

ASSEMBLY BILL NO. 49—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure. (BDR 3-419)

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

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; prescribing separate forms for certain postconviction petitions for a writ of habeas corpus; revising various provisions relating to postconviction petitions for a writ of habeas corpus; eliminating the requirement that the respondent to a postconviction petition for a writ of habeas corpus file a return with the court; revising provisions relating to a petition for a hearing to establish the factual innocence of a person; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes an offender who is convicted of a crime and under a
2 sentence of death or imprisonment to file a postconviction petition for a writ of
3 habeas corpus to challenge: (1) the validity of a judgment of conviction; or (2) the
4 computation of time that the person has served pursuant to a judgment of
5 conviction. (NRS 34.724) Existing law also authorizes a person who has been
6 convicted of a felony to file a petition for a hearing to establish the factual
7 innocence of the person based on newly discovered evidence. (NRS 34.960)
8 **Section 2** of this bill defines the term “prosecuting agency” for the purpose of
9 clarifying certain requirements relating to such petitions. **Sections 5, 10, 13 and 20-**
10 **24** of this bill make conforming changes to substitute the defined term where
11 appropriate.
12 **Sections 3 and 11** of this bill prescribe separate and distinct forms for a
13 petition for a writ of habeas corpus that challenges the computation of time that a
14 person has served pursuant to a judgment of conviction and a petition for a writ of
15 habeas corpus that challenges the validity of a judgment of conviction, respectively.
16 **Section 10** of this bill makes a conforming change by requiring each type of



17 petition to be: (1) appropriately titled; and (2) in substantially the form prescribed
18 by **sections 3 and 11. Sections 6, 7 and 17** of this bill make conforming changes to
19 indicate the proper placement of **section 3** in the Nevada Revised Statutes.

20 **Section 8** of this bill makes a nonsubstantive change to clarify that a person
21 may file a postconviction petition for a writ of habeas corpus without paying a
22 filing fee. **Sections 9, 10, 12-14, 16, 18 and 19** of this bill make certain other
23 nonsubstantive changes in statutes concerning postconviction petitions.

24 Existing law requires the respondent on a postconviction petition for a writ of
25 habeas corpus to file with the court: (1) a return, which includes certain information
26 relating to the basis on which the respondent has the petitioner in his or her custody
27 or power; and (2) an answer responding to the allegations of the petition. (NRS
28 34.430, 34.745) **Section 26** of this bill repeals the requirement that the respondent
29 file a return with the court. **Section 15** of this bill requires instead that the response
30 or answer filed by the respondent include the information contained in a return
31 under existing law. **Sections 13, 14 and 16** make conforming changes relating to
32 the elimination of the requirement that a respondent file a return with the court.

33 **Section 25** of this bill makes the amendatory provisions of this bill applicable
34 to a postconviction petition for a writ of habeas corpus filed on or after July 1,
35 2023.

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

1 **Section 1.** Chapter 34 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *As used in this chapter, “prosecuting agency” means:*

4 *1. The district attorney of the county in which the conviction*
5 *or sentence being challenged in a petition for a writ of habeas*
6 *corpus was obtained, if the district attorney or a deputy district*
7 *attorney prosecuted the petitioner in the original proceeding which*
8 *led to the conviction or sentence; or*

9 *2. The Attorney General, if the Attorney General or a deputy*
10 *attorney general prosecuted the petitioner in the original*
11 *proceeding which led to the conviction or sentence being*
12 *challenged in a petition for a writ of habeas corpus.*

13 **Sec. 3.** *A petition for a writ of habeas corpus that challenges*
14 *the computation of time that the petitioner has served pursuant to*
15 *a judgment of conviction must be in substantially the following*
16 *form, with appropriate modifications if the petition is filed in the*
17 *Court of Appeals or the Supreme Court:*

18
19 *Case No.*

20 *Dept. No.*

21
22 *IN THE JUDICIAL DISTRICT*
23 *COURT OF THE STATE OF NEVADA*
24 *IN AND FOR THE COUNTY OF*



.....
Petitioner,

v.

**PETITION FOR WRIT
OF HABEAS CORPUS
(COMPUTATION OF TIME)**

.....
Respondent.

INSTRUCTIONS:

(1) *This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.*

(2) *Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.*

(3) *If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.*

(4) *You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but:*

(a) *Within its custody, name the Director of the Department of Corrections.*

(b) *Under the supervision of the Division of Parole and Probation of the Department of Public Safety, name the probation officer or parole officer assigned to you at this time.*

(5) *You must include all grounds for relief which you may have regarding the computation of time served on your sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging the same computation of time issue.*

(6) *You must allege specific facts supporting the claims in this petition. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.*

(7) *When the petition is fully completed, the original and one copy must be filed with the clerk of the state district*



court for the county in which you are incarcerated, or, if you are incarcerated outside this State, the First Judicial District Court in and for Carson City. One copy must be mailed to the respondent and one copy must be mailed to the Attorney General's Office. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

2. Name and location of court that sentenced you:

3. Case number:

4. Date of judgment of conviction:

5. (a) Nature of the underlying offense involved in the sentence being challenged in this petition:

(b) Date on which the underlying offense involved in the sentence being challenged in this petition was committed: ..

6. Length of sentence being challenged in this petition:

7. Are you presently serving a sentence other than the sentence being challenged in this petition? Yes
No

If "yes," list each crime, case number and sentence being served at this time:

8. Have your sentences been aggregated? Yes
No

If "yes," list each case number and sentence, the terms of which have been aggregated:

9. Do you have any future sentences to serve after you complete the sentence being challenged in this petition (whether in the same judgment or a different judgment)?
Yes *No*

If "yes," specify where and when it is to be served, if you know:



1 10. Have you had a parole hearing relating to the
2 sentence you are challenging in this petition? Yes
3 No

4 If "yes," give the following information:

5 (a) Date of most recent parole hearing:

6 (b) Outcome of most recent parole hearing:

7 (c) Date on which the rehearing is to be held, if you
8 know:

9 11. Are you challenging a decision of the State Board
10 of Parole Commissioners to revoke your parole? Yes
11 No

12 If "yes," give the following information:

13 (a) Date of revocation hearing:

14 (b) Date on which your next parole hearing is
15 scheduled, if you know:

16 (c) Did you forfeit any credit as a result of the
17 revocation of parole? Yes No

18 (d) If you forfeited any credit as a result of the
19 revocation of parole, has any of the credit forfeited been
20 restored? Yes No

21 12. Are you challenging a disciplinary sanction?
22 Yes No

23 If "yes," give the following information:

24 (a) Date on which you were served with a notice of the
25 disciplinary offense charged:

26 (b) Date on which the disciplinary hearing involving the
27 charged offense was conducted:

28 (c) Did you forfeit any credit as a result of the
29 disciplinary hearing? Yes No

30 (d) If you forfeited any credit as a result of the
31 disciplinary hearing, has any of the credit forfeited been
32 restored? Yes No

33 13. Have you previously filed any petitions,
34 applications or motions with respect to the challenge raised
35 in this petition in any court, state or federal? Yes
36 No

37 14. If your answer to No. 13 was "yes," give the
38 following information:

39 (a) (1) Name of court:

40 (2) Nature of proceeding:

41
42 (3) Grounds raised:

43
44



1 (4) Did you receive an evidentiary hearing on your
2 petition, application or motion? Yes No

3 (5) Result:

4 (6) Date of result:

5 (7) If known, citations of any written opinion or date
6 of orders entered pursuant to such result:

7 (b) As to any second or subsequent additional petitions,
8 applications or motions, give the same information as
9 above, list them on a separate sheet and attach.

10 (c) Did you appeal to the highest state or federal court
11 having jurisdiction, the result or action taken on any
12 petition, application or motion?

13 (1) First petition, application or motion? Yes
14 No

15 Citation or date of decision:

16 (2) Second or subsequent petitions, applications or
17 motions? Yes No

18 Citation or date of decision:

19 (d) If you did not appeal from the adverse action on any
20 petition, application or motion, explain briefly why you did
21 not. (You must relate specific facts in response to this
22 question. Your response may be included on paper which is
23 8 1/2 by 11 inches attached to the petition. Your response
24 may not exceed five handwritten or typewritten pages in
25 length.)

26
27

28 15. Do you have any petition or appeal now pending in
29 any court, state or federal, regarding the computation of
30 time you are challenging in this petition? Yes No

31 If "yes," give the following information:

32 (a) Name of court:

33 (b) Case number:

34 16. Have you filed a grievance raising the same
35 computation of time issue as you are raising in this petition?
36 Yes No

37 17. If your answer to No. 16 was "yes," answer the
38 following:

39 (a) Number assigned to your grievance:

40 (b) Result of grievance:

41 (c) Did you complete all levels of the grievance
42 procedure? Yes No

43 (d) If you did not complete all levels of the grievance
44 procedure, explain briefly why you did not:



18. If any of the grounds being raised in this petition have been submitted for review and resolution by way of the grievance process, explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. State concisely every ground on which you claim that the computation of time you have served has been improperly computed. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting the same.

(a) Ground one:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground three:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at on the day of the month of of the year



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

.....
Signature of petitioner

.....
Address

.....
Signature of attorney (if any)

.....
Attorney for petitioner

.....
Address

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

.....
Petitioner

.....
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I,, hereby certify, pursuant to N.R.C.P. 5(b), that on this day of the month of of the year, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS (COMPUTATION OF TIME) addressed to:

.....
Respondent prison or jail official

.....
Address

.....
Attorney General
100 North Carson Street
Carson City, Nevada 89701

.....
Signature of Petitioner



1 **Sec. 4.** NRS 34.370 is hereby amended to read as follows:

2 34.370 1. A petition for a writ of habeas corpus must be
3 verified by the petitioner or the petitioner's counsel. If the petition is
4 verified by counsel, counsel shall also verify that the petitioner
5 personally authorized counsel to commence the action.

6 2. A verified petition for issuance of a writ of habeas corpus
7 must specify that the petitioner is imprisoned or restrained of the
8 petitioner's liberty, the officer or other person by whom the
9 petitioner is confined or restrained, and the place where
10 the petitioner is confined, naming all the parties if they are known,
11 or describing them if they are not known.

12 3. If the petitioner claims that the imprisonment is illegal, the
13 petitioner must state facts which show that the restraint or detention
14 is illegal.

15 4. If the petition requests relief from a ~~judgment of~~
16 conviction or sentence in a criminal case, the petition must identify
17 the proceedings in which the petitioner was convicted, give the date
18 of entry of the final judgment and set forth which constitutional
19 rights of the petitioner were violated and the acts constituting
20 violations of those rights. Affidavits, records or other evidence
21 supporting the allegations in the petition must be attached unless the
22 petition recites the cause for failure to attach these materials. The
23 petition must identify any previous proceeding in state or federal
24 court initiated by the petitioner to secure relief from the petitioner's
25 conviction or sentence. Argument, citations and other supporting
26 documents are unnecessary.

27 **Sec. 5.** NRS 34.700 is hereby amended to read as follows:

28 34.700 1. Except as provided in subsection 3, a pretrial
29 petition for a writ of habeas corpus based on alleged lack of
30 probable cause or otherwise challenging the court's right or
31 jurisdiction to proceed to the trial of a criminal charge may not be
32 considered unless:

33 (a) The petition and all supporting documents are filed within 21
34 days after the first appearance of the accused in the district court;
35 and

36 (b) The petition contains a statement that the accused:

37 (1) Waives the 60-day limitation for bringing an accused to
38 trial; or

39 (2) If the petition is not decided within 15 days before the
40 date set for trial, consents that the court may, without notice or
41 hearing, continue the trial indefinitely or to a date designated by the
42 court.

43 2. The arraignment and entry of a plea by the accused must not
44 be continued to avoid the requirement that a pretrial petition be filed
45 within the period specified in subsection 1.



1 3. The court may extend, for good cause, the time to file a
2 petition. Good cause shall be deemed to exist if the transcript of the
3 preliminary hearing or of the proceedings before the grand jury is
4 not available within 14 days after the accused's initial appearance
5 and the court shall grant an ex parte application to extend the time
6 for filing a petition. All other applications may be made only after
7 appropriate notice has been given to the prosecuting ~~attorney.~~
8 *agency.*

9 **Sec. 6.** NRS 34.720 is hereby amended to read as follows:

10 34.720 The provisions of NRS 34.720 to 34.830, inclusive, *and*
11 *section 3 of this act* apply only to petitions for writs of habeas
12 corpus in which the petitioner:

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

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

17 **Sec. 7.** NRS 34.722 is hereby amended to read as follows:

18 34.722 As used in NRS 34.720 to 34.830, inclusive, *and*
19 *section 3 of this act*, unless the context otherwise requires,
20 "petition" means a ~~postconviction~~ petition ~~for habeas corpus~~ *to*
21 *obtain relief from a conviction or sentence or to challenge the*
22 *computation of time a person has served* filed pursuant to
23 NRS 34.724.

24 **Sec. 8.** NRS 34.724 is hereby amended to read as follows:

25 34.724 1. Any person convicted of a crime and under
26 sentence of death or imprisonment who claims that the conviction
27 was obtained, or that the sentence was imposed, in violation of the
28 Constitution of the United States or the Constitution or laws of this
29 State, or who, after exhausting all available administrative remedies,
30 claims that the time the person has served pursuant to the judgment
31 of conviction has been improperly computed ~~;~~ may ~~;~~ *without*
32 *paying a filing fee,* file a ~~postconviction~~ petition ~~for a writ of~~
33 ~~habeas corpus~~ *to obtain relief from the conviction or sentence or to*
34 *challenge the computation of time that the person has served. A*
35 *person must not be required to pay a filing fee to file such a*
36 *petition.*

37 2. Such a petition:

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

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



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

5 3. For the purposes of this section, a motion to withdraw a plea
6 of 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 is a remedy which is incident to the
9 proceedings in the trial court if:

10 (a) The person has not filed a prior motion to withdraw the plea
11 and has not filed a prior ~~[postconviction]~~ petition ; ~~[[for a writ of~~
12 ~~habeas corpus;]~~

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

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

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

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

26 **Sec. 9.** NRS 34.726 is hereby amended to read as follows:

27 34.726 1. Unless there is good cause shown for delay, a
28 petition ~~[that challenges the validity of a judgment or sentence]~~ must
29 be filed within 1 year after entry of the judgment of conviction or, if
30 an appeal has been taken from the judgment, within 1 year after the
31 appellate court of competent jurisdiction pursuant to the rules fixed
32 by the Supreme Court pursuant to Section 4 of Article 6 of the
33 Nevada Constitution issues its remittitur. For the purposes of this
34 subsection, good cause for delay exists if the petitioner demonstrates
35 to the satisfaction of the court:

36 (a) That the delay is not the fault of the petitioner; and

37 (b) That dismissal of the petition as untimely will unduly
38 prejudice the petitioner.

39 2. The execution of a sentence must not be stayed for the
40 period provided in subsection 1 solely because a petition may be
41 filed within that period. A stay of sentence must not be granted
42 unless:

43 (a) A petition is actually filed; and

44 (b) The petitioner establishes a compelling basis for the stay.



1 **Sec. 10.** NRS 34.730 is hereby amended to read as follows:
2 34.730 1. A petition must be verified by the petitioner or the
3 petitioner’s counsel. If the petition is verified by counsel, counsel
4 shall also verify that the petitioner personally authorized counsel to
5 commence the action.

6 2. *A petition that challenges:*

7 (a) *The computation of time that the petitioner has served*
8 *pursuant to a judgment of conviction must be titled “Petition for*
9 *Writ of Habeas Corpus (Computation of Time)” and be in*
10 *substantially the form set forth in section 3 of this act.*

11 (b) The ~~[petition]~~ *validity of a conviction or sentence* must be
12 titled “Petition for Writ of Habeas Corpus ~~[(Postconviction)]”~~
13 *(Validity of Conviction or Sentence)”* and be in substantially the
14 form set forth in NRS 34.735. ~~[The]~~

15 3. A petition must name as respondent and be served by mail
16 upon the officer or other person by whom the petitioner is confined
17 or restrained. A copy of the petition must be served by mail upon ~~[-~~

18 ~~—(a) The] the~~ Attorney General ~~[-]~~ and

19 ~~[(b) In the case of a petition challenging the validity of a~~
20 ~~judgment of conviction or sentence, the district attorney in the~~
21 ~~county in which the petitioner was convicted.] , if applicable, any~~
22 *other prosecuting agency.*

23 ~~[3.]~~ 4. Except as otherwise provided in this subsection, the
24 clerk of the district court shall file a petition as a new action separate
25 and distinct from any original proceeding in which a conviction has
26 been had. If a petition challenges the validity of a conviction or
27 sentence, it must be:

28 (a) Filed with the record of the original proceeding to which it
29 relates; and

30 (b) Whenever possible, assigned to the original judge or court.

31 ~~[4.]~~ 5. No hearing upon the petition may be set until the
32 requirements of NRS 34.740 to 34.770, inclusive, are satisfied.

33 **Sec. 11.** NRS 34.735 is hereby amended to read as follows:

34 34.735 A petition *that challenges the validity of a conviction*
35 *or sentence* must be in substantially the following form, with
36 appropriate modifications if the petition is filed in the Court of
37 Appeals or the Supreme Court:

38
39 Case No.
40 Dept. No.

41
42 IN THE JUDICIAL DISTRICT COURT OF THE
43 STATE OF NEVADA IN AND FOR THE COUNTY
44 OF.....



.....
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
~~[(POSTCONVICTION)]~~
**(VALIDITY OF
CONVICTION
OR SENTENCE)**

.....
Respondent.

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds ~~[or claims]~~ for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in ~~[the] this~~ petition . ~~[you file seeking relief from any conviction or sentence.]~~ Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client



1 privilege for the proceeding in which you claim your counsel
2 was ineffective.

3 (7) When the petition is fully completed, the original and
4 one copy must be filed with the clerk of the state district court
5 for the county in which you were convicted. One copy must
6 be mailed to the respondent, one copy to the Attorney
7 General's Office, and one copy to the district attorney of the
8 county in which you were convicted or to the original
9 prosecutor if you are challenging your original conviction or
10 sentence. Copies must conform in all particulars to the
11 original submitted for filing.

12
13 PETITION

14
15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty:

18
19 2. Name and location of court which entered the
20 judgment of conviction ~~under attack~~ **being challenged**:

21
22 3. Date of judgment of conviction:

23 4. Case number:

24 5. (a) Length of sentence:

25
26 (b) If sentence is death, state any date upon which
27 execution is scheduled:.....

28 6. Are you presently serving a sentence for a conviction
29 other than the conviction ~~under attack~~ **you are challenging**
30 in this ~~motion?~~ **petition?** Yes No

31 If "yes," list **each** crime, case number and sentence being
32 served at this time:

33
34
35 7. Nature of offense involved in conviction being
36 challenged:

37
38 8. What was your plea? (check one)

39 (a) Not guilty

40 (b) Guilty

41 (c) Guilty but mentally ill

42 (d) Nolo contendere



9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

- (a) Jury
(b) Judge without a jury

11. Did you testify at the trial? Yes No

12. Did you appeal from the judgment of conviction?

Yes No

13. If you did appeal, answer the following:

- (a) Name of court:
(b) Case number or citation:
(c) Result:
(d) Date of result:
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not:

15. Other than a direct appeal from the judgment of conviction, [and sentence,] have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No

16. If your answer to No. 15 was "yes," give the following information:

- (1) Name of court:
(2) Nature of proceeding:
(3) Grounds raised:
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No
(5) Result:
(6) Date of result:
(7) If known, citations of any written opinion or date of orders entered pursuant to such result:



(b) As to any second petition, application or motion, give the same information:

(1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

(5) Result:

(6) Date of result:

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes No

Citation or date of decision:

(2) Second petition, application or motion? Yes No

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ..

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same:

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this



question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ..

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment **under attack?** of conviction you are challenging in this petition? Yes No
If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment **under attack?** of conviction you are challenging in this petition? Yes No
If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting the same.



(a) Ground one:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground three:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at on the day of the month of of the year

.....
Signature of petitioner
.....

Address
.....

.....
Signature of attorney (if any)
.....

Attorney for petitioner
.....

Address
.....

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition



and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

.....
Petitioner
.....

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I,, hereby certify, pursuant to N.R.C.P. 5(b), that on this day of the month of of the year, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS (*VALIDITY OF CONVICTION OR SENTENCE*) addressed to:

.....
Respondent prison or jail official
.....

Address
.....

Attorney General
~~[Heroes' Memorial Building
Capitol Complex]~~ *100 North Carson Street*
Carson City, Nevada ~~[89710]~~ *89701*

.....
District Attorney of County of Conviction
.....

Address
.....

.....
Signature of Petitioner

Sec. 12. 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:

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



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

4 2. A petition that is not filed in the district court for the
5 appropriate county:

6 (a) Shall be deemed to be filed on the date it is received by the
7 clerk of the district court in which the petition is initially lodged;
8 and

9 (b) Must be transferred by the clerk of that court to the clerk of
10 the district court for the appropriate county.

11 3. A petition must not challenge both the validity of a
12 ~~judgment of~~ conviction or sentence and the computation of time
13 that the petitioner has served pursuant to ~~that~~ a judgment ~~of~~
14 *conviction*. If a petition improperly challenges both the validity of a
15 ~~judgment of~~ conviction or sentence and the computation of time
16 that the petitioner has served pursuant to ~~that~~ a judgment ~~of~~
17 *conviction*, the district court for the appropriate county shall resolve
18 that portion of the petition that challenges the validity of the
19 ~~judgment of~~ conviction or sentence and dismiss the remainder of
20 the petition without prejudice.

21 **Sec. 13.** NRS 34.745 is hereby amended to read as follows:

22 34.745 1. ~~If a petition challenges the validity of a judgment~~
23 ~~of conviction or sentence and is the first petition filed by the~~
24 ~~petitioner, the~~ *The* judge or justice shall order the ~~district attorney~~
25 ~~or the Attorney General, whichever is appropriate,~~ *prosecuting*
26 *agency* to:

27 (a) File:

28 ~~(1) A~~ *a* response or an answer to the petition ~~;~~ *and*

29 ~~(2) If an evidentiary hearing is required pursuant to NRS~~
30 ~~34.770, a return,~~

31 ~~→~~ within 45 days or a longer period fixed by the judge or justice;
32 or

33 (b) Take other action that the judge or justice deems appropriate.

34 2. ~~If a petition challenges the computation of time that the~~
35 ~~petitioner has served pursuant to a judgment of conviction, the judge~~
36 ~~or justice shall order the Attorney General to:~~

37 ~~(a) File:~~

38 ~~(1) A response or an answer to the petition; and~~

39 ~~(2) A return,~~

40 ~~→ within 45 days or a longer period fixed by the judge or justice.~~

41 ~~(b) Take other action that the judge or justice deems appropriate.~~

42 ~~3.]~~ An order entered pursuant to subsection 1 ~~or 2~~ must be in
43 substantially the following form, with appropriate modifications if
44 the order is entered by a judge of the Court of Appeals or a justice of
45 the Supreme Court:



Case No.
Dept. No.

IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY
OF

.....
Petitioner,

v.

ORDER

.....
Respondent.

Petitioner filed a petition for a writ of habeas corpus on
..... (month) (day), (year). The court has reviewed the
petition and has determined that a response would assist the
court in determining whether petitioner is illegally
imprisoned and restrained of petitioner’s liberty. Respondent
shall, within 45 days after the date of this order, answer or
otherwise respond to the petition ~~and file a return~~ in
accordance with the provisions of NRS 34.360 to 34.830,
inclusive ~~and~~, *and section 3 of this act.*

Dated (month) (day), (year)

.....
District Judge

↪ A copy of the order must be served on the petitioner or the
petitioner’s counsel, the respondent, the Attorney General and ~~the
district attorney of the county in which the petitioner was convicted.
—4.~~, *if applicable, any other prosecuting agency.*

3. If the petition is a second or successive petition challenging
the validity of a ~~judgment of~~ conviction or sentence and if it
plainly appears from the face of the petition or an amended petition
and documents and exhibits that are annexed to it, or from records
of the court that the petitioner is not entitled to relief based on any
of the grounds set forth in subsection ~~2~~ 3 of NRS 34.810, the judge
or justice shall enter an order for its summary dismissal and cause
the petitioner to be notified of the entry of the order.

~~5.~~ 4. If the judge or justice relies on the records of the court in
entering an order pursuant to this section, those records must be



1 made a part of the record of the proceeding before entry of the
2 order.

3 **Sec. 14.** NRS 34.750 is hereby amended to read as follows:

4 34.750 1. A petition may allege that the petitioner is unable
5 to pay the costs of the proceedings or to employ counsel. If the court
6 is satisfied that the allegation of indigency is true and the petition
7 is not dismissed summarily, the court may appoint counsel to represent
8 the petitioner. In making its determination, the court may consider,
9 among other things, the severity of the consequences facing the
10 petitioner and whether:

- 11 (a) The issues presented are difficult;
- 12 (b) The petitioner is unable to comprehend the proceedings; or
- 13 (c) Counsel is necessary to proceed with discovery.

14 2. If the court determines that the petitioner is unable to pay all
15 necessary costs and expenses incident to the proceedings of the trial
16 court and the reviewing court, including court costs, stenographic
17 services, printing and reasonable compensation for legal services, all
18 costs must be paid from money appropriated to the office of the
19 State Public Defender for that purpose. After appropriations for that
20 purpose are exhausted, money must be allocated to the office of the
21 State Public Defender from the Reserve for Statutory Contingency
22 Account for the payment of the costs, expenses and compensation.

23 3. After appointment by the court, counsel for the petitioner
24 may file and serve supplemental pleadings, exhibits, transcripts and
25 documents within 30 days after:

26 (a) The date the court orders the filing of ~~{an}~~ *a response or*
27 *answer ; {and a return;}* or

28 (b) The date of counsel's appointment,
29 ↪ whichever is later. If it has not previously been filed, the
30 *response or* answer by the respondent must be filed within 15 days
31 after receipt of the supplemental pleadings and include any response
32 to the supplemental pleadings.

33 4. The petitioner shall respond within 15 days after service to a
34 motion by the State to dismiss the action.

35 5. No further pleadings may be filed except as ordered by the
36 court.

37 **Sec. 15.** NRS 34.760 is hereby amended to read as follows:

38 34.760 1. ~~{The}~~ *A response or* answer must ~~{state}~~ :

39 (a) *State plainly and unequivocally whether the respondent*
40 *has or had the petitioner in custody or under the respondent's*
41 *power or restraint and, if the respondent:*

42 (1) *Has the petitioner in custody or under his or her power*
43 *or restraint at the time of filing the response or answer, set forth*
44 *with specificity the basis for custody, including, without limitation,*
45 *the authority and cause of the imprisonment or restraint.*



1 (2) *Had the petitioner in custody or under the respondent's*
2 *power or restraint but no longer has the petitioner in custody or*
3 *under the respondent's power or restraint, state particularly to*
4 *whom, at what time and place, for what cause and by what*
5 *authority the transfer took place.*

6 (b) *Indicate* whether the petitioner has previously applied for
7 relief from the petitioner's conviction or sentence in any proceeding
8 in a state or federal court, including a direct appeal or a petition for a
9 writ of habeas corpus or other postconviction relief.

10 2. ~~[The]~~ *If a petition challenges the validity of a conviction or*
11 *sentence, the response or* answer must indicate what transcripts of
12 pretrial, trial, sentencing and postconviction proceedings are
13 available, when these transcripts can be furnished and what
14 proceedings have been recorded and not transcribed. The respondent
15 shall attach to the *response or* answer any portions of the
16 transcripts, except those in the court's file, which the respondent
17 deems relevant. The court on its own motion or upon request of the
18 petitioner may order additional portions of existing transcripts to be
19 furnished or certain portions of the proceedings which were not
20 transcribed to be transcribed and furnished. If a transcript is not
21 available or procurable, the court may require a narrative summary
22 of the evidence to be submitted.

23 3. *If a petition challenges the computation of time that the*
24 *petitioner has served pursuant to a judgment of conviction,*
25 *the respondent shall attach a copy of the judgment of conviction to*
26 *the response or answer.*

27 4. If the petitioner appealed ~~[from]~~ the ~~[judgment of]~~
28 conviction *or sentence* or any adverse judgment or order in a prior
29 petition, ~~[for a writ of habeas corpus or postconviction relief,]~~
30 a copy of the petitioner's brief on appeal and any opinion of the
31 appellate court must be filed by the respondent with the *response or*
32 answer.

33 **Sec. 16.** NRS 34.770 is hereby amended to read as follows:

34 34.770 1. The judge or justice, upon review of the ~~[return,]~~
35 *response or* answer and all supporting documents which are filed,
36 shall determine whether an evidentiary hearing is required. A
37 petitioner must not be discharged or committed to the custody of a
38 person other than the respondent unless an evidentiary hearing is
39 held.

40 2. If the judge or justice determines that the petitioner is not
41 entitled to relief and an evidentiary hearing is not required, the judge
42 or justice shall dismiss the petition without a hearing.

43 3. If the judge or justice determines that an evidentiary hearing
44 is required, the judge or justice shall grant the writ and shall set a
45 date for the hearing.



1 **Sec. 17.** NRS 34.780 is hereby amended to read as follows:

2 34.780 1. The Nevada Rules of Civil Procedure, to the extent
3 that they are not inconsistent with NRS 34.360 to 34.830, inclusive,
4 *and section 3 of this act* apply to proceedings pursuant to NRS
5 34.720 to 34.830, inclusive ~~§~~, *and section 3 of this act.*

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

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

14 **Sec. 18.** NRS 34.800 is hereby amended to read as follows:

15 34.800 1. A petition may be dismissed if delay in the filing of
16 the petition:

17 (a) Prejudices the respondent or the State of Nevada in
18 responding to the petition, unless the petitioner shows that the
19 petition is based upon grounds of which the petitioner could not
20 have had knowledge by the exercise of reasonable diligence before
21 the circumstances prejudicial to the State occurred; or

22 (b) Prejudices the State of Nevada in its ability to conduct a
23 retrial of the petitioner, unless the petitioner demonstrates that a
24 fundamental miscarriage of justice has occurred in the proceedings
25 resulting in the judgment of conviction. ~~[or sentence.]~~

26 2. A period exceeding 5 years between the filing of a judgment
27 of conviction, an order imposing a sentence of imprisonment or a
28 decision on direct appeal of a judgment of conviction and the filing
29 of a petition challenging the validity of a judgment of conviction
30 creates a rebuttable presumption of prejudice to the State. In a
31 motion to dismiss the petition based on that prejudice, the
32 respondent or the State of Nevada must specifically plead laches.
33 The petitioner must be given an opportunity to respond to the
34 allegations in the pleading before a ruling on the motion is made.

35 **Sec. 19.** NRS 34.810 is hereby amended to read as follows:

36 34.810 1. The court shall dismiss a petition *that challenges*
37 *the validity of a conviction or sentence* if the court determines that:

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

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

44 (1) Presented to the trial court;



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

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

7 2. *The court shall dismiss a petition that challenges the*
8 *computation of time served pursuant to a judgment of conviction*
9 *without prejudice if the court determines that the petitioner did not*
10 *exhaust all available administrative remedies to resolve such a*
11 *challenge as required by NRS 34.724.*

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

18 ~~[3.]~~ 4. Pursuant to subsections 1 and ~~[2,]~~ 3, the petitioner has
19 the burden of pleading and proving specific facts that demonstrate:

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

22 (b) Actual prejudice to the petitioner.

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

25 ~~[4.— The court shall dismiss a petition without prejudice if:~~

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

28 ~~—(b) The court determines that the petitioner did not exhaust all~~
29 ~~available administrative remedies to resolve such a challenge as~~
30 ~~required by NRS 34.724.]~~

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

35 **Sec. 20.** NRS 34.820 is hereby amended to read as follows:

36 34.820 1. If a petitioner has been sentenced to death and the
37 petition is the first one challenging the validity of the petitioner's
38 conviction or sentence, the court shall:

39 (a) Appoint counsel to represent the petitioner; and

40 (b) Stay execution of the judgment pending disposition of the
41 petition and the appeal.

42 2. The petition must include the date upon which execution is
43 scheduled, if it has been scheduled. The petitioner is not entitled to
44 an evidentiary hearing unless the petition states that:



1 (a) Each issue of fact to be considered at the hearing has not
2 been determined in any prior evidentiary hearing in a state or federal
3 court; or

4 (b) For each issue of fact which has been determined in a prior
5 evidentiary hearing, the hearing was not a full and fair consideration
6 of the issue. The petition must specify all respects in which the
7 hearing was inadequate.

8 3. If the petitioner has previously filed a petition for relief or
9 for a stay of the execution in the same court, the petition must be
10 assigned to the judge or justice who considered the previous matter.

11 4. The court shall inform the petitioner and the petitioner's
12 counsel that all claims which challenge the conviction or imposition
13 of the sentence must be joined in a single petition and that any
14 matter not included in the petition will not be considered in a
15 subsequent proceeding.

16 5. If relief is granted or the execution is stayed, the clerk shall
17 forthwith notify the respondent [~~the Attorney General~~] and the
18 [~~district attorney of the county in which the petitioner was~~
19 ~~convicted.~~] *prosecuting agency.*

20 6. If a district judge conducts an evidentiary hearing, a daily
21 transcript must be prepared for the purpose of appellate review.

22 7. The judge or justice who considers a petition filed by a
23 petitioner who has been sentenced to death shall make all reasonable
24 efforts to expedite the matter and shall render a decision within 60
25 days after submission of the matter for decision.

26 **Sec. 21.** NRS 34.830 is hereby amended to read as follows:

27 34.830 1. Any order that finally disposes of a petition,
28 whether or not an evidentiary hearing was held, must contain
29 specific findings of fact and conclusions of law supporting the
30 decision of the court.

31 2. A copy of any decision or order discharging the petitioner
32 from the custody or restraint under which the petitioner is held,
33 committing the petitioner to the custody of another person,
34 dismissing the petition or denying the requested relief must be
35 served by the clerk of the court upon the petitioner and the
36 petitioner's counsel, if any, the respondent [~~the Attorney General~~]
37 and the [~~district attorney of the county in which the petitioner was~~
38 ~~convicted.~~] *prosecuting agency.*

39 3. Whenever a decision or order described in this section is
40 entered by the district court, the clerk of the court shall prepare a
41 notice in substantially the following form and mail a copy of the
42 notice to each person listed in subsection 2:
43

44 Case No.
45 Dept. No.



IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY
OF

.....
Petitioner,

v. NOTICE OF ENTRY OF
DECISION OR ORDER

.....
Respondent.

PLEASE TAKE NOTICE that on (month) (day)
..... (year), the court entered a decision or order in this matter,
a true and correct copy of which is attached to this notice.

You may appeal to the appellate court of competent
jurisdiction pursuant to the rules fixed by the Supreme Court
from the decision or order of this court. If you wish to appeal,
you must file a notice of appeal with the clerk of this court
within 33 days after the date this notice is mailed to you. This
notice was mailed on (month) (day) (year)
Dated (month) (day) (year)

.....
Clerk of court

(SEAL) By
Deputy

Sec. 22. NRS 34.960 is hereby amended to read as follows:

34.960 1. At any time after the expiration of the period
during which a motion for a new trial based on newly discovered
evidence may be made pursuant to NRS 176.515, a person who has
been convicted of a felony may petition the district court in the
county in which the person was convicted for a hearing to establish
the factual innocence of the person based on newly discovered
evidence. A person who files a petition pursuant to this subsection
shall serve notice and a copy of the petition upon the ~~district
attorney of the county in which the conviction was obtained and the
Attorney General~~ prosecuting agency.

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

(a) Newly discovered evidence exists that is specifically
identified and, if credible, establishes a bona fide issue of factual
innocence;

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



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

3 (2) Is not merely cumulative of evidence that was known, is
4 not reliant solely upon recantation of testimony by a witness against
5 the petitioner and is not merely impeachment evidence; and

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

8 (c) If some or all of the newly discovered evidence alleged in
9 the petition is a biological specimen, that a genetic marker analysis
10 was performed pursuant to NRS 176.0918, 176.09183 and
11 176.09187 and the results were favorable to the petitioner; and

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

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

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

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

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

30 (a) Does not meet the requirements of subsection 2, the court
31 shall dismiss the petition without prejudice, state the basis for the
32 dismissal and send notice of the dismissal to the petitioner ~~[-the~~
33 ~~district attorney]~~ and the ~~[-Attorney General;]~~ *prosecuting agency*.

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

38 (1) Dismiss the petition without prejudice, state the basis for
39 the dismissal and send notice of the dismissal to the petitioner ~~[-the~~
40 ~~district attorney]~~ and the ~~[-Attorney General;]~~ *prosecuting agency*;
41 or

42 (2) Waive the requirements of subsection 3 if the court finds
43 the petition should proceed to a hearing and that there is other
44 evidence that could have been discovered through the exercise of



1 reasonable diligence by the petitioner or the petitioner's counsel at
2 trial, and the other evidence:

3 (I) Was not discovered by the petitioner or the petitioner's
4 counsel;

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

6 (III) Has never been presented to a court.

7 5. Any second or subsequent petition filed by a person must be
8 dismissed if the court determines that the petition fails to identify
9 new or different evidence in support of the factual innocence claim
10 or, if new and different grounds are alleged, the court finds that the
11 failure of the petitioner to assert those grounds in a prior petition
12 filed pursuant to this section constituted an abuse of the writ.

13 6. The court shall provide a written explanation of its order to
14 dismiss or not to dismiss the petition based on the requirements set
15 forth in subsections 2 and 3.

16 7. A person who has already obtained postconviction relief that
17 vacated or reversed the person's conviction or sentence may also
18 file a petition pursuant to subsection 1 in the same manner and form
19 as described in this section if no retrial or appeal regarding the
20 offense is pending.

21 8. After a petition is filed pursuant to subsection 1, any
22 prosecuting ~~[attorney.]~~ *agency*, law enforcement agency or forensic
23 laboratory that is in possession of any evidence that is the subject of
24 the petition shall preserve such evidence and any information
25 necessary to determine the sufficiency of the chain of custody of
26 such evidence.

27 9. A petition filed pursuant to subsection 1 must include the
28 underlying criminal case number.

29 10. Except as otherwise provided in NRS 34.900 to 34.990,
30 inclusive, the Nevada Rules of Civil Procedure govern all
31 proceedings concerning a petition filed pursuant to subsection 1.

32 11. As used in this section:

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

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

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

39 **Sec. 23.** NRS 34.970 is hereby amended to read as follows:

40 34.970 1. If the court does not dismiss a petition after
41 reviewing the petition in accordance with NRS 34.960, the court
42 shall order the ~~[district attorney or the Attorney General]~~
43 *prosecuting agency* to file a response to the petition. The court's
44 order must:



1 (a) Specify which claims identified in the petition warrant a
2 response from the ~~{district attorney or the Attorney General;}~~
3 *prosecuting agency*; and

4 (b) Specify which newly discovered evidence identified in the
5 petition, if credible, might establish a bona fide issue of factual
6 innocence.

7 2. The ~~{district attorney or the Attorney General}~~ *prosecuting*
8 *agency* shall, not later than 120 days after receipt of the court's
9 order requiring a response, or within any additional period the court
10 allows, respond to the petition and serve a copy upon the petitioner
11 and, if the *prosecuting agency is the* district attorney , ~~{is~~
12 ~~responding to the petition,}~~ the Attorney General.

13 3. Not later than 30 days after the date the ~~{district attorney or~~
14 ~~the Attorney General}~~ *prosecuting agency* responds to the petition,
15 the petitioner may reply to the response. Not later than 30 days after
16 the expiration of the period during which the petitioner may reply
17 to the response, the court shall consider the petition, any response by
18 the ~~{district attorney or the Attorney General}~~ *prosecuting agency*
19 and any reply by the petitioner. If the court determines that the
20 petition meets the requirements of NRS 34.960 and that there is a
21 bona fide issue of factual innocence regarding the charges of which
22 the petitioner was convicted, the court shall order a hearing on the
23 petition. If the court does not make such a determination, the court
24 shall enter an order denying the petition. For the purposes of this
25 subsection, a bona fide issue of factual innocence does not exist if
26 the petitioner is merely relitigating facts, issues or evidence
27 presented in a previous proceeding or if the petitioner is unable to
28 identify with sufficient specificity the nature and reliability of the
29 newly discovered evidence that establishes the factual innocence of
30 the petitioner. Unless stipulated to by the parties, the court may not
31 grant a hearing on the petition during any period in which criminal
32 proceedings in the matter are pending before any trial or appellate
33 court.

34 4. If the court grants a hearing on the petition, the hearing must
35 be held and the final order must be entered not later than 150 days
36 after the expiration of the period during which the petitioner may
37 reply to the response to the petition by the ~~{district attorney or the~~
38 ~~Attorney General}~~ *prosecuting agency* pursuant to subsection 3
39 unless the court determines that additional time is required for good
40 cause shown.

41 5. If the court grants a hearing on the petition, the court shall,
42 upon the request of the petitioner, order the preservation of all
43 material and relevant evidence in the possession or control of this
44 State or any agent thereof during the pendency of the proceeding.



1 6. If the parties stipulate that the evidence establishes the
2 factual innocence of the petitioner, the court may affirm the factual
3 innocence of the petitioner without holding a hearing. If the
4 prosecuting ~~attorney~~ agency does not stipulate that the evidence
5 establishes the factual innocence of the petitioner, a determination
6 of factual innocence must not be made by the court without a
7 hearing.

8 7. If the parties stipulate that the evidence establishes the
9 factual innocence of the petitioner, the prosecuting ~~attorney~~
10 agency makes a motion to dismiss the original charges against the
11 petitioner or, after a hearing, the court determines that the petitioner
12 has proven his or her factual innocence by clear and convincing
13 evidence, the court shall:

14 (a) Vacate the petitioner's conviction and issue an order of
15 factual innocence and exoneration; and

16 (b) Order the sealing of all documents, papers and exhibits in the
17 person's record, minute book entries and entries on dockets and
18 other documents relating to the case in the custody of such other
19 agencies and officers as are named in the court's order.

20 8. The court shall provide a written explanation of its
21 determination that the petitioner proved or failed to prove his or her
22 factual innocence by clear and convincing evidence.

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

25 **Sec. 24.** NRS 34.990 is hereby amended to read as follows:

26 34.990 After a petition is filed pursuant to NRS 34.960, if any
27 victim of the crime for which the petitioner was convicted has
28 indicated a desire to be notified regarding any postconviction
29 proceedings, the ~~district attorney~~ prosecuting agency shall make
30 reasonable efforts to provide notice to such a victim that the petition
31 has been filed and that indicates the time and place for any hearing
32 that may be held as a result of the petition and the disposition
33 thereof.

34 **Sec. 25.** The amendatory provisions of this act do not apply to
35 a postconviction petition for habeas corpus filed pursuant to NRS
36 34.724 before July 1, 2023.

37 **Sec. 26.** NRS 34.430 is hereby repealed.

38 **Sec. 27.** 1. This section becomes effective upon passage and
39 approval.

40 2. Sections 1 to 26, inclusive, of this act become effective:

41 (a) Upon passage and approval for the purpose of adopting any
42 regulations and performing any other preparatory administrative
43 tasks that are necessary to carry out the provisions of this act; and

44 (b) On July 1, 2023, for all other purposes.



TEXT OF REPEALED SECTION

34.430 Return and answer: Service and filing; contents; signature and verification.

1. Except as otherwise provided in subsection 1 of NRS 34.745, the respondent shall serve upon the petitioner and file with the court a return and an answer that must respond to the allegations of the petition within 45 days or a longer period fixed by the judge or justice.

2. The return must state plainly and unequivocally whether the respondent has the party in custody, or under the respondent's power or restraint. If the respondent has the petitioner in the respondent's custody or power, or under the respondent's restraint, the respondent shall state the authority and cause of the imprisonment or restraint, setting forth with specificity the basis for custody.

3. If the petitioner is detained by virtue of any judgment, writ, warrant or other written authority, a certified or exemplified copy must be annexed to the return.

4. If the respondent has the petitioner in the respondent's power or custody or under the respondent's restraint before or after the date of the writ of habeas corpus but has transferred custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority the transfer took place.

5. The return must be signed by the respondent and, unless the respondent is a sworn public officer who makes the return in the respondent's official capacity, verified under oath or affirmation.

