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SENATE BILL NO. 11—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 15, 2016

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the procedure for filing certain postconviction petitions for a writ of habeas corpus. (BDR 3-378)

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

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

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AN ACT relating to criminal procedure; requiring an offender to exhaust all available administrative remedies before filing a postconviction petition for a writ of habeas corpus challenging the computation of time that the offender has served; requiring the Department of Corrections to adopt regulations; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes an offender who is convicted of a crime and under a  
2 sentence of imprisonment who claims that the time served by the offender has not  
3 been properly computed to file a postconviction petition for a writ of habeas  
4 corpus. (NRS 34.724)  
5 **Section 1** of this bill requires an offender to exhaust all administrative remedies  
6 available to resolve a challenge to the computation of time that the offender has  
7 served before the offender may file such a petition. **Section 2** of this bill requires a  
8 court to dismiss such a petition if the court determines that the offender has not  
9 exhausted all available administrative remedies.  
10 **Section 3** of this bill requires the Department of Corrections to adopt  
11 regulations to establish procedures for the resolution of a challenge to the  
12 computation of time that an offender has served that is brought within 180 days  
13 immediately preceding the date projected by the Department for the release of the  
14 offender.



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 person convicted of a crime and under  
3 sentence of death or imprisonment who claims that the conviction  
4 was obtained, or that the sentence was imposed, in violation of the  
5 Constitution of the United States or the Constitution or laws of this  
6 State, or who , *after exhausting all available administrative*  
7 *remedies*, claims that the time the person has served pursuant to the  
8 judgment of conviction has been improperly computed, may,  
9 without paying a filing fee, file a postconviction petition for a writ  
10 of habeas corpus to obtain relief from the conviction or sentence or  
11 to challenge the 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 the computation of time that the person has served  
22 pursuant to a judgment of conviction **H** , *after all available*  
23 *administrative remedies have been exhausted*.

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

25       34.810 1. The court shall dismiss a petition if the court  
26 determines that:

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

31       (b) The petitioner's conviction was the result of a trial and the  
32 grounds for the 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  
35 habeas corpus or postconviction relief; or

36               (3) Raised in any other proceeding that the petitioner has  
37 taken to secure relief from the petitioner's conviction and sentence,  
38       ➤ unless the court finds both cause for the failure to present the  
39 grounds and actual prejudice to the petitioner.

40       2. A second or successive petition must be dismissed if the  
41 judge or justice determines that it fails to allege new or different  
42 grounds for relief and that the prior determination was on the merits



1 or, if new and different grounds are alleged, the judge or justice  
2 finds that the failure of the petitioner to assert those grounds in a  
3 prior petition constituted an abuse of the writ.

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

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

8 (b) Actual prejudice to the petitioner.

9 ➔ The petitioner shall include in the petition all prior proceedings in  
10 which the petitioner challenged the same conviction or sentence.

11 4. *The court shall dismiss a petition that challenges the*  
12 *computation of time that the petitioner has served pursuant to a*  
13 *judgment of conviction if the court determines that the petitioner*  
14 *did not exhaust all available administrative remedies to resolve*  
15 *such a challenge as required by NRS 34.724.*

16 5. The court may dismiss a petition that fails to include any  
17 prior proceedings of which the court has knowledge through the  
18 record of the court or through the pleadings submitted by the  
19 respondent.

20 **Sec. 3.** Chapter 209 of NRS is hereby amended by adding  
21 thereto a new section to read as follows:

22 *The Department shall adopt regulations to establish procedures*  
23 *for the expedited resolution of a challenge to the computation of*  
24 *time that an offender has served which is brought by the offender*  
25 *within 180 days immediately preceding the date projected by the*  
26 *Department for the release of the offender.*

27 **Sec. 4.** NRS 209.432 is hereby amended to read as follows:

28 209.432 As used in NRS 209.432 to 209.451, inclusive, *and*  
29 *section 3 of this act*, unless the context otherwise requires:

30 1. "Offender" includes:

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

34 (b) A person who is convicted of a felony under the laws of this  
35 State and assigned to the custody of the Division of Parole and  
36 Probation of the Department of Public Safety pursuant to NRS  
37 209.4886 or 209.4888.

38 2. "Residential confinement" means the confinement of a  
39 person convicted of a felony to his or her place of residence under  
40 the terms and conditions established pursuant to specific statute. The  
41 term does not include any confinement ordered pursuant to NRS  
42 176A.530 to 176A.560, inclusive, 176A.660 to 176A.690, inclusive,  
43 213.15105, 213.15193 or 213.152 to 213.1528, inclusive.

44 **Sec. 5.** The amendatory provisions of this act do not apply to a  
45 postconviction petition for a writ of habeas corpus that challenges



1 the computation of time which a petitioner has served pursuant to a  
2 judgment of conviction that is filed before January 1, 2018.

3 **Sec. 6.** This act becomes effective:

4 1. Upon passage and approval for the purposes of adopting  
5 regulations and performing any other preparatory administrative  
6 tasks that are necessary to carry out the provisions of this act; and

7 2. On January 1, 2018, for all other purposes.

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