
SENATE BILL NO. 435—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 24, 2003

Referred to Committee on Judiciary

SUMMARY—Requires leave of district court to be obtained before filing of certain subsequent postconviction petitions for writ of habeas corpus. (BDR 3-434)

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 writs of habeas corpus; requiring leave of the district court to be obtained before the filing of certain subsequent postconviction petitions for writ of habeas corpus; and providing other matters properly relating thereto.

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

1 **Section 1.** Chapter 34 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 ***1. Notwithstanding the provisions of any other statute, if a***
4 ***person previously filed a postconviction petition for writ of habeas***
5 ***corpus containing any claim challenging a conviction or sentence,***
6 ***and if the previous proceeding resulted in an adjudication on the***
7 ***merits of any claim or resulted in a dismissal based on the***
8 ***timeliness provisions of NRS 34.726, the person shall not file a***
9 ***subsequent petition containing any claim challenging the same***
10 ***conviction or sentence, unless the person first applies for, and***
11 ***obtains, leave of the appropriate district court pursuant to this***
12 ***section.***

13 ***2. To apply for leave of court pursuant to this section, the***
14 ***applicant must:***



- 1 (a) *File an application with the appropriate clerk of the district*
2 *court for the county as described in subsection 1 of NRS 34.738*
3 *titled "Application for Leave to File Subsequent Petition for Writ*
4 *of Habeas Corpus"; and*
5 (b) *Attach a copy of the proposed postconviction petition for*
6 *writ of habeas corpus as an exhibit to the application.*
7 3. *The application:*
8 (a) *Must contain a complete description of all prior*
9 *proceedings in any court in which the applicant challenged the*
10 *same judgment or sentence;*
11 (b) *Must name as the respondent the officer or other person by*
12 *whom the petitioner is confined or restrained; and*
13 (c) *Must be served upon the respondent or respondents, the*
14 *district attorney in the county in which the application is filed and*
15 *the Attorney General.*
16 4. *The applicant has the burden of pleading and proving*
17 *specific facts which demonstrate that the filing of the petition, if*
18 *permitted, would be lawful and proper pursuant to the standards*
19 *set forth in subsection 8.*
20 5. *The respondent, through the district attorney or the*
21 *Attorney General, whichever is appropriate, shall respond to the*
22 *application in writing within 30 days after service, and shall state*
23 *whether the claims contained within the proposed petition meet*
24 *the standards set forth in subsection 8 for the filing of a*
25 *subsequent petition.*
26 6. *The application and the response of the respondent must*
27 *be:*
28 (a) *Presented promptly to the court by the clerk of the court;*
29 *and*
30 (b) *Examined expeditiously by the judge to whom the*
31 *application and response are assigned, who shall determine*
32 *whether the applicant has met his burden of demonstrating that*
33 *the filing of the subsequent petition is lawful and proper pursuant*
34 *to the standards set forth in subsection 8.*
35 7. *The court shall deny the application if the court determines*
36 *that the applicant has not demonstrated that the filing of the*
37 *proposed petition would be lawful and proper pursuant to the*
38 *standards set forth in subsection 8. Otherwise, the court shall*
39 *grant the application.*
40 8. *The court shall deny the application if the court determines*
41 *that:*
42 (a) *The applicant has previously filed a postconviction petition*
43 *for writ of habeas corpus containing any claim challenging the*
44 *same conviction or sentence, the previous proceeding resulted in*
45 *an adjudication of any of the claims on the merits and:*



- 1 (1) *The proposed petition fails to allege new or different*
2 *grounds for relief not presented in the prior petition;*
3 (2) *New and different grounds are alleged in the proposed*
4 *petition, the failure of the applicant to assert those grounds in a*
5 *prior petition would constitute an abuse of the writ and the*
6 *applicant has failed to demonstrate cause for the failure to present*
7 *the grounds and actual prejudice to the applicant; or*
8 (3) *The claims contained within the proposed petition fail to*
9 *satisfy the standards for the presentation of claims set forth in*
10 *paragraph (a) or (b) of subsection 1 of NRS 34.810; or*
11 (b) *The applicant has previously filed a postconviction petition*
12 *for writ of habeas corpus containing any claim challenging the*
13 *same conviction or sentence, and:*
14 (1) *The previous proceeding resulted either in an*
15 *adjudication of any of the claims on the merits or in a dismissal*
16 *based on the timeliness provisions of NRS 34.726; and*
17 (2) *The filing of the proposed petition would not be timely*
18 *based on the timeliness provisions of NRS 34.726, and the*
19 *applicant has not demonstrated good cause for delay.*
20 9. *The court may, at its discretion, appoint counsel to assist*
21 *the applicant in accordance with the standards set forth in*
22 *subsection 1 of NRS 34.750.*
23 10. *Upon the determination by the court to grant or deny the*
24 *application, the court shall make specific findings of fact and*
25 *conclusions of law regarding whether the applicant has met his*
26 *burden of demonstrating that the filing of the subsequent petition*
27 *is lawful and proper pursuant to the standards set forth in*
28 *subsection 8 or whether the applicant has failed to do so.*
29 11. *The aggrieved party may appeal to the Supreme Court*
30 *from the order and decision of the district court by filing a notice*
31 *of appeal with the clerk of the district court within 15 days after*
32 *service of written notice of entry of the order. If the order appealed*
33 *from is an order granting the application, the district court shall*
34 *permit the provisional filing of the petition and stay the*
35 *proceedings on the petition pending the appeal.*
36 12. *The court shall strike from the court record, nunc pro*
37 *tunc, any subsequent petition that is filed in violation of the*
38 *provisions of this section.*
39 13. *As used in this section, "subsequent petition" means:*
40 (a) *A postconviction petition for writ of habeas corpus*
41 *containing any claim challenging a conviction or sentence, which*
42 *is filed, or sought to be filed, subsequent to the adjudication on the*
43 *merits of any of the claims contained within a previous*
44 *postconviction petition for writ of habeas corpus which contained*
45 *any claim challenging the same conviction or sentence; or*



1 ***(b) A postconviction petition for writ of habeas corpus***
2 ***containing any claim challenging a conviction or sentence that is***
3 ***filed, or sought to be filed, subsequent to the dismissal based on***
4 ***the timeliness provisions of NRS 34.726 of a previous***
5 ***postconviction petition for writ of habeas corpus which contained***
6 ***any claim challenging the same conviction or sentence.***
7 **Sec. 2.** NRS 34.722 is hereby amended to read as follows:
8 34.722 As used in NRS 34.720 to 34.830, inclusive, ***and***
9 ***section 1 of this act,*** unless the context otherwise requires,
10 “petition” means a postconviction petition for habeas corpus filed
11 pursuant to NRS 34.724.

