

Amendment No. 665

Senate Amendment to Assembly Bill No. 49 First Reprint	(BDR 3-419)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes 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: 5/23/2023

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.

~

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

AN ACT relating to criminal procedure; authorizing certain persons to file and serve certain documents by electronic means; 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**. **Section 2.5 of this bill authorizes a petitioner, under certain circumstances, to file and serve upon certain persons each type of petition by electronic means. Under section 2.5, the following may be filed or served by electronic means: (1) a response or answer filed by a prosecuting agency; (2) a copy of any decision or order served by the clerk of the court upon the petitioner or petitioner’s attorney; and (3) a notice of a decision or order delivered to the petitioner or petitioner’s attorney.** **Sections 6, 7 and 17** of this bill make conforming changes to indicate the proper placement of ~~section~~ **sections 2.5 and 3** in the Nevada Revised Statutes.

23 **Section 8** of this bill makes a nonsubstantive change to clarify that a person may file a
 24 postconviction petition for a writ of habeas corpus without paying a filing fee. **Sections 9, 10,**
 25 **12-14, 16, 18** ~~, **19**~~ **, 24.1-24.3, 24.5 and 24.6** of this bill make certain other
 26 nonsubstantive changes in statutes concerning postconviction petitions.

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

36 Existing law provides that: (1) certain written motions, written notices, designations
 37 of record on appeal and similar papers must be served upon each of the parties in a
 38 criminal proceeding and filed with the court; and (2) with certain exceptions, any papers
 39 required to be served must be filed with the court in the manner provided in civil
 40 actions. (NRS 178.582, 178.584, 178.588) Section 24.4 of this bill authorizes a person,
 41 under certain circumstances, to file and send or receive service of a motion, notice or
 42 other legal document through electronic means.

43 **Section 25** of this bill makes the amendatory provisions of this bill applicable to a
 44 postconviction petition for a writ of habeas corpus filed on or after July 1, 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 thereto the
 2 provisions set forth as sections 2, 2.5 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. 2.5.** 1. A petition that challenges the computation of time that the
 13 petitioner has served pursuant to a judgment of conviction or that challenges the
 14 validity of a judgment of conviction may be served by electronic means upon the
 15 officer or other person by whom the petitioner is confined or restrained. A copy
 16 of the petition may also be served by electronic means upon the Attorney General
 17 or any other prosecuting agency.

18 2. A petition filed with the clerk of the district court for the county in which
 19 the conviction occurred pursuant to NRS 34.738 may be filed electronically.

20 3. A response or answer to a petition filed by a prosecuting agency pursuant
 21 to NRS 34.745 may be filed electronically.

22 4. A decision or order prepared by the court pursuant to NRS 34.830 may
 23 be filed electronically. A copy of the decision or order may be served by electronic
 24 means upon the petitioner and the petitioner's counsel. A notice of a decision or
 25 order may be electronically delivered to the petitioner by the clerk of the court.

26 5. The clerk of the court may accept a petition and a response or answer to
 27 the petition that is filed electronically. A petition, response or answer that is filed

electronically may be converted into a printed document and served upon a respondent or petitioner, as applicable, in the same manner as a petition, response or answer that is not filed electronically.

6. A petition, response, answer, order or decision that is filed electronically shall be deemed to be filed on the date that it is filed electronically if it is filed not later than 11:59 p.m. on that date.

Sec. 3. A petition for a writ of habeas corpus that challenges the computation of time that the petitioner has served pursuant to a judgment of conviction 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.
Dept. No.

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

.....
Petitioner,

v.

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

.....
Respondent.

INSTRUCTIONS:

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

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

(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 an Affidavit in Support of Request to Proceed in Forma Pauperis. 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.

(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.

(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.

(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.

(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 or electronically delivered to the respondent and one copy must be mailed or electronically delivered 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:

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

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
45
46
47
48
49
50
51
52
53

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:

(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 or subsequent additional petitions, applications or motions, give the same information as above, list them on a separate sheet and attach.

(c) 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 or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(d) 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.)

.....

.....

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
45
46
47
48
49
50
51
52
53

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

4 If "yes," give the following information:

5 (a) Name of court:

6 (b) Case number:

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

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

10 (a) Number assigned to your grievance:

11 (b) Result of grievance:

12 (c) Did you complete all levels of the grievance procedure? Yes
13 No

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

16 18. If any of the grounds being raised in this petition have been
17 submitted for review and resolution by way of the grievance process,
18 explain why you are again raising these grounds. (You must relate
19 specific facts in response to this question. Your response may be included
20 on paper which is 8 1/2 by 11 inches attached to the petition. Your
21 response may not exceed five handwritten or typewritten pages in length.)
22

23

24

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

30 (a) Ground one:

31

32 Supporting FACTS (Tell your story briefly without citing cases or law.): .
33

34

35 (b) Ground two:

36

37 Supporting FACTS (Tell your story briefly without citing cases or law.): .
38

39

40 (c) Ground three:

41

42 Supporting FACTS (Tell your story briefly without citing cases or law.): .
43

44

45 (d) Ground four:

46

47 Supporting FACTS (Tell your story briefly without citing cases or law.): .
48

49

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

52 EXECUTED at on the day of the month of of
53 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
45
46
47
48
49
50
51
52

.....
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
(PLEASE SIGN THE APPROPRIATE METHOD YOU WISH TO USE)

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

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I,, hereby certify that on this day of the month of of the year, I electronically delivered a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS (COMPUTATION OF TIME) addressed to:

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

.....
*Electronic mail address or other
electronic means for service*
.....

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

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

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

14 34.370 1. A petition for a writ of habeas corpus must be verified by the
15 petitioner or the petitioner's counsel. If the petition is verified by counsel, counsel
16 shall also verify that the petitioner personally authorized counsel to commence the
17 action.

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

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

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

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

36 34.700 1. Except as provided in subsection 3, a pretrial petition for a writ of
37 habeas corpus based on alleged lack of probable cause or otherwise challenging the
38 court's right or jurisdiction to proceed to the trial of a criminal charge may not be
39 considered unless:

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

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

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

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

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

50 3. The court may extend, for good cause, the time to file a petition. Good
51 cause shall be deemed to exist if the transcript of the preliminary hearing or of the
52 proceedings before the grand jury is not available within 14 days after the accused's
53 initial appearance and the court shall grant an ex parte application to extend the

1 time for filing a petition. All other applications may be made only after appropriate
2 notice has been given to the prosecuting ~~attorney~~ agency.

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

4 34.720 The provisions of NRS 34.720 to 34.830, inclusive, and ~~section~~
5 sections 2.5 and 3 of this act apply only to petitions for writs of habeas corpus in
6 which the petitioner:

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

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

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

12 34.722 As used in NRS 34.720 to 34.830, inclusive, and ~~section~~ sections
13 2.5 and 3 of this act, unless the context otherwise requires, "petition" means a
14 ~~postconviction~~ petition ~~for habeas corpus~~ *to obtain relief from a judgment of*
15 *conviction or sentence or to challenge the computation of time a person has*
16 *served* filed pursuant to NRS 34.724.

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

18 34.724 1. Any person convicted of a crime and under sentence of death or
19 imprisonment who claims that the conviction was obtained, or that the sentence was
20 imposed, in violation of the Constitution of the United States or the Constitution or
21 laws of this State, or who, after exhausting all available administrative remedies,
22 claims that the time the person has served pursuant to the judgment of conviction
23 has been improperly computed ~~[,]~~ may ~~[, without paying a filing fee.]~~ file a
24 ~~postconviction~~ petition ~~for a writ of habeas corpus~~ *to obtain relief from the*
25 *judgment of conviction or sentence or to challenge the computation of time that*
26 *the person has served. A person must not be required to pay a filing fee to file such a*
27 *petition.*

28 2. Such a petition:

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

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

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

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

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

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

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

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

52 4. The court shall not appoint counsel to represent a person for the purpose of
53 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 or electronic means upon the officer or other person by whom the petitioner is confined or restrained. A copy of the petition must be served by mail or electronic means upon ~~[-~~

~~(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.*

~~[-]~~ 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.

~~[-]~~ 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.
Dept. No.

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

.....
Petitioner,

v.

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

.....
Respondent.

INSTRUCTIONS:

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

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

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

~~[(3)]~~ (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 within its custody, name the Director of the Department of Corrections.

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

~~[(6)]~~ (7) 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 privilege for the proceeding in which you claim your counsel was 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 **or electronically**

delivered 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:

(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:

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
45
46
47
48
49
50
51
52
53

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

(PLEASE SIGN THE APPROPRIATE METHOD OF SERVICE YOU WISH TO USE)

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
.....

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I,, hereby certify that on this day of the month of of the year, I electronically delivered 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
.....

.....
Electronic mail address or other electronic means for service
.....

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

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

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

5 3. A petition must not challenge both the validity of a judgment of conviction
6 or sentence and the computation of time that the petitioner has served pursuant to
7 ~~that~~ a judgment ~~of conviction~~. If a petition improperly challenges both the
8 validity of a judgment of conviction or sentence and the computation of time that
9 the petitioner has served pursuant to ~~that~~ a judgment ~~of conviction~~, the district
10 court for the appropriate county shall resolve that portion of the petition that
11 challenges the validity of the judgment of conviction or sentence and dismiss the
12 remainder of the petition without prejudice.

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

14 34.745 1. ~~If a petition challenges the validity of a judgment of conviction~~
15 ~~or sentence and is the first petition filed by the petitioner, the~~ **The** judge or justice
16 shall order the ~~district attorney or the Attorney General, whichever is appropriate,~~
17 **prosecuting agency** to:

18 (a) File ~~the~~

- 19 ~~(1) A~~ a response or an answer to the petition ~~;~~ and
20 ~~(2) If an evidentiary hearing is required pursuant to NRS 34.770, a return,~~
21 ~~to~~ within 45 days or a longer period fixed by the judge or justice; or

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

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

26 ~~(a) File:~~

- 27 ~~(1) A response or an answer to the petition; and~~
28 ~~(2) A return,~~
29 ~~to~~ within 45 days or a longer period fixed by the judge or justice.
30 ~~(b) Take other action that the judge or justice deems appropriate.~~

31 ~~3.~~ An order entered pursuant to subsection 1 ~~for 2~~ must be in substantially
32 the following form, with appropriate modifications if the order is entered by a judge
33 of the Court of Appeals or a justice of the Supreme Court:

34
35 Case No.....
36 Dept. No.....
37

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

40
41
42 Petitioner,

43
44 v.

45 ORDER

46
47 Respondent.

48
49 Petitioner filed a petition for a writ of habeas corpus on (month)
50 (day), (year). The court has reviewed the petition and has determined
51 that a response would assist the court in determining whether petitioner is
52 illegally imprisoned and restrained of petitioner's liberty. Respondent shall,
53 within 45 days after the date of this order, answer or otherwise respond to

1 the petition ~~[and file a return]~~ in accordance with the provisions of NRS
 2 34.360 to 34.830, inclusive ~~[]~~, *and section 3 of this act.*

3
 4 Dated (month) (day), (year)

5
 6
 7 District Judge

8
 9 ↪ A copy of the order must be served on the petitioner or the petitioner's counsel,
 10 the respondent, the Attorney General and ~~[the district attorney of the county in~~
 11 ~~which the petitioner was convicted-~~
 12 ~~—4.]~~, *if applicable, any other prosecuting agency.*

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

20 ~~[5.] 4.~~ If the judge or justice relies on the records of the court in entering an
 21 order pursuant to this section, those records must be made a part of the record of the
 22 proceeding before entry of the order.

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

24 34.750 1. A petition may allege that the petitioner is unable to pay the costs
 25 of the proceedings or to employ counsel. If the court is satisfied that the allegation
 26 of indigency is true and the petition is not dismissed summarily, the court may
 27 appoint counsel to represent the petitioner. In making its determination, the court
 28 may consider, among other things, the severity of the consequences facing the
 29 petitioner and whether:

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

33 2. If the court determines that the petitioner is unable to pay all necessary
 34 costs and expenses incident to the proceedings of the trial court and the reviewing
 35 court, including court costs, stenographic services, printing and reasonable
 36 compensation for legal services, all costs must be paid from money appropriated to
 37 the office of the State Public Defender for that purpose. After appropriations for
 38 that purpose are exhausted, money must be allocated to the office of the State
 39 Public Defender from the Reserve for Statutory Contingency Account for the
 40 payment of the costs, expenses and compensation.

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

44 (a) The date the court orders the filing of ~~[an] a response or~~ answer ; ~~[and a~~
 45 ~~return:]~~ or

46 (b) The date of counsel's appointment,

47 ↪ whichever is later. If it has not previously been filed, the *response or* answer by
 48 the respondent must be filed within 15 days after receipt of the supplemental
 49 pleadings and include any response to the supplemental pleadings.

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

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

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

2 34.760 1. ~~[The]~~ *A response or* answer must ~~[state]~~ :

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

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

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

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

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

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

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

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

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

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

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

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

48 34.780 1. The Nevada Rules of Civil Procedure, to the extent that they are
49 not inconsistent with NRS 34.360 to 34.830, inclusive, *and [section] sections 2.5*
50 *and 3 of this act* apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive
51 ~~[, and [section] sections 2.5 and 3 of this act.~~

52 2. After the writ has been granted and a date set for the hearing, a party may
53 invoke any method of discovery available under the Nevada Rules of Civil

1 Procedure if, and to the extent that, the judge or justice for good cause shown grants
2 leave to do so.

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

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

7 34.800 1. A petition may be dismissed if delay in the filing of the petition:

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

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

16 2. A period exceeding 5 years between the filing of a judgment of conviction,
17 an order imposing a sentence of imprisonment or a decision on direct appeal of a
18 judgment of conviction and the filing of a petition challenging the validity of a
19 judgment of conviction creates a rebuttable presumption of prejudice to the State.
20 In a motion to dismiss the petition based on that prejudice, the respondent or the
21 State of Nevada must specifically plead laches. The petitioner must be given an
22 opportunity to respond to the allegations in the pleading before a ruling on the
23 motion is made.

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

25 34.810 1. The court shall dismiss a petition *that challenges the validity of a*
26 *judgment of conviction or sentence* if the court determines that:

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

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

33 (1) Presented to the trial court;

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

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

38 ~~unless~~ unless the court finds both cause for the failure to present the grounds and actual
39 prejudice to the petitioner.

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

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

49 ~~3.~~ 4. Pursuant to subsections 1 and ~~2.~~ 3, the petitioner has the burden of
50 pleading and proving specific facts that demonstrate:

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

53 (b) Actual prejudice to the petitioner.

1 ↳ The petitioner shall include in the petition all prior proceedings in which the
2 petitioner challenged the same *judgment of* conviction or sentence.

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

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

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

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

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

12 34.820 1. If a petitioner has been sentenced to death and the petition is the
13 first one challenging the validity of the petitioner's *judgment of* conviction or
14 sentence, the court shall:

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

16 (b) Stay execution of the judgment pending disposition of the petition and the
17 appeal.

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

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

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

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

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

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

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

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

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

42 34.830 1. Any order that finally disposes of a petition, whether or not an
43 evidentiary hearing was held, must contain specific findings of fact and conclusions
44 of law supporting the decision of the court.

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

51 3. Whenever a decision or order described in this section is entered by the
52 district court, the clerk of the court shall prepare a notice in substantially the

1 following form and mail or electronically deliver a copy of the notice to each
2 person listed in subsection 2:

3
4 Case No.....
5 Dept. No.....

6
7 IN THE JUDICIAL DISTRICT COURT OF THE
8 STATE OF NEVADA IN AND FOR THE COUNTY OF

9
10
11 Petitioner,

12
13 v.

14 NOTICE OF ENTRY OF
15 DECISION OR ORDER

16
17
18 Respondent.

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

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

28
29 Clerk of court

30 (SEAL) By
31 Deputy

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

33 34.960 1. At any time after the expiration of the period during which a
34 motion for a new trial based on newly discovered evidence may be made pursuant
35 to NRS 176.515, a person who has been convicted of a felony may petition the
36 district court in the county in which the person was convicted for a hearing to
37 establish the factual innocence of the person based on newly discovered evidence.
38 A person who files a petition pursuant to this subsection shall serve notice and a
39 copy of the petition upon the ~~district attorney of the county in which the conviction~~
40 ~~was obtained and the Attorney General.] prosecuting agency.~~

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

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

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

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

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

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

1 (c) If some or all of the newly discovered evidence alleged in the petition is a
2 biological specimen, that a genetic marker analysis was performed pursuant to NRS
3 176.0918, 176.09183 and 176.09187 and the results were favorable to the
4 petitioner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 8. After a petition is filed pursuant to subsection 1, any prosecuting
48 ~~[-attorney,]~~ *agency*, law enforcement agency or forensic laboratory that is in
49 possession of any evidence that is the subject of the petition shall preserve such
50 evidence and any information necessary to determine the sufficiency of the chain of
51 custody of such evidence.

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

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

4 11. As used in this section:

5 (a) “Biological specimen” has the meaning ascribed to it in NRS 176.09112.

6 (b) “Forensic laboratory” has the meaning ascribed to it in NRS 176.09117.

7 (c) “Genetic marker analysis” has the meaning ascribed to it in NRS
8 176.09118.

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

10 34.970 1. If the court does not dismiss a petition after reviewing the petition
11 in accordance with NRS 34.960, the court shall order the ~~district attorney or the~~
12 ~~Attorney General~~ **prosecuting agency** to file a response to the petition. The court’s
13 order must:

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

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

18 2. The ~~district attorney or the Attorney General~~ **prosecuting agency** shall,
19 not later than 120 days after receipt of the court’s order requiring a response, or
20 within any additional period the court allows, respond to the petition and serve a
21 copy upon the petitioner and, if the **prosecuting agency is the** district attorney, ~~is~~
22 ~~responding to the petition~~.

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

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

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

50 6. If the parties stipulate that the evidence establishes the factual innocence of
51 the petitioner, the court may affirm the factual innocence of the petitioner without
52 holding a hearing. If the prosecuting ~~attorney~~ **agency** does not stipulate that the

1 evidence establishes the factual innocence of the petitioner, a determination of
2 factual innocence must not be made by the court without a hearing.

3 7. If the parties stipulate that the evidence establishes the factual innocence of
4 the petitioner, the prosecuting ~~attorney~~ *agency* makes a motion to dismiss the
5 original charges against the petitioner or, after a hearing, the court determines that
6 the petitioner has proven his or her factual innocence by clear and convincing
7 evidence, the court shall:

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

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

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

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

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

20 34.990 After a petition is filed pursuant to NRS 34.960, if any victim of the
21 crime for which the petitioner was convicted has indicated a desire to be notified
22 regarding any postconviction proceedings, the ~~district attorney~~ *prosecuting*
23 *agency* shall make reasonable efforts to provide notice to such a victim that the
24 petition has been filed and that indicates the time and place for any hearing that
25 may be held as a result of the petition and the disposition thereof.

26 **Sec. 24.1.** NRS 7.155 is hereby amended to read as follows:

27 7.155 The compensation and expenses of an attorney appointed to represent a
28 defendant must be paid from the county treasury ~~unless the proceedings are based~~
29 ~~upon a postconviction petition for habeas corpus~~ ↳ *challenging a judgment of*
30 *conviction or sentence,* in which case the compensation and expenses must be paid
31 from money appropriated to the Office of State Public Defender, but after the
32 appropriation for such expenses is exhausted, money must be allocated to the
33 Office of State Public Defender from the reserve for statutory contingency account
34 for the payment of such compensation and expenses.

35 **Sec. 24.2.** NRS 176.486 is hereby amended to read as follows:

36 176.486 A district court having proper jurisdiction, the Court of Appeals or
37 the Supreme Court, if it has proper jurisdiction, may stay the execution of a
38 sentence of death when a postconviction petition for habeas corpus *challenging a*
39 *judgment of conviction or sentence* has been filed only after appropriate notice has
40 been given to the appropriate respondent in the case.

41 **Sec. 24.3.** NRS 176.487 is hereby amended to read as follows:

42 176.487 When a person under a sentence of death files a proper
43 postconviction petition for habeas corpus ↳ *challenging a judgment of conviction*
44 *or sentence,* a district court, the Court of Appeals or the Supreme Court on a
45 subsequent appeal shall enter a stay of execution if the court finds a stay necessary
46 for a proper consideration of the claims for relief. In making this determination, the
47 court shall consider whether:

48 1. The petition is the first effort by the petitioner to raise constitutional claims
49 for relief after a direct appeal from a conviction and the petition raises claims other
50 than those which could have been raised at trial or on direct appeal.

51 2. The petition is timely filed and jurisdictionally appropriate and does not set
52 forth conclusory claims only.

1 3. If the petition is not the first petition for postconviction relief, it raises
2 constitutional claims which are not procedurally barred by laches, the law of the
3 case, the doctrines of abuse of the writ or successive petition or any other
4 procedural default.

5 4. If the petition is a second or successive petition, it presents substantial
6 grounds upon which relief might be granted and valid justification for the claims
7 not having been presented in a prior proceeding.

8 5. The petition asserts claims based upon specified facts or law which, if true,
9 would entitle the petitioner to relief.

10 6. The court cannot decide legal claims which are properly raised or
11 expeditiously hold an evidentiary hearing on factual claims which are properly
12 raised before the execution of sentence.

13 **Sec. 24.4. Chapter 178 of NRS is hereby amended by adding thereto a**
14 **new section to read as follows:**

15 **1. Except when personal service of a person is ordered by the court or**
16 **required by specific statute, a person who is represented by an attorney may be**
17 **lawfully served with any motion, notice or other legal document by electronic**
18 **means if the office of the attorney representing the person has the ability to**
19 **receive and store the motion, notice or other legal document electronically.**

20 **2. In addition to any other document required by the court, a person who**
21 **uses electronic means pursuant to subsection 1 to electronically serve any motion,**
22 **notice or other legal document that is required to be filed with the court shall**
23 **include with the original document filed with the court evidence of the electronic**
24 **transmittal of the legal document.**

25 **3. A court clerk may accept a motion, notice or other legal document that is**
26 **filed electronically. A motion, notice or other legal document that is filed**
27 **electronically must contain an image of the signature of the prosecuting attorney.**

28 **4. If a court clerk accepts a motion, notice or other legal document that is**
29 **filed electronically pursuant to subsection 3, the court clerk shall acknowledge**
30 **receipt of the motion, notice or other legal document by an electronic time stamp**
31 **and shall electronically return the motion, notice or other legal document with**
32 **the electronic time stamp to the prosecuting attorney. A motion, notice or other**
33 **legal document may be converted into a printed document and served upon a**
34 **defendant in the same manner as a motion, notice or other legal document that is**
35 **not filed electronically.**

36 **5. A motion, notice or other legal document that is filed or served**
37 **electronically shall be deemed to be filed or served on the date that it is filed or**
38 **served electronically if it is filed or served not later than 11:59 p.m. on that date.**

39 **Sec. 24.5. NRS 178.4871 is hereby amended to read as follows:**

40 178.4871 A person who has filed a postconviction petition for habeas corpus
41 **⊞ challenging a judgment of conviction or sentence:**

- 42 1. Must not in any case be released on the person's own recognizance.
43 2. Must not be admitted to bail pending a review of the petition unless:
44 (a) The petition is filed in the proper jurisdiction;
45 (b) The petition presents substantial questions of law or fact and does not
46 appear to be barred procedurally;
47 (c) The petitioner has made out a clear case on the merits; and
48 (d) There are exceptional circumstances deserving of special treatment in the
49 interests of justice.

50 **Sec. 24.6. NRS 178.4873 is hereby amended to read as follows:**

51 178.4873 If a district court denies a postconviction petition for habeas corpus
52 **⊞ challenging a judgment of conviction or sentence,** the petitioner must not be
53 released on the petitioner's own recognizance or admitted to bail pending any

1 appeal. If the petition is granted and a stay of the order granting relief is not
2 entered, the district court shall admit the petitioner to bail pending appeal if the
3 respondent files a notice of appeal.

4 **Sec. 25.** The amendatory provisions of this act do not apply to a
5 postconviction petition for habeas corpus filed pursuant to NRS 34.724 before July
6 1, 2023.

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

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

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

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

13 (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.