

SENATE BILL NO. 384—SENATORS PARKS;
AND OHRENSCHALL (BY REQUEST)

MARCH 20, 2019

JOINT SPONSOR: ASSEMBLYMAN KRAMER

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure.
(BDR 14-857)

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

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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; removing the period within which a prosecution for perjury or subornation of perjury must be commenced in certain circumstances; revising provisions governing the conduct of discovery in criminal actions; establishing provisions relating to the filing of a petition for a hearing to establish the factual innocence of a person based on newly discovered evidence; creating the Public Integrity Unit Commission; establishing provisions relating to the duties and authority of the Commission; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person who commits perjury or subornation of perjury is guilty of a category D felony. (NRS 199.120) Existing law also provides that an indictment for perjury or subornation of perjury must be found, or an information or complaint filed, within 3 years after the commission of the offense. (NRS 171.085) Existing law further provides that if a person is convicted of perjury or subornation of perjury, another person who suffered injury as the proximate result of such perjury or subornation of perjury is authorized to bring an action for the recovery of his or her actual damages and any punitive damages which the facts may warrant. (NRS 41.365) **Section 1** of this bill provides that there is no limitation of time within which a prosecution for perjury or subornation of perjury must be commenced if the violation was committed by an attorney or a law enforcement officer during any court proceeding.



* S B 3 8 4 *

Existing law requires, with certain exceptions, a prosecuting attorney to permit a defendant, upon request by the defendant, to inspect and copy or photograph certain materials within the possession, custody or control of the State. (NRS 174.235) **Section 4** of this bill adds to this requirement material which tends to exculpate the defendant, mitigate the culpability of the defendant, adversely impact the credibility of the State's prospective witnesses or evidence or mitigate the potential punishment of the defendant. **Section 4** also imposes on the prosecuting attorney an affirmative duty to seek out and disclose material which tends to exculpate or mitigate the culpability of the defendant, whether or not the defendant has made a request for such material.

Existing law establishes certain periods and limitations for making initial and subsequent discovery requests and for complying with such requests. (NRS 174.285) **Section 5** of this bill allows a subsequent discovery request to be made only if the party making the request learns of additional, previously unknown material. **Section 5** also allows a party to comply with certain discovery requests less than 30 days before trial only upon written motion to the court.

Section 3 of this bill provides that, for the procedural purposes of discovery and inspection of discoverable materials in a criminal action, the prosecuting attorney is deemed to be in constructive possession of all materials that are created, generated or collected by any and all law enforcement agencies.

Existing law authorizes a court to grant a new trial to a defendant on the ground of newly discovered evidence, but generally provides that a motion for a new trial based on such a ground must be made within 2 years after the verdict or finding of guilt. (NRS 176.515) **Section 21** of this bill removes such provisions, and **sections 7-15** of this bill establish provisions relating to the filing of a petition for a hearing to establish the factual innocence of a person based on newly discovered evidence.

Section 11 of this bill authorizes a person who has been convicted of a felony or a representative acting on behalf of a person who was convicted of a felony but is now deceased to file a petition for a hearing to establish the factual innocence of the person based on newly discovered evidence in the district court of the county in which the person was convicted and sets forth certain requirements relating to the contents of such a petition. **Section 25** of this bill authorizes the court to change the place of the proceeding if a person who files such a petition requests a change to a different county. **Section 11** requires the court to review such a petition to determine whether the petition satisfies the necessary requirements. **Section 12** of this bill: (1) provides that if the court does not dismiss the petition after the court's review, the court is required to order the district attorney to file a response to the petition; and (2) authorizes the petitioner to reply to the district attorney's response. **Section 12** also provides that if the court determines that the petition satisfies all requirements and that there is a bona fide issue of factual innocence regarding the charges of which the convicted person was convicted, the court is required to order a hearing on the petition. **Section 12** further provides that if the factual innocence of the convicted person is established, the court is required to: (1) vacate the conviction and issue an order of factual innocence and exoneration; and (2) order the sealing of all records of criminal proceedings relating to the case. **Section 15** of this bill provides that if the court vacates the conviction of a person and issues an order of factual innocence and exoneration, the court is required to award the person \$100,000 for each year the person was wrongfully imprisoned. **Section 28** of this bill waives the State's immunity from liability in actions involving petitions brought pursuant to **section 11**.

Section 13 of this bill authorizes the court to appoint counsel for an indigent petitioner if the court grants a hearing on a petition filed pursuant to **section 11**, and **section 14** of this bill requires the district attorney to make reasonable efforts to provide notice to any victim of the crime for which the convicted person was convicted that a petition has been filed.



Section 27 of this bill provides that if a person brings a civil action relating to his or her wrongful conviction against this State, the Attorney General is required to provide to the person any materially exculpatory evidence relating to the crime for which the person was convicted that was not previously disclosed to the person.

Section 17 of this bill creates the Public Integrity Unit Commission (Commission). **Section 18** establishes the duties of the Commission, including: (1) the identification and study of the elements in the criminal justice system which affect the sentences imposed for felonies and gross misdemeanors as a direct result of wrongful conviction; (2) the evaluation of the effectiveness and fiscal impact of various policies and practices regarding sentencing; (3) the identification and study of the elements in the criminal justice system which affect the outcome of cases when evidence is withheld by the State; and (4) the evaluation of the effectiveness and efficiency of the Attorney General's Office. **Section 19** of this bill authorizes the Commission to issue subpoenas for the purpose of carrying out its powers and duties.

Section 29 of this bill makes an appropriation of \$50,000 to the Commission for the purpose of enabling the Commission to enter into a contract with a qualified, independent consultant to assist the Commission in carrying out its duties.

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

Section 1. Chapter 171 of NRS is hereby amended by adding thereto a new section to read as follows:

There is no limitation of time within which a prosecution for a violation of NRS 199.120 must be commenced if the violation was committed by an attorney or a law enforcement officer during any court proceeding.

Sec. 2. NRS 171.085 is hereby amended to read as follows:

171.085 Except as otherwise provided in NRS 171.080, 171.083, 171.084 and 171.095 **and section 1 of this act**, an indictment for:

1. Theft, robbery, burglary, forgery, arson, sex trafficking, a violation of NRS 90.570, a violation punishable pursuant to paragraph (c) of subsection 3 of NRS 598.0999 or a violation of NRS 205.377 must be found, or an information or complaint filed, within 4 years after the commission of the offense.

2. Sexual assault must be found, or an information or complaint filed, within 20 years after the commission of the offense.

3. Any felony other than the felonies listed in subsections 1 and 2 must be found, or an information or complaint filed, within 3 years after the commission of the offense.

Sec. 3. Chapter 174 of NRS is hereby amended by adding thereto a new section to read as follows:

For the purposes of this section and NRS 174.233 to 174.295, inclusive, the prosecuting attorney is deemed to be in constructive



possession of all materials that are created, generated or collected by any and all law enforcement agencies.

Sec. 4. NRS 174.235 is hereby amended to read as follows:

174.235 1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, *and section 3 of this act*, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:

(a) Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; ~~and~~

(c) Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney ~~and~~; *and*

(d) Material which tends to exculpate the defendant, mitigate the culpability of the defendant, adversely impact the credibility of the State's prospective witnesses or evidence or mitigate the potential punishment of the defendant.

2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

(b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this state or the Constitution of the United States.

3. The *prosecuting attorney has an affirmative obligation to seek out and disclose to the defendant any and all material which tends to exculpate or mitigate the culpability of the defendant, whether or not the defendant has made a request for such material pursuant to subsection 1.*

4. *Except as otherwise provided in this section, the* provisions of this section are not intended to affect any obligation placed upon



the prosecuting attorney by the Constitution of this state or the Constitution of the United States to disclose exculpatory evidence to the defendant.

Sec. 5. NRS 174.285 is hereby amended to read as follows:

174.285 1. A request made pursuant to NRS 174.235 or 174.245 may be made only within 30 days after arraignment or at such reasonable later time as the court may permit. A subsequent request may be made only ~~{upon a showing of cause why the request would be in the interest of justice.}~~ *if the party making the subsequent request has learned of additional material, the existence of which the party was not aware when the party made its initial request pursuant to NRS 174.235 or 174.245.*

2. A party shall comply with a request made pursuant to NRS 174.235 or 174.245 not less than 30 days before trial or , *as provided in this subsection,* at such ~~{reasonable}~~ later time as the court may permit. *A party may request leave of court to comply with a request made pursuant to NRS 174.235 or 174.245 less than 30 days before trial only upon written motion to the court.*

Sec. 6. Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 19, inclusive, of this act.

Sec. 7. *As used in sections 7 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 8, 9 and 10 of this act have the meanings ascribed to them in those sections.*

Sec. 8. *“Bona fide issue of factual innocence” means that newly discovered evidence presented by the petitioner, if credible, would clearly establish the factual innocence of a convicted person.*

Sec. 9. *“Factual innocence” means that a person did not:*

1. Engage in the conduct for which he or she was convicted;
2. Engage in conduct constituting a lesser included or inchoate offense of the crime for which he or she was convicted;
and

3. Commit any other crime arising out of or reasonably connected to the facts supporting the indictment or information upon which he or she was convicted.

Sec. 10. *“Newly discovered evidence” means evidence that was not available to a convicted person at trial or during the resolution by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is relevant to the determination of the issue of factual innocence, including, without limitation:*



1 1. Evidence that was discovered before or during the course
2 of any appeal or postconviction proceeding that served in whole or
3 in part as the basis to vacate or reverse the conviction;

4 2. Evidence that supports the claims within a postconviction
5 petition for a writ of habeas corpus that is pending at the time of
6 the court's determination of factual innocence pursuant to
7 sections 7 to 15, inclusive, of this act;

8 3. Materially exculpatory evidence that was not disclosed to
9 the convicted person at trial or that was discovered after trial;

10 4. Evidence that any attorney or witness committed perjury
11 during the trial and such perjury resulted in the conviction or the
12 conviction being upheld; or

13 5. Relevant forensic scientific evidence that was not available
14 at the time of trial or during the resolution by the trial court of any
15 motion to withdraw a guilty plea or motion for new trial, or that
16 undermines forensic scientific evidence presented at trial. Forensic scientific evidence is considered to be undermined if new
17 research or information exists that repudiates the foundational
18 validity of scientific evidence or testimony or the applied validity of
19 a scientific method or technique. As used in this subsection:

20 (a) "Applied validity" means the reliability of a scientific
21 method or technique in practice.

22 (b) "Foundational validity" means the reliability of a scientific
23 method to be repeatable, reproducible and accurate in a scientific
24 setting.

25 **Sec. 11.** 1. A person who has been convicted of a felony or
26 a representative acting on behalf of a person who was convicted of
27 a felony but is now deceased may petition the district court in the
28 county in which the person was convicted for a hearing to
29 establish the factual innocence of the person based on newly
30 discovered evidence. A person who files a petition pursuant to this
31 subsection shall serve notice and a copy of the petition upon the
32 district attorney of the county in which the conviction was
33 obtained and the Attorney General.

34 2. A petition filed pursuant to subsection 1 must contain an
35 assertion of factual innocence under oath by the petitioner and
36 must aver, with supporting affidavits or other credible documents,
37 that:

38 (a) Newly discovered evidence exists that, if credible,
39 establishes a bona fide issue of factual innocence;

40 (b) The newly discovered evidence identified by the petitioner:

41 (1) Establishes innocence and is material to the case and
42 the determination of factual innocence;

43 (2) Is not merely cumulative of evidence that was known, is
44 not reliant solely upon recantation of testimony by a witness
45



1 against the convicted person and is not merely impeachment
2 evidence; and

3 (3) Is distinguishable from any claims made in any
4 previous petitions;

5 (c) If some or all of the newly discovered evidence alleged in
6 the petition is a biological specimen, that a genetic marker
7 analysis was performed pursuant to NRS 176.0918, 176.09183 and
8 176.09187 and the results were favorable to the convicted person;
9 and

10 (d) When viewed with all other evidence in the case, regardless
11 of whether such evidence was admitted during trial, the newly
12 discovered evidence demonstrates the factual innocence of the
13 convicted person.

14 3. In addition to the requirements set forth in subsection 2, a
15 petition filed pursuant to subsection 1 must also assert that:

16 (a) Neither the convicted person nor his or her counsel knew
17 of the newly discovered evidence at the time of trial or sentencing
18 or in time to include the evidence in any previously filed post-trial
19 motion or postconviction petition, and the evidence could not have
20 been discovered by the convicted person or his or her counsel
21 through the exercise of reasonable diligence; or

22 (b) A court has found ineffective assistance of counsel for
23 failing to exercise reasonable diligence in uncovering the newly
24 discovered evidence.

25 4. The court shall review the petition and determine whether
26 the petition satisfies the requirements of subsection 2. If the court
27 determines that the petition:

28 (a) Does not meet the requirements of subsection 2, the court
29 shall dismiss the petition without prejudice, state the basis for the
30 dismissal and send notice of the dismissal to the petitioner, the
31 district attorney and the Attorney General.

32 (b) Meets the requirements of subsection 2, the court shall
33 determine whether the petition satisfies the requirements of
34 subsection 3. If the court determines that the petition does not
35 meet the requirements of subsection 3, the court may:

36 (1) Dismiss the petition without prejudice, state the basis
37 for the dismissal and send notice of the dismissal to the petitioner,
38 the district attorney and the Attorney General; or

39 (2) Waive the requirements of subsection 3 if the court
40 finds the petition should proceed to a hearing and that there is
41 other evidence that could have been discovered through the
42 exercise of reasonable diligence by the convicted person or his or
43 her counsel at trial, and the other evidence:

44 (I) Was not discovered by the convicted person or his or
45 her counsel;



(II) Is material upon the issue of factual innocence; and

(III) Has never been presented to a court.

5. A person who has already obtained postconviction relief that vacated or reversed the person's conviction or sentence, or a representative acting on behalf of such a person who is deceased, may also file a petition pursuant to subsection 1 in the same manner and form as described in this section if no retrial or appeal regarding the offense is pending.

6. After a petition is filed pursuant to subsection 1, any prosecuting attorney, law enforcement agency or forensic laboratory that is in possession of any evidence that is the subject of the petition shall preserve such evidence and any information necessary to determine the sufficiency of the chain of custody of such evidence.

7. If the district judge assigned to hear a petition filed pursuant to subsection 1 was the judge in any previous proceeding relating to the crime for which the convicted person was convicted, the district judge shall recuse himself or herself and immediately transfer the case to another department of the court, if there is more than one department of the court in the district, or request the judge of another district court to preside at the hearing of the matter.

8. A petition filed pursuant to subsection 1 must include the underlying criminal case number.

9. Except as otherwise provided in sections 7 to 15, inclusive, of this act, the Nevada Rules of Civil Procedure govern all proceedings concerning a petition filed pursuant to subsection 1.

10. As used in this section:

(a) "Biological specimen" has the meaning ascribed to it in NRS 176.09112.

(b) "Forensic laboratory" has the meaning ascribed to it in NRS 176.09117.

(c) "Genetic marker analysis" has the meaning ascribed to it in NRS 176.09118.

Sec. 12. 1. If the court does not dismiss a petition after reviewing the petition in accordance with subsection 4 of section 11 of this act, the court shall order the district attorney to file a response to the petition. The district attorney shall, not later than 120 days after receipt of the court's order requiring a response, or within any additional period the court allows, respond to the petition and serve a copy upon the petitioner and the Attorney General.

2. Not later than 30 days after the date the district attorney responds to the petition, the petitioner may reply to the response. Not later than 30 days after the expiration of the period during



1 *which the petitioner may reply to the response, the court shall*
2 *consider the petition, any response by the district attorney and any*
3 *reply by the petitioner. If the court determines that the petition*
4 *meets the requirements of section 11 of this act and that there is a*
5 *bona fide issue of factual innocence regarding the charges of*
6 *which the convicted person was convicted, the court shall order a*
7 *hearing on the petition. If the court does not make such a*
8 *determination, the court shall enter an order denying the petition.*
9 *For the purposes of this subsection, a bona fide issue of factual*
10 *innocence does not exist if the petitioner is merely relitigating*
11 *facts, issues or evidence presented in a previous proceeding or if*
12 *the petitioner is unable to identify with sufficient specificity the*
13 *nature and reliability of the newly discovered evidence that*
14 *establishes the factual innocence of the convicted person. Unless*
15 *stipulated to by the parties, the court may not grant a hearing on*
16 *the petition during any period in which criminal proceedings in*
17 *the matter are pending before any trial or appellate court.*

18 *3. If the court grants a hearing on the petition, the hearing*
19 *must be held and the final order must be entered not later than*
20 *150 days after the expiration of the period during which the*
21 *petitioner may reply to the district attorney's response to the*
22 *petition pursuant to subsection 2 unless the court determines that*
23 *additional time is required for good cause shown.*

24 *4. If the court grants a hearing on the petition, the court*
25 *shall, upon the request of the petitioner, order the preservation of*
26 *all material and relevant evidence in the possession or control of*
27 *this State or any agent thereof during the pendency of the*
28 *proceeding.*

29 *5. If the parties stipulate that the evidence establishes the*
30 *factual innocence of the convicted person, the court may affirm*
31 *the factual innocence of the convicted person without holding a*
32 *hearing. If the prosecuting attorney does not stipulate that the*
33 *evidence establishes the factual innocence of the convicted person,*
34 *a determination of factual innocence must not be made by the*
35 *court without a hearing.*

36 *6. If the parties stipulate that the evidence establishes the*
37 *factual innocence of the convicted person, the prosecuting*
38 *attorney makes a motion to dismiss the original charges against*
39 *the convicted person or, after a hearing, the court determines that*
40 *the petitioner has proven the factual innocence of the convicted*
41 *person by clear and convincing evidence, the court shall:*

42 *(a) Vacate the conviction and issue an order of factual*
43 *innocence and exoneration; and*

44 *(b) Order the sealing of all documents, papers and exhibits in*
45 *the convicted person's record, minute book entries and entries on*



dockets and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order.

7. Any order granting or denying a hearing on a petition pursuant to this section may be appealed by either party.

8. The court must issue a published opinion concerning the court's final order in a hearing on a petition pursuant to this section.

Sec. 13. If the court grants a hearing on a petition pursuant to section 12 of this act, the court may, after determining whether the petitioner is indigent pursuant to NRS 171.188 and whether counsel was appointed in the case which resulted in the conviction, appoint counsel for the petitioner.

Sec. 14. After a petition is filed pursuant to section 11 of this act, the district attorney shall make reasonable efforts to provide notice to any victim of the crime for which the convicted person was convicted that the petition has been filed and that indicates the time and place for any hearing that may be held as a result of the petition and the disposition thereof.

Sec. 15. 1. Except as otherwise provided in subsection 2, if a court vacates the conviction of a person and issues an order of factual innocence and exoneration pursuant to section 12 of this act, the court shall award the person \$100,000 for each year the person was imprisoned.

2. A court shall not award and a person shall not receive compensation for any period of imprisonment during which the person was concurrently serving a sentence for a conviction of another offense for which the person was lawfully convicted and imprisoned.

Sec. 16. As used in sections 16 to 19, inclusive, of this act, "Commission" means the Public Integrity Unit Commission.

Sec. 17. 1. The Public Integrity Unit Commission is hereby created. The Commission consists of:

(a) One member who is a district judge, appointed by the governing body of the Nevada District Judges Association;

(b) One member who is an attorney in private practice, experienced in defending criminal actions, appointed by the governing body of the State Bar of Nevada;

(c) One member who is an attorney in private practice, experienced in defending civil rights, appointed by the governing body of the State Bar of Nevada;

(d) One member who has been a victim of a crime or is a representative of an organization supporting the rights of victims of crime, appointed by the Governor;



(e) One member who is a representative of an organization that, or is a member of the public who, advocates on behalf of inmates and the innocent, appointed by the Governor;

(f) One member who is a member of the public with a medical background and is currently licensed as a physician in this State, appointed by the Governor;

(g) One member who is a member of the public with an investigative background, appointed by the Governor;

(h) Two members who are Senators, one of whom is appointed by the Majority Leader of the Senate and one of whom is appointed by the Minority Leader of the Senate; and

(i) Two members who are members of the Assembly, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Minority Leader of the Assembly.

➤ If any association listed in this subsection ceases to exist, the appointment required by this subsection must be made by the association's successor in interest or, if there is no successor in interest, by the Governor.

2. Each appointed member serves a term of 2 years. Members may be reappointed for additional terms of 2 years in the same manner as the original appointments. Any vacancy occurring in the membership of the Commission must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

3. The Legislators who are members of the Commission are entitled to receive the salary provided for a majority of the members of the Legislature during the first 60 days of the preceding session for each day's attendance at a meeting of the Commission.

4. At the first regular meeting of each odd-numbered year, the members of the Commission shall elect a Chair by majority vote who shall serve until the next Chair is elected.

5. The Commission shall meet at least once every 3 months and may meet at such further times as deemed necessary by the Chair.

6. A majority of the members of the Commission constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Commission.

7. While engaged in the business of the Commission, to the extent of legislative appropriation, each member of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.



8. To the extent of legislative appropriation, the Director of the Legislative Counsel Bureau shall provide the Commission with such staff as is necessary to carry out the duties of the Commission.

Sec. 18. The Commission:

1. Shall:

(a) Identify and study the elements in this State's system of criminal justice which affect the sentences imposed for felonies and gross misdemeanors as a direct result of wrongful conviction.

(b) Evaluate the effectiveness and fiscal impact of various policies and practices regarding sentencing which are employed in this State and other states, including, without limitation, the use of plea bargaining, probation, parole, programs of intensive supervision, imprisonment, residential confinement and alternatives to incarceration.

(c) Identify and study the elements of this State's system of criminal justice which affect the outcome of cases when evidence is withheld by the State.

(d) Evaluate the effectiveness and efficiency of the Attorney General's Office and consider whether it is feasible and advisable to establish an oversight committee or advisory board to perform various functions and suggest policies and practices concerning the ability of the Attorney General's Office to investigate its own office.

(e) For each regular session of the Legislature, prepare a comprehensive report including the Commission's recommended changes, the Commission's findings and any recommendations of the Commission for proposed legislation. The report must be submitted to the Director of the Legislative Counsel Bureau for distribution to the Legislature not later than September 1 of each even-numbered year.

2. May, in carrying out its powers and duties pursuant to sections 16 to 19, inclusive, of this act, view evidence presented at the trial of a person who alleges that he or she was wrongfully convicted, view transcripts of any testimony given at such a trial, view newly discovered evidence and hear from any witnesses who the defendant and the jury never heard from or were precluded from hearing.

Sec. 19. 1. To carry out its powers and duties pursuant to sections 16 to 19, inclusive, of this act, the Commission or any member thereof acting on behalf of the Commission may, with a concurrence of a majority of the members of the Commission, issue subpoenas to compel the attendance of witnesses and the production of books, records, documents or other papers and testimony.



2. If any person fails to comply with a subpoena issued by the Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the Commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon the filing of a petition pursuant to subsection 2, the court shall enter an order directing the person who was subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date of service of the order, and show cause why he or she has not complied with the subpoena. A certified copy of the order must be served upon the person who was subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the Commission or a member thereof pursuant to this section, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

5. If it appears to the court that an offense has been committed against the laws of this State, the court shall issue a warrant for the arrest of the person as if a complaint had been made and filed.

Sec. 20. NRS 176.09187 is hereby amended to read as follows:

176.09187 1. If the results of a genetic marker analysis performed pursuant to this section and NRS 176.0918 and 176.09183 are favorable to the petitioner ~~;~~

~~—(a) The~~, the petitioner may ~~bring a motion for a new trial~~ file a petition to establish the factual innocence of the petitioner based on ~~the ground of~~ newly discovered evidence pursuant to ~~NRS 176.515; and~~

~~—(b) The restriction on the time for filing the motion set forth in subsection 3 of NRS 176.515 is not applicable.~~ section 11 of this act.

2. For the purposes of a genetic marker analysis pursuant to this section and NRS 176.0918 and 176.09183, a person who files a petition pursuant to NRS 176.0918 shall be deemed to consent to the:

(a) Submission of a biological specimen by the petitioner to determine genetic marker information; and

(b) Release and use of genetic marker information concerning the petitioner.

3. The petitioner shall pay the cost of a genetic marker analysis performed pursuant to this section and NRS 176.0918 and 176.09183, unless the petitioner is incarcerated at the time the petitioner files the petition, found to be indigent pursuant to



1 NRS 171.188 and the results of the genetic marker analysis are
2 favorable to the petitioner. If the petitioner is not required to pay the
3 cost of the analysis pursuant to this subsection, the expense of an
4 analysis ordered pursuant to this section and NRS 176.0918 and
5 176.09183 is a charge against the Department of Corrections and
6 must be paid upon approval by the Board of State Prison
7 Commissioners as other claims against the State are paid.

8 4. The remedy provided by this section and NRS 176.0918 and
9 176.09183 is in addition to, is not a substitute for and is not
10 exclusive of any other remedy, right of action or proceeding
11 available to a person convicted of a crime.

12 **Sec. 21.** NRS 176.515 is hereby amended to read as follows:

13 176.515 1. The court may grant a new trial to a defendant if
14 required as a matter of law . ~~{or on the ground of newly discovered~~
15 ~~evidence.}~~

16 2. If trial was by the court without a jury, the court may vacate
17 the judgment if entered, take additional testimony and direct the
18 entry of a new judgment.

19 3. ~~{Except as otherwise provided in NRS 176.09187, a motion~~
20 ~~for a new trial based on the ground of newly discovered evidence~~
21 ~~may be made only within 2 years after the verdict or finding of guilt.~~
22 ~~— 4.}~~ A motion for a new trial ~~{based on any other grounds}~~ must
23 be made within 7 days after the verdict or finding of guilt or within
24 such further time as the court may fix during the 7-day period.

25 **Sec. 22.** NRS 179.275 is hereby amended to read as follows:

26 179.275 Where the court orders the sealing of a record
27 pursuant to NRS 174.034, 176A.265, 176A.295, 179.245, 179.247,
28 179.255, 179.259, 179.2595, 201.354, 453.3365 or 458.330 ~~{}~~ **or**
29 **section 12 of this act**, a copy of the order must be sent to:

30 1. The Central Repository for Nevada Records of Criminal
31 History; and

32 2. Each agency of criminal justice and each public or private
33 company, agency, official or other custodian of records named in
34 the order, and that person shall seal the records in his or her custody
35 which relate to the matters contained in the order, shall advise the
36 court of compliance and shall then seal the order.

37 **Sec. 23.** NRS 179.285 is hereby amended to read as follows:

38 179.285 Except as otherwise provided in NRS 179.301:

39 1. If the court orders a record sealed pursuant to NRS 174.034,
40 176A.265, 176A.295, 179.245, 179.247, 179.255, 179.259,
41 179.2595, 201.354, 453.3365 or 458.330 ~~{}~~ **or section 12 of this**
42 **act**:

43 (a) All proceedings recounted in the record are deemed never to
44 have occurred, and the person to whom the order pertains may
45 properly answer accordingly to any inquiry, including, without



1 limitation, an inquiry relating to an application for employment,
2 concerning the arrest, conviction, dismissal or acquittal and the
3 events and proceedings relating to the arrest, conviction, dismissal
4 or acquittal.

5 (b) The person is immediately restored to the following civil
6 rights if the person's civil rights previously have not been restored:

7 (1) The right to vote;

8 (2) The right to hold office; and

9 (3) The right to serve on a jury.

10 2. Upon the sealing of the person's records, a person who is
11 restored to his or her civil rights pursuant to subsection 1 must be
12 given:

13 (a) An official document which demonstrates that the person has
14 been restored to the civil rights set forth in paragraph (b) of
15 subsection 1; and

16 (b) A written notice informing the person that he or she has not
17 been restored to the right to bear arms, unless the person has
18 received a pardon and the pardon does not restrict his or her right to
19 bear arms.

20 3. A person who has had his or her records sealed in this State
21 or any other state and whose official documentation of the
22 restoration of civil rights is lost, damaged or destroyed may file a
23 written request with a court of competent jurisdiction to restore his
24 or her civil rights pursuant to this section. Upon verification that the
25 person has had his or her records sealed, the court shall issue an
26 order restoring the person to the civil rights to vote, to hold office
27 and to serve on a jury. A person must not be required to pay a fee to
28 receive such an order.

29 4. A person who has had his or her records sealed in this State
30 or any other state may present official documentation that the person
31 has been restored to his or her civil rights or a court order restoring
32 civil rights as proof that the person has been restored to the right to
33 vote, to hold office and to serve as a juror.

34 **Sec. 24.** NRS 179.295 is hereby amended to read as follows:

35 179.295 1. The person who is the subject of the records that
36 are sealed pursuant to NRS 174.034, 176A.265, 176A.295, 179.245,
37 179.247, 179.255, 179.259, 179.2595, 201.354, 453.3365 or
38 458.330 **or section 12 of this act** may petition the court that ordered
39 the records sealed to permit inspection of the records by a person
40 named in the petition, and the court may order such inspection.
41 Except as otherwise provided in this section, subsection 9 of NRS
42 179.255 and NRS 179.259 and 179.301, the court may not order the
43 inspection of the records under any other circumstances.

44 2. If a person has been arrested, the charges have been
45 dismissed and the records of the arrest have been sealed, the court



1 may order the inspection of the records by a prosecuting attorney
2 upon a showing that as a result of newly discovered evidence, the
3 person has been arrested for the same or a similar offense and that
4 there is sufficient evidence reasonably to conclude that the person
5 will stand trial for the offense.

6 3. The court may, upon the application of a prosecuting
7 attorney or an attorney representing a defendant in a criminal action,
8 order an inspection of such records for the purpose of obtaining
9 information relating to persons who were involved in the incident
10 recorded.

11 4. This section does not prohibit a court from considering a
12 conviction for which records have been sealed pursuant to NRS
13 174.034, 176A.265, 176A.295, 179.245, 179.247, 179.255, 179.259,
14 179.2595, 201.354, 453.3365 or 458.330 in determining whether to
15 grant a petition pursuant to NRS 176A.265, 176A.295, 179.245,
16 179.255, 179.259, 179.2595, 453.3365 or 458.330 for a conviction
17 of another offense.

18 **Sec. 25.** NRS 13.050 is hereby amended to read as follows:

19 13.050 1. If the county designated for that purpose in the
20 complaint, petition or motion is not the proper county, the
21 proceeding may, notwithstanding, be tried or heard therein, unless:

22 (a) After the filing of a complaint or petition, the defendant
23 demands in writing, before the time for answering expires, that the
24 trial be had in the proper county, and the place of trial be thereupon
25 changed by consent of the parties, or by order of the court, as
26 provided in this section.

27 (b) In a proceeding in which the court has continuing
28 jurisdiction after the issuance of a final order, judgment or decree,
29 including, without limitation, any proceeding for divorce,
30 annulment, separate maintenance or parentage or custody of a child
31 and where no party currently resides in the county in which the
32 order, judgment or decree was entered, the respondent demands in
33 writing, before the time for filing a response expires, that the
34 petition or motion be heard in the county of residence of either party
35 to the proceeding or in the county where the child who is the subject
36 of the proceeding resides, or by order of the court, as provided in
37 this section.

38 2. The court may, on motion or stipulation, change the place of
39 the proceeding in the following cases:

40 (a) When the county designated in the complaint, petition or
41 motion is not the proper county.

42 (b) When there is reason to believe that an impartial proceeding
43 cannot be had therein.

44 (c) When the convenience of the witnesses and the ends of
45 justice would be promoted by the change.



(d) When any defendant in a case commenced in a county without a business court requests a change to a county:

(1) With a business court; and

(2) In which the case, if originally commenced in such county, would be eligible for assignment to the business court.

(e) When each of the parties consent to the change.

(f) When a person who files a petition pursuant to section 11 of this act requests a change to a different county.

3. When the place of the proceeding is changed, all other matters relating to the proceeding shall be had in the county to which the place of the proceeding is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of the court, and the papers shall be filed or transferred accordingly.

4. As used in this section, "business court" means, as designated pursuant to the rules of the applicable district court:

(a) A business court docket;

(b) A business matter designation; or

(c) At least one business court judge.

Sec. 26. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 27 and 28 of this act.

Sec. 27. ***If a person brings a civil action relating to his or her wrongful conviction against this State, the Attorney General must provide to the person any materially exculpatory evidence relating to the crime for which the person was convicted that was not previously disclosed to the person.***

Sec. 28. The State of Nevada waives its immunity from liability in any action involving a petition brought pursuant to section 11 of this act and consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations.

Sec. 29. 1. There is hereby appropriated from the State General Fund to the Public Integrity Unit Commission created by section 17 of this act the sum of \$50,000 to enable the Commission to enter into a contract with a qualified, independent consultant to assist the Commission in carrying out its duties.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2021, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 17, 2021, by either the entity to which the money was appropriated or the entity to which the money was subsequently



1 granted or transferred, and must be reverted to the State General
2 Fund on or before September 17, 2021.

3 **Sec. 30.** 1. The Public Integrity Unit Commission created by
4 section 17 of this act shall meet not later than July 31, 2019, and
5 shall elect a Chair at that meeting.

6 2. Not later than July 15, 2019, each person or association
7 required to appoint a member of the Public Integrity Unit
8 Commission pursuant to subsection 1 of section 17 of this act shall
9 appoint each member that the person or association is required to
10 appoint for an initial term of office.

11 **Sec. 31.** The provisions of subsection 1 of NRS 218D.380 do
12 not apply to any provision of this act which adds or revises a
13 requirement to submit a report to the Legislature.

14 **Sec. 32.** This act becomes effective:

15 1. Upon passage and approval for the purpose of appointing
16 members of the Public Integrity Unit Commission created by section
17 17 of this act and performing any other preparatory administrative
18 tasks that are necessary to carry out the provisions of this act; and

19 2. On July 1, 2019, for all other purposes.

