

SENATE BILL NO. 4—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing remittiturs.
(BDR 3-412)

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; requiring the service of remittiturs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides, unless there is good cause for delay, that a postconviction petition for a writ of habeas corpus must be filed: (1) within 1 year after entry of the judgment of conviction; or (2) if an appeal has been taken from the judgment, within 1 year after the appellate court issues its remittitur. (NRS 34.726) The Nevada Rules of Appellate Procedure require an appellate court to issue a remittitur, under certain circumstances, within 25 days after the entry of judgment. (NRAP 41) Purposes of a remittitur include, without limitation: (1) divesting the appellate court of jurisdiction over an appeal and returning jurisdiction to the district court; (2) formally informing the district court of the appellate court's final resolution of the appeal; and (3) in the case of an untimely appeal, removing or transferring the matter to the district court and informing the district court that the appellate court never obtained jurisdiction over the appeal. (*Dickerson v. State*, 114 Nev. 1084 (1998)) **Section 1** of this bill requires the clerk of the appellate court to serve a copy of the remittitur upon the petitioner, the petitioner's attorney, if any, the respondent, the Attorney General and the district attorney of the county where the petitioner was convicted. **Sections 2-4** of this bill make conforming changes.



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

Section 1. Chapter 34 of NRS is hereby amended by adding thereto a new section to read as follows:

A copy of any remittitur issued by the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution must be served by the clerk of the court upon the petitioner and the petitioner's counsel, if any, the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

Sec. 2. NRS 34.720 is hereby amended to read as follows:

34.720 The provisions of NRS 34.720 to 34.830, inclusive, *and section 1 of this act* apply only to petitions for writs of habeas corpus in which the petitioner:

1. Requests relief from a judgment of conviction or sentence in a criminal case; or

2. Challenges the computation of time that the petitioner has served pursuant to a judgment of conviction.

Sec. 3. NRS 34.722 is hereby amended to read as follows:

34.722 As used in NRS 34.720 to 34.830, inclusive, *and section 1 of this act*, unless the context otherwise requires, "petition" means a postconviction petition for habeas corpus filed pursuant to NRS 34.724.

Sec. 4. NRS 34.780 is hereby amended to read as follows:

34.780 1. The Nevada Rules of Civil Procedure, to the extent that they are not inconsistent with NRS 34.360 to 34.830, inclusive, apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive *H, and section 1 of this act.*

2. After the writ has been granted and a date set for the hearing, a party may invoke any method of discovery available under the Nevada Rules of Civil Procedure if, and to the extent that, the judge or justice for good cause shown grants leave to do so.

3. A request for discovery which is available under the Nevada Rules of Civil Procedure must be accompanied by a statement of the interrogatories or requests for admission and a list of any documents sought to be produced.

Sec. 5. This act becomes effective on July 1, 2019.

