

SENATE BILL NO. 3—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

**SUMMARY**—Revises provisions governing postconviction petitions for a writ of habeas corpus that challenge the computation of time served in incarceration by an offender. (BDR 3-411)

**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.

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AN ACT relating to criminal procedure; requiring an offender to exhaust all available administrative remedies before filing a postconviction petition for a writ of habeas corpus challenging the computation of time the offender has served; revising provisions governing the county in which an offender must file a postconviction petition for a writ of habeas corpus challenging the computation of time the offender has served; requiring the Department of Corrections to adopt regulations concerning expedited resolution of certain challenges to the computation of time an offender has served; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes an offender who is convicted of a crime and under a sentence of death or imprisonment and who claims that the time served by the offender has been improperly computed to file a postconviction petition for a writ of habeas corpus. (NRS 34.724) **Section 1** of this bill requires an offender to exhaust all administrative remedies available to resolve a challenge to the computation of time that the offender has served before the offender may file such a petition. **Section 3** of this bill requires a court to dismiss without prejudice a petition for a writ of habeas corpus that challenges the computation of time that the offender has served if the court determines that the offender has not exhausted all available administrative remedies. **Section 4** of this bill requires the Department of Corrections to adopt regulations to establish procedures for the resolution of a



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challenge to the computation of time that an offender has served that is brought within 180 days immediately preceding the expiration date of the offender's term of imprisonment as calculated by the Department. **Section 5** of this bill makes a conforming change.

Existing law further requires a petition for a writ of habeas corpus challenging the validity of a conviction or sentence to be filed with the clerk of the district court for the county in which the conviction occurred. Existing law also requires any other petition for a writ of habeas corpus to be filed in the district court for the county in which the person is incarcerated. (NRS 34.738) **Section 2** of this bill requires a person incarcerated outside this State, while serving a Nevada sentence, to file such a petition in the First Judicial District Court in Carson City.

**Section 6** of this bill provides that the amendatory provisions of this bill do not apply to a postconviction petition for a writ of habeas corpus that challenges the computation of time that a petitioner has served that is filed on or before January 1, 2020.

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


**Section 1.** NRS 34.724 is hereby amended to read as follows:

34.724 1. Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, or who , *after exhausting all available administrative remedies*, claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served.

2. Such a petition:

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

(b) Comprehends and takes the place of 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.

(c) Is the only remedy available to an incarcerated person to challenge the computation of time that the person has served pursuant to a judgment of conviction  , *after all available administrative remedies have been exhausted*.

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



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

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

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

(d) The motion is not barred by the doctrine of laches. A motion filed more than 5 years after the date on which the person was convicted creates a rebuttable presumption of prejudice to the State on the basis of laches.

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

**Sec. 2.** 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~~ :

(a) *The district court for the* county in which the petitioner is incarcerated ~~the~~; or

(b) *The First Judicial District Court in and for Carson City, if the petitioner is incarcerated outside this State while serving a term of imprisonment imposed by a court of this State.*

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. 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. 3.** NRS 34.810 is hereby amended to read as follows:

34.810 1. The court shall dismiss a petition if the court determines that:



(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

➤ The petitioner shall include in the petition all prior proceedings in which the petitioner challenged the same conviction or sentence.

4. *The court shall dismiss a petition without prejudice if:*

(a) *The petition challenges the computation of time that the petitioner has served pursuant to a judgment of conviction; and*

(b) *The court determines that the petitioner did not exhaust all available administrative remedies to resolve such a challenge as required by NRS 34.724.*

5. The court may dismiss a petition that fails to include any prior proceedings of which the court has knowledge through the record of the court or through the pleadings submitted by the respondent.

**Sec. 4.** Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:

*The Department shall adopt regulations to establish procedures for the expedited resolution of a challenge to the computation of time that an offender has served which is brought by the offender within 180 days immediately preceding the expiration date of his or her term of imprisonment as calculated by the Department.*



1       **Sec. 5.** NRS 209.432 is hereby amended to read as follows:

2       209.432 As used in NRS 209.432 to 209.451, inclusive, *and*  
3 *section 4 of this act*, unless the context otherwise requires:

4       1. "Offender" includes:

5       (a) A person who is convicted of a felony under the laws of this  
6 State and sentenced, ordered or otherwise assigned to serve a term  
7 of residential confinement.

8       (b) A person who is convicted of a felony under the laws of this  
9 State and assigned to the custody of the Division of Parole and  
10 Probation of the Department of Public Safety pursuant to NRS  
11 209.4886 or 209.4888.

12       2. "Residential confinement" means the confinement of a  
13 person convicted of a felony to his or her place of residence under  
14 the terms and conditions established pursuant to specific statute. The  
15 term does not include any confinement ordered pursuant to NRS  
16 176A.530 to 176A.560, inclusive, 176A.660 to 176A.690, inclusive,  
17 213.15105, 213.15193 or 213.152 to 213.1528, inclusive.

18       **Sec. 6.** The amendatory provisions of this act do not apply to a  
19 postconviction petition for a writ of habeas corpus that challenges  
20 the computation of time which a petitioner has served pursuant to a  
21 judgment of conviction that is filed before January 1, 2020.

22       **Sec. 7.** This act becomes effective:

23       1. Upon passage and approval for the purposes of adopting  
24 regulations and performing any other preparatory administrative  
25 tasks that are necessary to carry out the provisions of this act; and

26       2. On January 1, 2020, for all other purposes.

