

Amendment No. 79

Senate Amendment to Senate Bill No. 3	(BDR 3-411)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

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

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

KMN/NCA



Date: 4/3/2019

S.B. No. 3—Revises provisions governing postconviction petitions for a writ of habeas corpus that challenge the computation of time served in incarceration by an offender. (BDR 3-411)



SENATE BILL NO. 3—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing postconviction petitions for a writ of habeas corpus that challenge the computation of time served in incarceration by an offender. (BDR 3-411)

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 ~~formatted material~~ is material to be omitted.

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 the offender has served; revising provisions governing the county in which an offender must file a postconviction petition for a writ of habeas corpus challenging the computation of time the offender has served; requiring the Department of Corrections to adopt regulations concerning expedited resolution of certain challenges to the computation of time an offender has served; 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 and who claims that the time served by the offender has been improperly computed to file a postconviction petition for a writ of habeas corpus. (NRS 34.724) **Section 1** of this bill requires an offender to exhaust all administrative remedies available to resolve a challenge to the computation of time that the offender has served before the offender may file such a petition. **Section 3** of this bill requires a court to dismiss without prejudice a petition for a writ of habeas corpus that challenges the computation of time that the offender has served if the court determines that the offender has not exhausted all available administrative remedies. **Section 4** of this bill requires the Department of Corrections to adopt regulations to establish procedures for the resolution of a challenge to the computation of time that an offender has served that is brought within 180 days immediately preceding the expiration date ~~projected~~ of the offender's term of imprisonment as calculated by the Department. ~~[for the release of the offender.]~~ **Section 5** of this bill makes a conforming change.

Existing law further requires a petition for a writ of habeas corpus challenging the validity of a conviction or sentence to be filed with the clerk of the district court for the county in which the conviction occurred. Existing law also requires any other petition for a writ of habeas corpus to be filed in the district court for the county in which the person is incarcerated. (NRS 34.738) **Section 2** of this bill requires a person incarcerated outside this

20 State, while serving a Nevada sentence, to file such a petition in the First Judicial District
 21 Court in Carson City.

22 **Section 6** of this bill provides that the amendatory provisions of this bill do not apply to a
 23 postconviction petition for a writ of habeas corpus that challenges the computation of time
 24 that a petitioner has served that is filed on or before January 1, 2020.

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

11 2. Such a petition:

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

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

18 (c) Is the only remedy available to an incarcerated person to challenge the
 19 computation of time that the person has served pursuant to a judgment of
 20 conviction ~~+~~, *after all available administrative remedies have been exhausted*.

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

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

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

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

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

35 4. The court shall not appoint counsel to represent a person for the purpose of
 36 subsection 3.

37 **Sec. 2.** NRS 34.738 is hereby amended to read as follows:

38 34.738 1. A petition that challenges the validity of a conviction or sentence
 39 must be filed with the clerk of the district court for the county in which the
 40 conviction occurred. Any other petition must be filed with the clerk of ~~the district~~
 41 ~~court for the~~ :

42 (a) The district court for the county in which the petitioner is incarcerated ~~+~~;
 43 or

1 *(b) ~~##~~ The First Judicial District Court, if the petitioner is incarcerated*
2 *outside this State while serving a term of imprisonment imposed by a court of this*
3 *State, ~~in Carson City.~~*

4 2. A petition that is not filed in the district court for the appropriate county:

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

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

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

16 **Sec. 3.** NRS 34.810 is hereby amended to read as follows:

17 34.810 1. The court shall dismiss a petition if the court determines that:

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

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

24 (1) Presented to the trial court;

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

27 (3) Raised in any other proceeding that the petitioner has taken to secure
28 relief from the petitioner's conviction and sentence,

29 **↳** unless the court finds both cause for the failure to present the grounds and actual
30 prejudice to the petitioner.

31 2. A second or successive petition must be dismissed if the judge or justice
32 determines that it fails to allege new or different grounds for relief and that the prior
33 determination was on the merits or, if new and different grounds are alleged, the
34 judge or justice finds that the failure of the petitioner to assert those grounds in a
35 prior petition constituted an abuse of the writ.

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

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

40 (b) Actual prejudice to the petitioner.

41 **↳** The petitioner shall include in the petition all prior proceedings in which the
42 petitioner challenged the same conviction or sentence.

43 4. *The court shall dismiss a petition ~~that~~ without prejudice if:*

44 *(a) The petition challenges the computation of time that the petitioner has*
45 *served pursuant to a judgment of conviction ~~if the~~; and*

46 *(b) The court determines that the petitioner did not exhaust all available*
47 *administrative remedies to resolve such a challenge as required by NRS 34.724.*

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

1 **Sec. 4.** Chapter 209 of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 *The Department shall adopt regulations to establish procedures for the*
4 *expedited resolution of a challenge to the computation of time that an offender*
5 *has served which is brought by the offender within 180 days immediately*
6 *preceding the expiration date [projected] of his or her term of imprisonment as*
7 *calculated by the Department . [for the release of the offender.]*

8 **Sec. 5.** NRS 209.432 is hereby amended to read as follows:

9 209.432 As used in NRS 209.432 to 209.451, inclusive, *and section 4 of this*
10 *act*, unless the context otherwise requires:

11 1. "Offender" includes:

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

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

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

22 **Sec. 6.** The amendatory provisions of this act do not apply to a
23 postconviction petition for a writ of habeas corpus that challenges the computation
24 of time which a petitioner has served pursuant to a judgment of conviction that is
25 filed before January 1, 2020.

26 **Sec. 7.** This act becomes effective:

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

30 2. On January 1, 2020, for all other purposes.