habeas corpus to challenge the conviction or sentence as having been obtained or imposed in violation of state law or a constitutional right. Existing law provides that, with the exception of a direct appeal or a remedy which is incident to the proceedings in the trial court, the petition for a writ of habeas corpus replaces all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence and must be used exclusively in place of them. (NRS 34.724) Existing law also authorizes a criminal defendant to withdraw a plea of guilty, guilty but mentally ill or nolo contendere at any time before sentencing, and also permits the withdrawal of such a plea after sentencing, but only to correct a manifest injustice. (NRS 176.165)

In 2000, the Nevada Supreme Court held that a postconviction motion to withdraw a guilty plea to correct a manifest injustice was a remedy incident to the proceedings in the trial court. Accordingly, the Court held in that case the motion had not been replaced by the petition for a writ of habeas corpus and was not subject to the various procedural requirements that govern such petitions. (*Hart v. State*, 116 Nev. 558 (2000)) The Nevada Supreme Court, however, recently reversed the holding of that case, instead holding that a postconviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of a guilty plea made after sentencing for persons in custody on the conviction being challenged. (*Harris v. State*, 130 Nev. Adv. Op. 47, 329 P.3d 619 (2014))

This bill expressly provides that a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere pursuant to NRS 176.165 that is made after



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25 sentence is imposed or imposition of sentence is suspended is a remedy which is  
26 incident to the proceedings in the trial court under certain circumstances.

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

1     **Section 1.** NRS 34.724 is hereby amended to read as follows:  
2     34.724 1. Any person convicted of a crime and under  
3 sentence of death or imprisonment who claims that the conviction  
4 was obtained, or that the sentence was imposed, in violation of the  
5 Constitution of the United States or the Constitution or laws of this  
6 State, or who claims that the time the person has served pursuant to  
7 the judgment of conviction has been improperly computed, may,  
8 without paying a filing fee, file a postconviction petition for a writ  
9 of habeas corpus to obtain relief from the conviction or sentence or  
10 to challenge the computation of time that the person has served.

11     2. Such a petition:

12     (a) Is not a substitute for and does not affect any remedies which  
13 are incident to the proceedings in the trial court or the remedy of  
14 direct review of the sentence or conviction.

15     (b) Comprehends and takes the place of all other common-law,  
16 statutory or other remedies which have been available for  
17 challenging the validity of the conviction or sentence, and must be  
18 used exclusively in place of them.

19     (c) Is the only remedy available to an incarcerated person to  
20 challenge the computation of time that the person has served  
21 pursuant to a judgment of conviction.

22     **3. *For the purposes of this section, a motion to withdraw a***  
23 ***plea of guilty, guilty but mentally ill or nolo contendere pursuant***  
24 ***to NRS 176.165 that is made after sentence is imposed or***  
25 ***imposition of sentence is suspended is a remedy which is incident***  
26 ***to the proceedings in the trial court if:***

27     ***(a) The person has not filed a prior motion to withdraw the***  
28 ***plea and has not filed a prior postconviction petition for a writ of***  
29 ***habeas corpus;***

30     ***(b) The motion is filed within 1 year after the date on which***  
31 ***the person was convicted, unless the person pleads specific facts***  
32 ***demonstrating that some impediment external to the defense***  
33 ***precluded bringing the motion earlier;***

34     ***(c) At the time the person files the motion to withdraw the plea,***  
35 ***the person is not incarcerated for the charge for which the person***  
36 ***entered the plea; and***

37     ***(d) The motion is not barred by the doctrine of laches. A***  
38 ***motion filed more than 5 years after the date on which the person***



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1 *was convicted creates a rebuttable presumption of prejudice to the*  
2 *State on the basis of laches.*

3 *4. The court shall not appoint counsel to represent a person*  
4 *for the purpose of subsection 3.*

5 **Sec. 2.** This act applies to any motion to withdraw a plea of  
6 guilty, guilty but mentally ill or nolo contendere pursuant to NRS  
7 176.165 that is made after sentence is imposed or imposition of  
8 sentence is suspended that is pending on or after June 12, 2014.

