

Amendment No. CA12

Conference Committee Amendment to (BDR 3-156)
Senate Bill No. 53 Second Reprint

Proposed by: Conference Committee

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BAW



Date: 6/1/2015

S.B. No. 53—Revises provisions relating to criminal procedure. (BDR 3-156)



SENATE BILL NO. 53—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure. (BDR 3-156)

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; requiring an incarcerated person to exhaust all available administrative remedies before filing a postconviction petition for a writ of habeas corpus challenging the computation of time the person has served pursuant to a judgment of conviction; revising provisions concerning the withdrawal of certain pleas after sentence is imposed or imposition of sentence is suspended; requiring a court to dismiss a postconviction petition for a writ of habeas corpus upon determining that the petitioner has not exhausted all available administrative remedies; requiring the Department of Corrections to establish procedures for the expedited resolution of a challenge to the computation of time that an offender has served under certain circumstances; 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 who claims that the time the person has served pursuant to the judgment of conviction has been improperly computed to file a postconviction petition for a writ of habeas corpus to challenge the computation of time that the person has served. (NRS 34.724) **Section 1** of this bill requires a person to exhaust all administrative remedies available for resolving a challenge to the computation of time that he or she has served as set forth in regulations adopted by the Department of Corrections before the person may file such a petition. **Section 2** of this bill requires a court to dismiss such a petition if the court determines that the petitioner has not exhausted all available administrative remedies. **Section 2.5** of this bill requires the Department to establish procedures for the expedited resolution of a challenge to the computation of time that an offender has served that is brought by the offender within 180 days before the offender's projected discharge date as determined by the Department. **Section 3** of this bill provides that the amendatory provisions of this bill do not apply to a postconviction petition for a writ of habeas corpus which challenges the computation of time that a petitioner has served that is filed on or before the effective date of this bill.

Existing law also 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

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

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

36 **Section 1** expressly provides that a motion to withdraw a plea of guilty, guilty but
37 mentally ill or nolo contendere pursuant to NRS 176.165 that is made after sentence is
38 imposed or imposition of sentence is suspended is a remedy which is incident to the
39 proceedings in the trial court ~~+~~ under certain circumstances.

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~~ *Except as otherwise provided in subsection 3, any* person
3 convicted of a crime and under sentence of death or imprisonment who claims that
4 the conviction 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 State, or who
6 claims that the time the person has served pursuant to the judgment of conviction
7 has been improperly computed, may, without paying a filing fee, file a
8 postconviction petition for a writ of habeas corpus to obtain relief from the
9 conviction or sentence or to challenge the computation of time that the person has
10 served.

11 2. Such a petition:

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

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

18 ~~(c) Is the only remedy available to an incarcerated person to challenge~~

19 3. *Before a person may file a petition pursuant to this section that*
20 *challenges* the computation of time that the person has served pursuant to a
21 judgment of conviction ~~+~~ *, the person must exhaust all administrative remedies*
22 *available for resolving a challenge to the computation of time that the person has*
23 *served as set forth in regulations adopted by the Department of Corrections.*

24 4. *For the purposes of this section, a motion to withdraw a plea of guilty,*
25 *guilty but mentally ill or nolo contendere pursuant to NRS 176.165 that is made*

1 *after sentence is imposed or imposition of sentence is suspended is a remedy*
2 *which is incident to the proceedings in the trial court ~~++~~ if:*

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

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

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

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

13 *➤ The court shall not appoint counsel to represent a person for the purpose of*
14 *this subsection.*

15 **Sec. 2.** NRS 34.810 is hereby amended to read as follows:

16 34.810 1. The court shall dismiss a petition if the court determines that:

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

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

23 (1) Presented to the trial court;

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

26 (3) Raised in any other proceeding that the petitioner has taken to secure
27 relief from the petitioner's conviction and sentence,

28 ➤ unless the court finds both cause for the failure to present the grounds and actual
29 prejudice to the petitioner.

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

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

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

39 (b) Actual prejudice to the petitioner.

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

42 4. *The court shall dismiss a petition that challenges the computation of time*
43 *which a petitioner has served pursuant to a judgment of conviction if the court*
44 *determines that the petitioner has not exhausted all administrative remedies*
45 *available for resolving a challenge to the computation of time which the*
46 *petitioner has served as required pursuant to subsection 3 of NRS 34.724.*

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

1 **Sec. 2.5.** Chapter 209 of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 *The Department shall adopt regulations to establish procedures for the*
4 *expedited resolution of a challenge to the computation of time that an offender*
5 *has served that is brought by the offender within 180 days before the offender's*
6 *projected discharge date as determined by the Department.*

7 **Sec. 2.7.** NRS 209.432 is hereby amended to read as follows:

8 209.432 As used in NRS 209.432 to 209.451, inclusive, *and section 2.5 of*
9 *this act*, unless the context otherwise requires:

10 1. "Offender" includes:

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

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

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

21 **Sec. 3.** 1. The amendatory provisions of this act do not apply to a
22 postconviction petition for a writ of habeas corpus that challenges the computation
23 of time which a petitioner has served pursuant to a judgment of conviction that is
24 filed on or before the effective date of this act.

25 2. The amendatory provisions of subsection 4 of section 1 of this act apply to
26 any motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere
27 pursuant to NRS 176.165 that is made after sentence is imposed or imposition of
28 sentence is suspended that is pending on or after June 12, 2014.

29 **Sec. 4.** This act becomes effective upon passage and approval.