SENATE BILL NO. 53–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014
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Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain postconviction petitions for writs of habeas corpus. (BDR 3-156)

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

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EXPLANATION – Matter in **_bolded italics_** is new; matter between brackets **[omitted material]** is material to be omitted.

AN ACT relating to criminal procedure; requiring an incarcerated person to exhaust all available administrative remedies before filing a postconviction petition for a writ of habeas corpus challenging the computation of time the person has served pursuant to a judgment of conviction; requiring a court to dismiss such a petition upon determining that the petitioner has not exhausted all available administrative remedies; requiring the Department of Corrections to establish procedures for the expedited resolution of a challenge to the computation of time that an offender has served under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1   Existing law authorizes a person convicted of a crime and under sentence of
2 death or imprisonment who claims that the time the person has served pursuant to
3 the judgment of conviction has been improperly computed to file a postconviction
4 petition for a writ of habeas corpus to challenge the computation of time that the
5 person has served. (NRS 34.724) **Section 1** of this bill requires a person to exhaust
6 all administrative remedies available for resolving a challenge to the computation
7 of time that he or she has served as set forth in regulations adopted by the
8 Department of Corrections before the person may file such a petition. **Section 2** of
9 this bill requires a court to dismiss such a petition if the court determines that the
10 petitioner has not exhausted all available administrative remedies. **Section 2.5** of
11 this bill requires the Department to establish procedures for the expedited resolution
12 of a challenge to the computation of time that an offender has served that is brought
13 by the offender within 180 days before the offender's projected discharge date as

14 determined by the Department. **Section 3** of this bill provides that the amendatory
15 provisions of this bill do not apply to a postconviction petition for a writ of habeas
16 corpus which challenges the computation of time that a petitioner has served that is
17 filed on or before the effective date of this bill.

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

1   **Section 1.** NRS 34.724 is hereby amended to read as follows:
2   34.724 1. **[**Any**]** *Except as otherwise provided in subsection*
3 *3, any* person convicted of a crime and under sentence of death or
4 imprisonment who claims that the conviction was obtained, or that
5 the sentence was imposed, in violation of the Constitution of the
6 United States or the Constitution or laws of this State, or who claims
7 that the time the person has served pursuant to the judgment of
8 conviction has been improperly computed, may, without paying a
9 filing fee, file a postconviction petition for a writ of habeas corpus
10 to obtain relief from the conviction or sentence or to challenge the
11 computation of time that the person has served.
12   2. Such a petition:
13   (a) Is not a substitute for and does not affect any remedies which
14 are incident to the proceedings in the trial court or the remedy of
15 direct review of the sentence or conviction.
16   (b) Comprehends and takes the place of all other common-law,
17 statutory or other remedies which have been available for
18 challenging the validity of the conviction or sentence, and must be
19 used exclusively in place of them.
20   **[**(c) Is the only remedy available to an incarcerated person to
21 challenge**]**
22   *3. Before a person may file a petition pursuant to this section*
23 *that challenges* the computation of time that the person has served
24 pursuant to a judgment of conviction **[**.**]** *, the person must exhaust*
25 *all administrative remedies available for resolving a challenge to*
26 *the computation of time that the person has served as set forth in*
27 *regulations adopted by the Department of Corrections.*
28   **Sec. 2.** NRS 34.810 is hereby amended to read as follows:
29   34.810 1. The court shall dismiss a petition if the court
30 determines that:
31   (a) The petitioner's conviction was upon a plea of guilty or
32 guilty but mentally ill and the petition is not based upon an
33 allegation that the plea was involuntarily or unknowingly entered or
34 that the plea was entered without effective assistance of counsel.
35   (b) The petitioner's conviction was the result of a trial and the
36 grounds for the petition could have been:
37   (1) Presented to the trial court;

1   (2) Raised in a direct appeal or a prior petition for a writ of
2 habeas corpus or postconviction relief; or
3   (3) Raised in any other proceeding that the petitioner has
4 taken to secure relief from the petitioner's conviction and sentence,
5 ➥ unless the court finds both cause for the failure to present the
6 grounds and actual prejudice to the petitioner.
7   2. A second or successive petition must be dismissed if the
8 judge or justice determines that it fails to allege new or different
9 grounds for relief and that the prior determination was on the merits
10 or, if new and different grounds are alleged, the judge or justice
11 finds that the failure of the petitioner to assert those grounds in a
12 prior petition constituted an abuse of the writ.
13   3. Pursuant to subsections 1 and 2, the petitioner has the
14 burden of pleading and proving specific facts that demonstrate:
15   (a) Good cause for the petitioner's failure to present the claim or
16 for presenting the claim again; and
17   (b) Actual prejudice to the petitioner.
18 ➥ The petitioner shall include in the petition all prior proceedings in
19 which the petitioner challenged the same conviction or sentence.
20   4. ***The court shall dismiss a petition that challenges the***
21 ***computation of time which a petitioner has served pursuant to a***
22 ***judgment of conviction if the court determines that the petitioner***
23 ***has not exhausted all administrative remedies available for***
24 ***resolving a challenge to the computation of time which the***
25 ***petitioner has served as required pursuant to subsection 3 of***
26 ***NRS 34.724.***
27   ***5.*** The court may dismiss a petition that fails to include any
28 prior proceedings of which the court has knowledge through the
29 record of the court or through the pleadings submitted by the
30 respondent.
31   **Sec. 2.5.** Chapter 209 of NRS is hereby amended by adding
32 thereto a new section to read as follows:
33   ***The Department shall adopt regulations to establish procedures***
34 ***for the expedited resolution of a challenge to the computation of***
35 ***time that an offender has served that is brought by the offender***
36 ***within 180 days before the offender's projected discharge date as***
37 ***determined by the Department.***
38   **Sec. 2.7.** NRS 209.432 is hereby amended to read as follows:
39   209.432 As used in NRS 209.432 to 209.451, inclusive, ***and***
40 ***section 2.5 of this act,*** unless the context otherwise requires:
41   1. "Offender" includes:
42   (a) A person who is convicted of a felony under the laws of this
43 State and sentenced, ordered or otherwise assigned to serve a term
44 of residential confinement.

1   (b) A person who is convicted of a felony under the laws of this
2 State and assigned to the custody of the Division of Parole and
3 Probation of the Department of Public Safety pursuant to NRS
4 209.4886 or 209.4888.
5   2. "Residential confinement" means the confinement of a
6 person convicted of a felony to his or her place of residence under
7 the terms and conditions established pursuant to specific statute. The
8 term does not include any confinement ordered pursuant to NRS
9 176A.530 to 176A.560, inclusive, 176A.660 to 176A.690, inclusive,
10 213.15105, 213.15193 or 213.152 to 213.1528, inclusive.
11   **Sec. 3.** The amendatory provisions of this act do not apply to a
12 postconviction petition for a writ of habeas corpus that challenges
13 the computation of time which a petitioner has served pursuant to a
14 judgment of conviction that is filed on or before the effective date of
15 this act.
16   **Sec. 4.** This act becomes effective upon passage and approval.

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