

Amendment No. 151

Assembly Amendment to Assembly Bill No. 49	(BDR 3-419)
<b>Proposed by:</b> Assembly Committee on Judiciary	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION	Initial and Date		SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>
Receded <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/>	Not <input type="checkbox"/>

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.

MR/BAW



Date: 4/17/2023

A.B. No. 49—Revises provisions relating to criminal procedure. (BDR 3-419)





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.

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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; 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:**

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

**Sections 3 and 11** of this bill prescribe separate and distinct forms for a petition for a writ of habeas corpus that challenges the computation of time that a person has served pursuant to a judgment of conviction and a petition for a writ of habeas corpus that challenges the validity of a judgment of conviction, respectively. **Section 10** of this bill makes a conforming change by requiring each type of petition to be: (1) appropriately titled; and (2) in substantially the form prescribed by **sections 3 and 11**. **Sections 6, 7 and 17** of this bill make conforming changes to indicate the proper placement of **section 3** in the Nevada Revised Statutes.

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

Existing law requires the respondent on a postconviction petition for a writ of habeas corpus to file with the court: (1) a return, which includes certain information relating to the basis on which the respondent has the petitioner in his or her custody or power; and (2) an answer responding to the allegations of the petition. (NRS 34.430, 34.745) **Section 26** of this

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25 bill repeals the requirement that the respondent file a return with the court. **Section 15** of this  
26 bill requires instead that the response or answer filed by the respondent include the  
27 information contained in a return under existing law. **Sections 13, 14 and 16** make  
28 conforming changes relating to the elimination of the requirement that a respondent file a  
29 return with the court.

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

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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 thereto the  
2 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 judgment of conviction or*  
5 *sentence being challenged in a petition for a writ of habeas corpus was obtained,*  
6 *if the district attorney or a deputy district attorney prosecuted the petitioner in the*  
7 *original proceeding which led to the judgment of conviction or sentence; or*

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

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

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18 *Case No. ....*

19 *Dept. No. ....*

20  
21 *IN THE ..... JUDICIAL DISTRICT COURT OF THE STATE*  
22 *OF NEVADA IN AND FOR THE COUNTY OF.....*

23  
24 *.....*  
25 *Petitioner,*

26 v.

27 *PETITION FOR WRIT*  
28 *OF HABEAS CORPUS*  
29 *(COMPUTATION OF TIME)*

30  
31 *.....*  
32 *Respondent.*

33 **INSTRUCTIONS:**

34 *(1) Use this form if you are currently serving a sentence pursuant to*  
35 *a judgment of conviction and are challenging the postconviction*  
36 *computation of your time served, the revocation of your parole or the*  
37 *forfeiture of your credits. Do not use this form if you are requesting relief*  
38 *from a judgment of conviction.*

39 *(2) 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) You must include facts which support your grounds for relief. You do not need to cite law or authorities. You may submit additional pages if necessary with this form.

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

~~(4)~~ (5) 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)~~ (6) 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)~~ (7) 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)~~ (8) 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: .....

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.....  
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: .....

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

If "yes," give the following information:

(a) Date of most recent parole hearing: .....

(b) Outcome of most recent parole hearing: .....

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

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

If "yes," give the following information:

(a) Date of revocation hearing: .....

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

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

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

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

If "yes," give the following information:

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

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

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

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

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

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

(a) (1) Name of court: .....

(2) Nature of proceeding: .....

(3) Grounds raised: .....

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

3 (5) Result: .....

4 (6) Date of result: .....

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

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

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

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

14 Citation or date of decision: .....

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

17 Citation or date of decision: .....

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

24 .....  
25 15. Do you have any petition or appeal now pending in any court,  
26 state or federal, regarding the computation of time you are challenging in  
27 this petition? Yes ..... No .....

28 If "yes," give the following information:

29 (a) Name of court: .....

30 (b) Case number: .....

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

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

34 (a) Number assigned to your grievance: .....

35 (b) Result of grievance: .....

36 (c) Did you complete all levels of the grievance procedure? Yes .....  
37 No .....

38 (d) If you did not complete all levels of the grievance procedure,  
39 explain briefly why you did not: .....

40 18. If any of the grounds being raised in this petition have been  
41 submitted for review and resolution by way of the grievance process,  
42 explain why you are again raising these grounds. (You must relate  
43 specific facts in response to this question. Your response may be included  
44 on paper which is 8 1/2 by 11 inches attached to the petition. Your  
45 response may not exceed five handwritten or typewritten pages in  
46 length.) .....  
47 .....

48 .....  
49 19. State concisely every ground on which you claim that the  
50 computation of time you have served has been improperly computed.  
51 Summarize briefly the facts supporting each ground. If necessary you  
52 may attach pages stating additional grounds and facts supporting the  
53 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 (COMPUTATION OF TIME) addressed to:*

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

*Address*  
.....

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

.....  
*Signature of Petitioner*  
.....

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

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

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

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

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

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

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

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

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

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

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

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

3. The court may extend, for good cause, the time to file a petition. Good cause shall be deemed to exist if the transcript of the preliminary hearing or of the

1 proceedings before the grand jury is not available within 14 days after the accused's  
2 initial appearance and the court shall grant an ex parte application to extend the  
3 time for filing a petition. All other applications may be made only after appropriate  
4 notice has been given to the prosecuting ~~attorney~~ agency.

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

6 34.720 The provisions of NRS 34.720 to 34.830, inclusive, *and section 3 of*  
7 *this act* apply only to petitions for writs of habeas corpus in which the petitioner:

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

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

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

13 34.722 As used in NRS 34.720 to 34.830, inclusive, *and section 3 of this act,*  
14 unless the context otherwise requires, "petition" means a ~~postconviction~~  
15 ~~for habeas corpus~~ *to obtain relief from a judgment of conviction or sentence or*  
16 *to challenge the computation of time a person has served* filed pursuant to NRS  
17 34.724.

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

19 34.724 1. Any person convicted of a crime and under sentence of death or  
20 imprisonment who claims that the conviction was obtained, or that the sentence was  
21 imposed, in violation of the Constitution of the United States or the Constitution or  
22 laws of this State, or who, after exhausting all available administrative remedies,  
23 claims that the time the person has served pursuant to the judgment of conviction  
24 has been improperly computed ~~;~~ may ~~;~~ ~~without paying a filing fee.~~ file a  
25 ~~postconviction~~ petition ~~for a writ of habeas corpus~~ to obtain relief from the  
26 judgment of conviction or sentence or to challenge the computation of time that the  
27 person has served. *A person must not be required to pay a filing fee to file such a*  
28 *petition.*

29 2. Such a petition:

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

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

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

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

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

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

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

50 (d) The motion is not barred by the doctrine of laches. A motion filed more  
51 than 5 years after the date on which the person was convicted creates a rebuttable  
52 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. 9.** NRS 34.726 is hereby amended to read as follows:

34.726 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment of conviction or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after 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 issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

- (a) That the delay is not the fault of the petitioner; and
- (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

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

- (a) A petition is actually filed; and
- (b) The petitioner establishes a compelling basis for the stay.

**Sec. 10.** NRS 34.730 is hereby amended to read as follows:

34.730 1. A petition must be verified by the petitioner or the petitioner’s counsel. If the petition is verified by counsel, counsel shall also verify that the petitioner personally authorized counsel to commence the action.

2. *A petition that challenges:*

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

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

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

~~(a) The~~ the Attorney General ~~[(;]~~ and ~~[(b) In the case of a petition challenging the validity of a judgment of conviction or sentence, the district attorney in the county in which the petitioner was convicted.], if applicable, any other prosecuting agency.~~

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

- (a) Filed with the record of the original proceeding to which it relates; and
- (b) Whenever possible, assigned to the original judge or court.

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

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

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

Case No. ....

1 Dept. No. ....

2  
3 IN THE ..... JUDICIAL DISTRICT COURT OF THE  
4 STATE OF NEVADA IN AND FOR THE COUNTY OF.....

5 .....  
6 Petitioner,

7  
8 v.

9 PETITION FOR WRIT  
10 OF HABEAS CORPUS  
11 ~~[(POSTCONVICTION)]~~  
12 (VALIDITY OF  
13 JUDGMENT OF  
14 CONVICTION  
15 OR SENTENCE)

16 .....  
17 Respondent.

18 INSTRUCTIONS:

19 (1) Use this form if you are currently serving a sentence pursuant to  
20 a judgment of conviction and are seeking relief from your judgment of  
21 conviction or sentence. Do not use this form if you are challenging the  
22 postconviction computation of your time served.

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

25 ~~[(2)]~~ (3) Additional pages are not permitted except where noted or with  
26 respect to the facts ~~[which you rely upon to]~~ that support your grounds for  
27 relief. ~~[No citation of authorities need be furnished.]~~ You are not required  
28 to cite to law or authorities. If you submit briefs or arguments ~~[are~~  
29 ~~submitted,]~~ they ~~[should be submitted in the form of]~~ must be in a separate  
30 memorandum.

31 ~~[(3)]~~ (4) If you want an attorney appointed, you must complete ~~[the]~~ an  
32 Affidavit in Support of Request to Proceed in Forma Pauperis. ~~[You must~~  
33 ~~have an]~~ An authorized officer at the prison must complete the certificate as  
34 to the amount of money and securities on deposit to your credit in any  
35 account in the institution.

36 ~~[(4)]~~ (5) You must name as respondent the person by whom you are  
37 confined or restrained. If you are in a specific institution of the Department  
38 of Corrections, name the warden or head of the institution. If you are not in  
39 a specific institution of the Department but within its custody, name the  
40 Director of the Department of Corrections.

41 ~~[(5)]~~ (6) You must include all grounds ~~[or claims]~~ for relief which you  
42 may have regarding your judgment of conviction or sentence. Failure to  
43 raise all grounds in this petition may preclude you from filing future  
44 petitions challenging your judgment of conviction and sentence.

45 ~~[(6)]~~ (7) You must allege specific facts supporting the claims in ~~[the]~~  
46 this petition . ~~[you file seeking relief from any conviction or sentence.]~~  
47 Failure to allege specific facts rather than just conclusions may cause your  
48 petition to be dismissed. If your petition contains a claim of ineffective  
49 assistance of counsel, that claim will operate to waive the attorney-client  
50 privilege for the proceeding in which you claim your counsel was  
51 ineffective.

~~[(7)]~~ (8) 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 were convicted. One copy must be mailed to the respondent, one copy to the Attorney General’s Office, and one copy to the ~~district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence.~~ prosecuting agency. 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 which entered the judgment of conviction ~~under attack;~~ being challenged: .....

3. Date of judgment of conviction: .....

4. Case number: .....

5. (a) Length of sentence: .....

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

6. Are you presently serving a sentence for a judgment of conviction other than the judgment of conviction ~~under attack;~~ you are challenging in this ~~motion?~~ petition? Yes ..... No .....

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

7. Nature of offense involved in the judgment of conviction being challenged: .....

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty .....

(c) Guilty but mentally ill .....

(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: .....

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- (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:

- (a) (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 judgment of 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 JUDGMENT 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 judgment of 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

(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~~ a judgment ~~of conviction~~. 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~~ a judgment ~~of conviction~~, 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. 13.** NRS 34.745 is hereby amended to read as follows:

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

(a) File:

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

~~(2) If an evidentiary hearing is required pursuant to NRS 34.770, a return,~~ within 45 days or a longer period fixed by the judge or justice; or

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

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

~~(a) File:~~

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

1 ~~(2) A return,~~  
 2 ~~within 45 days or a longer period fixed by the judge or justice.~~  
 3 ~~(b) Take other action that the judge or justice deems appropriate.~~  
 4 ~~3.1~~ An order entered pursuant to subsection 1 ~~for 2~~ must be in substantially  
 5 the following form, with appropriate modifications if the order is entered by a judge  
 6 of the Court of Appeals or a justice of the Supreme Court:

7 Case No.....  
 8 Dept. No.....

10 IN THE ..... JUDICIAL DISTRICT COURT OF THE  
 11 STATE OF NEVADA IN AND FOR THE COUNTY OF .....

13 .....  
 14 Petitioner,

15  
 16 v.

ORDER

17 .....  
 18 Respondent.

20  
 21 Petitioner filed a petition for a writ of habeas corpus on ..... (month) .....  
 22 (day), ..... (year). The court has reviewed the petition and has determined  
 23 that a response would assist the court in determining whether petitioner is  
 24 illegally imprisoned and restrained of petitioner’s liberty. Respondent shall,  
 25 within 45 days after the date of this order, answer or otherwise respond to  
 26 the petition ~~[and file a return]~~ in accordance with the provisions of NRS  
 27 34.360 to 34.830, inclusive ~~[,]~~, **and section 3 of this act.**

28  
 29 Dated ..... (month) ..... (day), ..... (year)

30 .....  
 31 District Judge

32  
 33  
 34 ~~↪ A copy of the order must be served on the petitioner or the petitioner’s counsel,~~  
 35 ~~the respondent, the Attorney General and [the district attorney of the county in~~  
 36 ~~which the petitioner was convicted.~~

37 ~~— 4.1, if applicable, any other prosecuting agency.~~  
 38 **3.** If the petition is a second or successive petition challenging the validity of  
 39 a judgment of conviction or sentence and if it plainly appears from the face of the  
 40 petition or an amended petition and documents and exhibits that are annexed to it,  
 41 or from records of the court that the petitioner is not entitled to relief based on any  
 42 of the grounds set forth in subsection ~~[2]~~ **3** of NRS 34.810, the judge or justice shall  
 43 enter an order for its summary dismissal and cause the petitioner to be notified of  
 44 the entry of the order.

45 ~~[5.1]~~ **4.** If the judge or justice relies on the records of the court in entering an  
 46 order pursuant to this section, those records must be made a part of the record of the  
 47 proceeding before entry of the order.

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

49 34.750 1. A petition may allege that the petitioner is unable to pay the costs  
 50 of the proceedings or to employ counsel. If the court is satisfied that the allegation  
 51 of indigency is true and the petition is not dismissed summarily, the court may  
 52 appoint counsel to represent the petitioner. In making its determination, the court

1 may consider, among other things, the severity of the consequences facing the  
2 petitioner and whether:

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

6 2. If the court determines that the petitioner is unable to pay all necessary  
7 costs and expenses incident to the proceedings of the trial court and the reviewing  
8 court, including court costs, stenographic services, printing and reasonable  
9 compensation for legal services, all costs must be paid from money appropriated to  
10 the office of the State Public Defender for that purpose. After appropriations for  
11 that purpose are exhausted, money must be allocated to the office of the State  
12 Public Defender from the Reserve for Statutory Contingency Account for the  
13 payment of the costs, expenses and compensation.

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

17 (a) The date the court orders the filing of ~~an~~ *a response or* answer ; ~~and a~~  
18 ~~return;~~ or

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

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

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

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

27 34.760 1. ~~The~~ *A response or* answer must ~~state~~ *:*

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

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

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

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

43 2. ~~The~~ *If a petition challenges the validity of a judgment of conviction or*  
44 *sentence, the response or* answer must indicate what transcripts of pretrial, trial,  
45 sentencing and postconviction proceedings are available, when these transcripts can  
46 be furnished and what proceedings have been recorded and not transcribed. The  
47 respondent shall attach to the *response or* answer any portions of the transcripts,  
48 except those in the court's file, which the respondent deems relevant. The court on  
49 its own motion or upon request of the petitioner may order additional portions of  
50 existing transcripts to be furnished or certain portions of the proceedings which  
51 were not transcribed to be transcribed and furnished. If a transcript is not available  
52 or procurable, the court may require a narrative summary of the evidence to be  
53 submitted.

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

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

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

9           34.770 1. The judge or justice, upon review of the ~~return,~~ *response or*  
10 answer and all supporting documents which are filed, shall determine whether an  
11 evidentiary hearing is required. A petitioner must not be discharged or committed  
12 to the custody of a person other than the respondent unless an evidentiary hearing is  
13 held.

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

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

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

20           34.780 1. The Nevada Rules of Civil Procedure, to the extent that they are  
21 not inconsistent with NRS 34.360 to 34.830, inclusive, *and section 3 of this act*  
22 apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive ~~it~~, *and section*  
23 *3 of this act.*

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

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

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

32           34.800 1. A petition may be dismissed if delay in the filing of the petition:

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

37           (b) Prejudices the State of Nevada in its ability to conduct a retrial of the  
38 petitioner, unless the petitioner demonstrates that a fundamental miscarriage of  
39 justice has occurred in the proceedings resulting in the judgment of conviction. ~~for~~  
40 ~~sentence.~~

41           2. A period exceeding 5 years between the filing of a judgment of conviction,  
42 an order imposing a sentence of imprisonment or a decision on direct appeal of a  
43 judgment of conviction and the filing of a petition challenging the validity of a  
44 judgment of conviction creates a rebuttable presumption of prejudice to the State.  
45 In a motion to dismiss the petition based on that prejudice, the respondent or the  
46 State of Nevada must specifically plead laches. The petitioner must be given an  
47 opportunity to respond to the allegations in the pleading before a ruling on the  
48 motion is made.

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

50           34.810 1. The court shall dismiss a petition *that challenges the validity of a*  
51 *judgment of conviction or sentence* if the court determines that:

52           (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally  
53 ill and the petition is not based upon an allegation that the plea was involuntarily or

1 unknowingly entered or that the plea was entered without effective assistance of  
2 counsel.

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

5 (1) Presented to the trial court;

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

8 (3) Raised in any other proceeding that the petitioner has taken to secure  
9 relief from the petitioner's judgment of conviction and sentence,

10 ↪ unless the court finds both cause for the failure to present the grounds and actual  
11 prejudice to the petitioner.

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

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

21 ~~{3.}~~ 4. Pursuant to subsections 1 and ~~{2.}~~ 3, the petitioner has the burden of  
22 pleading and proving specific facts that demonstrate:

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

25 (b) Actual prejudice to the petitioner.

26 ↪ The petitioner shall include in the petition all prior proceedings in which the  
27 petitioner challenged the same judgment of conviction or sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. A copy of any decision or order discharging the petitioner from the custody or restraint under which the petitioner is held, committing the petitioner to the custody of another person, dismissing the petition or denying the requested relief 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.]~~ *prosecuting agency.*

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

Case No.....

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

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

2       34.960 1. At any time after the expiration of the period during which a  
3 motion for a new trial based on newly discovered evidence may be made pursuant  
4 to NRS 176.515, a person who has been convicted of a felony may petition the  
5 district court in the county in which the person was convicted for a hearing to  
6 establish the factual innocence of the person based on newly discovered evidence.  
7 A person who files a petition pursuant to this subsection shall serve notice and a  
8 copy of the petition upon the ~~district attorney of the county in which the conviction~~  
9 ~~was obtained and the Attorney General.~~ *prosecuting agency.*

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

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

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

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

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

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

22       (c) If some or all of the newly discovered evidence alleged in the petition is a  
23 biological specimen, that a genetic marker analysis was performed pursuant to NRS  
24 176.0918, 176.09183 and 176.09187 and the results were favorable to the  
25 petitioner; and

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

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

31       (a) Neither the petitioner nor the petitioner's counsel knew of the newly  
32 discovered evidence at the time of trial or sentencing or in time to include the  
33 evidence in any previously filed post-trial motion or postconviction petition, and  
34 the evidence could not have been discovered by the petitioner or the petitioner's  
35 counsel through the exercise of reasonable diligence; or

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

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

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

44       (b) Meets the requirements of subsection 2, the court shall determine whether  
45 the petition satisfies the requirements of subsection 3. If the court determines that  
46 the petition does not meet the requirements of subsection 3, the court may:

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

50           (2) Waive the requirements of subsection 3 if the court finds the petition  
51 should proceed to a hearing and that there is other evidence that could have been  
52 discovered through the exercise of reasonable diligence by the petitioner or the  
53 petitioner's counsel at trial, and the other evidence:



- 1 (I) Was not discovered by the petitioner or the petitioner's counsel;  
2 (II) Is material upon the issue of factual innocence; and  
3 (III) Has never been presented to a court.

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

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

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

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

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

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

25 11. As used in this section:

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

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

28 (c) "Genetic marker analysis" has the meaning ascribed to it in NRS  
29 176.09118.

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

31 34.970 1. If the court does not dismiss a petition after reviewing the petition  
32 in accordance with NRS 34.960, the court shall order the ~~district attorney or the~~  
33 ~~Attorney General~~ *prosecuting agency* to file a response to the petition. The court's  
34 order must:

35 (a) Specify which claims identified in the petition warrant a response from the  
36 ~~district attorney or the Attorney General,~~ *prosecuting agency*; and

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

39 2. The ~~district attorney or the Attorney General~~ *prosecuting agency* shall,  
40 not later than 120 days after receipt of the court's order requiring a response, or  
41 within any additional period the court allows, respond to the petition and serve a  
42 copy upon the petitioner and, if the *prosecuting agency is the* district attorney, ~~is~~  
43 ~~responding to the petition,~~ the Attorney General.

44 3. Not later than 30 days after the date the ~~district attorney or the Attorney~~  
45 ~~General~~ *prosecuting agency* responds to the petition, the petitioner may reply to  
46 the response. Not later than 30 days after the expiration of the period during which  
47 the petitioner may reply to the response, the court shall consider the petition, any  
48 response by the ~~district attorney or the Attorney General~~ *prosecuting agency* and  
49 any reply by the petitioner. If the court determines that the petition meets the  
50 requirements of NRS 34.960 and that there is a bona fide issue of factual innocence  
51 regarding the charges of which the petitioner was convicted, the court shall order a  
52 hearing on the petition. If the court does not make such a determination, the court  
53 shall enter an order denying the petition. For the purposes of this subsection, a bona



1 fide issue of factual innocence does not exist if the petitioner is merely relitigating  
2 facts, issues or evidence presented in a previous proceeding or if the petitioner is  
3 unable to identify with sufficient specificity the nature and reliability of the newly  
4 discovered evidence that establishes the factual innocence of the petitioner. Unless  
5 stipulated to by the parties, the court may not grant a hearing on the petition during  
6 any period in which criminal proceedings in the matter are pending before any trial  
7 or appellate court.

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

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

18 6. If the parties stipulate that the evidence establishes the factual innocence of  
19 the petitioner, the court may affirm the factual innocence of the petitioner without  
20 holding a hearing. If the prosecuting ~~{attorney}~~ *agency* does not stipulate that the  
21 evidence establishes the factual innocence of the petitioner, a determination of  
22 factual innocence must not be made by the court without a hearing.

23 7. If the parties stipulate that the evidence establishes the factual innocence of  
24 the petitioner, the prosecuting ~~{attorney}~~ *agency* makes a motion to dismiss the  
25 original charges against the petitioner or, after a hearing, the court determines that  
26 the petitioner has proven his or her factual innocence by clear and convincing  
27 evidence, the court shall:

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

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

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

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

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

40 34.990 After a petition is filed pursuant to NRS 34.960, if any victim of the  
41 crime for which the petitioner was convicted has indicated a desire to be notified  
42 regarding any postconviction proceedings, the ~~{district attorney}~~ *prosecuting*  
43 *agency* shall make reasonable efforts to provide notice to such a victim that the  
44 petition has been filed and that indicates the time and place for any hearing that  
45 may be held as a result of the petition and the disposition thereof.

46 **Sec. 25.** The amendatory provisions of this act do not apply to a  
47 postconviction petition for habeas corpus filed pursuant to NRS 34.724 before July  
48 1, 2023.

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

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

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

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

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

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**TEXT OF REPEALED SECTION**

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**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.