MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
May 10, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Wednesday, May 10, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Assemblywoman Lesley Cohen, Assembly District No. 29

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Heather Procter, Chief Deputy Attorney General, Office of the Attorney General
Jennifer Noble, Nevada District Attorneys Association
Tonja Brown, Advocates for the Inmates and the Innocent
Annemarie Grant, Advocates for the Inmates and the Innocent

Kimberly Surratt, Nevada Justice Association
Angela Campbell, Advocates for the Inmates and the Innocent

CHAIR SCHEIBLE:
I will open the hearing on Assembly Bill (A.B.) 49.

ASSEMBLY BILL 49 (1st Reprint): Revises provisions relating to criminal procedure. (BDR 3-419)

HEATHER PROCTER (Chief Deputy Attorney General, Office of the Attorney General):
Assembly Bill 49 seeks to amend *Nevada Revised Statutes* (NRS) 34 regarding petitions filed by inmates after they are sentenced for a crime. These petitions are called a writ of habeas corpus or a postconviction petition. Under NRS 34, there are two categories of postconviction habeas corpus petitions: when petitioners challenge their judgment of conviction or sentence; and when petitioners challenge the Nevada Department of Corrections (DOC) computation of time served. There are different procedural requirements for each.

Petitions challenging the judgment of conviction must be filed in the county where the inmate was convicted. Petitions challenging the computation of time must be filed in the county where the inmate is currently incarcerated. A petitioner cannot challenge both his or her judgment of conviction and time computation in a single petition.

Unfortunately, these differences are sometimes buried in legal fine print and can be difficult to navigate in practice. The intent of A.B. 49 is to clarify existing law as to the different procedures and requirements for the two types of petitions. This will make it easier for an inmate to properly file a petition without an attorney, for attorneys who litigate such cases and for district courts that address these petitions.

We seek to clarify and distinguish the two types of petitions through sample forms. Existing law provides a sample petition challenging a judgment of conviction—section 11 of A.B. 49—but not to challenge the computation of time served.

Section 3 of the bill creates the sample petition to challenge a time computation. The petition instructions in section 3 are largely reflected in the

revised instructions in section 11 to more clearly advise inmates as to which petition to use based on their desired challenge.

In NRS 34, the language as to which agency responds to each petition is inconsistent and confusing. This confusion was increased in 2019 when the Legislature attempted to create clarity with a subtype of postconviction petition called a petition for factual innocence.

Section 2 of A.B. 49 defines "prosecuting agency" as the one that prosecuted the crime. While the prosecuting agency is generally the county district attorney, the Office of the Attorney General (OAG) is also authorized to prosecute certain crimes. By contrast, we did not change the section requiring OAG to respond to a time-challenge calculation.

Section 26 repeals the requirement to file a return with the court. A return is a document prepared by the custodian of the petitioner. Generally, DOC demonstrates the person is currently incarcerated or under supervision. Because a responding agency to either type of petition generally provides proof of a judgment of conviction and addresses the custody status of the petitioner in the normal course of litigating such petitions, there is no need for a return. Instead, we moved the requirement to file a proof of judgment or custody to the responding agency for a response or answer to the petition. This is included in sections 13, 14 and 16 of the bill.

The wholesale clarification of NRS 34 continues in several sections of A.B. 49, including minor clerical changes to update the law's original language from the 1980s. One change addresses language that alternately uses the terms conviction, sentence and judgment of conviction to make it consistent as to the two types of petitions. We now use the term "judgment of conviction or sentence" for the first type of petition and "judgment of conviction" only with regard to time-credit challenges. It is also used when referencing specific documents, such as statutes that address timely filing of a petition or in sections 8, 9, 18 and 19 and in the petition form in section 11 of A.B. 49 when the specific date of the document is again required. Our intent is to use consistent terms to easily identify which statute or process is applied to the two types of petitions.

The OAG submitted an amendment (Exhibit C) to add a section to A.B. 49 we inadvertently left out of the original bill and the first amendment adopted by the

Assembly. The amendment addresses a provision in NRS 178.4873 regarding custody status. When a court grants a postconviction petition, NRS addresses the petitioner's bail status. When a habeas corpus petitioner receives relief, bail applies only in the context of a petition challenging a judgment of conviction or sentence, not a petition challenging time credits. Therefore, the intent of the amendment, consistent with the existing provision of A.B. 49, is to provide clarity as to which type of petition such relief applies.

Assembly Bill 49 does not seek to change the law or procedural processes already in place for postconviction actions. The purpose and intent is to clarify the differences between the two types of petitions and provide guidance within the existing statutes to explain procedural rules associated with each type. Assembly Bill 49 preserves inmate rights while promoting judicial economy and clarity in the law.

JENNIFER NOBLE (Nevada District Attorneys Association):
My day job is chief of the appellate division of the Office of the Washoe County District Attorney. We also handle postconviction litigation. Assembly Bill 49 will clarify things for filing petitions with the proper persons. Inmates often file petitions in the wrong court and then we have to transfer them. That delays the time to get a court to review of whatever is going on with the calculation of their sentence.

TONJA BROWN (Advocates for the Inmates and the Innocent):
Advocates for the Inmates and the Innocent supports A.B. 49. You have our proposed amendment (Exhibit D) to establish factual innocence posthumously through a new section, section 28. We kept the factual innocence law—NRS 34.910—and just added those words.

We have added to NRS 34 "newly discovered evidence defined" and language concerning posthumous treatment of such. In NRS 34.960, subsection 1, we added language concerning the expiration period during the motion for new trial based on newly discovered evidence.

In NRS 34.960, subsection 4, paragraph (b), subparagraph (2), sub-subparagraph (IV), we added "or the petition was denied and the Nevada Supreme Court 'noted a potential jurisdictional defect.' *Wilkinson vs. State* November 28, 2011. 373P. 3d 973 (Nev, 2011)." We also added section 28, when the bill becomes effective, July 1, 2023, upon passage and approval.

I have also provided you some reasons, Exhibit D, why we would like to see these changes to A.B. 49.

A motion for discovery contains the handwritten notes of a prosecuting attorney. This came to me by way of a court order in 2009. Second Judicial District Court Judge Brent Adams issued an order for the Washoe County district attorney to turn over the entire file—well over 220 documents—in the case. It included a lot of exculpatory evidence that would have exonerated the defendant and discredited the State's prosecution. This information would have been crucial. The court also made decisions on the credibility of witnesses.

On the first two pages, the district attorney wrote "okay" on our motion for discovery; he wrote "no" or showed no materiality, which was the exculpatory evidence he did not turn over. On the third page, there is no showing of materiality. Included is a 1988 court order directing the district attorney to turn over the evidence. In 2009, it was shown he never did so.

I cannot speak for the dead. I have a copy of a letter from the defendant predicting his own death. Who better to speak to us than someone who has been wrongfully convicted of a crime he or she did not commit? He writes in part,

> When I first got to prison I realized that if this could happen to me, it could happen to anyone, including family or other loved ones. I went to work in the prison law library, then took a couple of years of law through correspondence courses as well as others offered by the State College system at the prison, and learned through research that it didn't have to happen. … So I took the case into my own hands and started from there. …
>
> The simple truth is that because the judicial system in Nevada, as well as the parole board, are motivated by what is politically favorable rather than what is right; guilt or innocence is totally irrelevant to the process itself. The American public wants criminals in jail because they are tired of being afraid in the streets and tired of being victims. That fear causes the elected prosecutors to be entirely motivated to make certain that for every crime there is a criminal. As such, I feel the need to face the reality that I will spend the rest of my life in prison for a crime I did not commit,

> whether my life ends tomorrow by the act of another or in twenty years by natural causes. Signed Noah Klein #28074, Nevada State Prison, April 2001.

Prior to his death, Noah learned the truth about what the court had done. The Office of the Washoe County District Attorney and his attorney were ready to file motions for a new trial and bail when we got word he had died.

There is no remedy for this unless the law changes. Families left behind lack the means to move forward with exoneration. We become a victim of the system ourselves. I get hateful phone calls from people because of what has happened, not just to my family but everybody else.

Nevada has issued posthumous exonerations for four cases from 1907 and 1987; the rest were judicially exonerated because the cases are pending. If an innocent inmate dies, it is over. I hired a private investigator to find the real perpetrator of the crime in 2011.

ANNEMARIE GRANT (Advocates for the Inmates and the Innocent):
I support A.B. 49 but would like to talk about our proposed amendment, Exhibit D, adding posthumous exoneration language and an explanation (Exhibit E) thereof. You also have my responses to possible questions about the amendment (Exhibit F).

The OAG testified at the Assembly Committee on Judiciary it does not support the amendment of posthumous language because it changes the process. There are no other remedies or processes for wrongfully convicted prisoners who died in prison besides the Legislature passing A.B. 49 with our amendment, Exhibit D. The OAG has attempted to clean up the language of the bill.

We reached out to the Attorney General's personal staff months before the Legislature began and asked for their input on our amendment. We heard nothing back. The reasons the OAG provided to Assembly for not supporting our amendment are disingenuous. Even after their loved ones' deaths, there is ongoing stigma attached to the surviving families. The Conviction Integrity Committee—the criminal assistant district attorney, chief of Major Violators Unit and the appellate chief—in Washoe County does not give a fair review to those who have experienced alleged prosecutorial misconduct.

During his presentation about the OAG, Washoe County District Attorney Christopher Hicks told the Assembly Committee on Judiciary his office seeks justice for all Nevadans and, as the prosecuting agency, testified that is particularly important to him when it comes to the criminal justice system and reform.

The OAG does not just talk the talk; they walk the walk. Our amendment, Exhibit D, to A.B. 49 is the walk to that talk. What if someone whom District Attorney Hicks had represented died in prison before he found exculpatory evidence? What would he tell the inmate's family? So what if he is dead, right? It does not matter if a petition for posthumous exoneration was presented to the Nevada Supreme Court and justices opined it was not appealable.

We should recognize the petition for exoneration even when the defendant is deceased and that an order denying such a petition is appealable. We cannot do that. It is contrary to the appellant's suggestion the Supreme Court is the only body in the State that can set the course for petitions for posthumous exoneration. It is for the Legislature to create a cause of action or a remedy and provide for an appeal. Please support A.B. 49 with our amendment, Exhibit D. These families deserve justice. The ultimate injustice is dying in prison wrongfully convicted due to prosecutorial misconduct by the withholding of exculpatory evidence.

CHAIR SCHEIBLE:
We have received one letter (Exhibit G) in support of A.B. 49. We will close the hearing on A.B. 49.

VICE CHAIR HARRIS:
We will open the hearing on A.B. 371.

ASSEMBLY BILL 371 (1st Reprint): Makes various changes relating to parentage. (BDR 11-140)

ASSEMBLYWOMAN LESLEY COHEN (Assembly District No. 29):
Assembly Bill 371 adopts provisions of the Uniform Parentage Act (UPA). The Uniform Law Commission (ULC) was established in 1892 to provide the United States, plus the District of Columbia, Puerto Rico and the U.S. Virgin Islands, with well-researched and -drafted model acts to bring clarity and stability to critical areas of statutory law across jurisdictions.

The ULC promotes enactment of uniform acts in areas of state law when uniformity is desirable and practical. The ULC has approximately 350 commissioners appointed by the U.S. government in each state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Every ULC commissioner must be an attorney; commissioners often concurrently serve as legislators, judges, legal scholars or members of legislative staff in the realm of family law.

Nevada has adopted the Uniform Premarital Agreement Act, Uniform Deployed Parents Custody and Visitation Act, Uniform Interstate Family Support Act, Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Child Abduction Prevention Act.

During my day job, I am a family law attorney. Unfortunately, Nevada's family law statutes are not particularly well organized, but we are up to date in some ways. The statutes are cobbled together and do not always consider the way we create families these days.

The UPA was originally promulgated in 1973. It removed the legal status of illegitimacy and provided a series of presumptions used to determine a child's legal parentage. In 2002, the UPA was augmented and streamlined. Among other changes, provisions were added permitting a nonjudicial acknowledgement of paternity procedure equivalent to an adjudication of parentage in court. The 2002 update included provisions governing genetic testing and rules for determining the parentage of a child whose conception was not the result of sexual intercourse.

As a uniform law commissioner, I served on the 2017 drafting committee that worked for months on updates. Seven states have enacted that update, including Nevada, which is one of five state legislatures that have introduced the 2017 update. In this legislative session season, 14 states enacted versions of the UPA update.

Nevada Revised Statutes 126 deals with parentage. Little of A.B. 371 covers child custody, divorce and child support, which is in NRS 125. Parentage law is how we determine the parent of a child. If there is a married man and woman, parentage is usually simply defined. However, if you have surrogacy, unmarried parents or a same-sex couple, it becomes more difficult.

As per A.B. 371, the UPA simplifies the parenting process for families, keeping them out of court to address those issues. Sections 3 through 26 relate to definitions. Section 27 notes references to mother or father include any gender. Sections 28 and 29 note sections 28 through 91 are the UPA and do not affect parental rights under the law beyond the Act. Section 31 is jurisdictional. Section 32 is related to disclosure of information. Section 33 states what applies to the Act for a mother applies for a father and vice versa as applicable.

Section 34 of A.B. 371 states how a parent and child relationship is established. Section 35 notes a parent-child relationship extends to every parent and child regardless of the marital status of the parents. Section 36 states a parent-child relationship applies for all purposes. Section 37 lists rebuttable parental presumptions.

Sections 38 and 39 reference acknowledgements of parentage to establish parentage of a child. Section 40 addresses the signing of a denial of parentage by a presumed or alleged genetic parent. Sections 41 through 50 address acknowledgment and denial of parentage forms, including rescission of parentage. Section 51 permits the State Board of Health to adopt regulations regarding the acknowledgement and denial of paternity. Sections 52 through 57 list more definitions.

The genetic testing part of A.B. 371 is in sections 53 through 68. Section 69 states matters to adjudicate parentage are governed by the *Nevada Rules of Civil Procedure*, except as otherwise addressed in the bill. Section 70 lists who can maintain proceedings to adjudicate parentage; Section 71 lists who gets notice of such proceedings. Sections 72 and 73 detail jurisdiction and venue.

Section 74 has to do with the report of genetic testing. Sections 75 and 76 provide for the proceeding to determine whether an alleged genetic parent or presumed parent, respectively, is indeed a parent of a child may be commenced before or after the child becomes an adult if the child initiates the proceeding.

Section 77 of A.B. 371 lists who can commence a proceeding to establish parentage. It also authorizes a person who claims to be a de facto parent of a child to commence a proceeding to establish parentage if the child is less than 18 years of age. It also provides a person who claims to be the de facto parent of a child must be adjudicated as a parent if there is only one other person who

is a parent or has a claim to parentage and the person who claims to be the de facto parent can demonstrate certain facts by clear and convincing evidence.

Section 78 addresses the rules for a parental challenge in the event of an acknowledged parent. Section 79 addresses a challenge to adjudication when a child has an adjudicated parent. Section 80 lists more proceedings for adjudication. Section 81 authorizes a court to adjudicate a child to have more than two parents if it finds the failure to recognize more than two parents would be detrimental to the child.

Section 82 of A.B. 371 allows for temporary child support during the proceedings. Section 83 permits the combination of proceedings to adjudicate parentage. Section 84 permits the commencement of proceedings prior to the birth of the child. Section 85 permits a minor child to be a party to the proceedings and requires a guardian *ad litem* in certain situations. Section 86 requires adjudication of parentage without a jury. Section 87 addresses dismissal without prejudice. Section 88 addresses fees and the child's name change. Section 89 addresses who is bound by parental acknowledgement. Section 90 refers to the importance of uniform law. Section 91 has to do with electronic signatures.

Section 92 relates to the death of a parent of a child conceived by assisted reproduction during the period between the transfer of the gamete or embryo and birth of the child. Section 93 addresses termination of the gestation agreement. Sections 98 through 106 make various other changes to the provisions of existing law concerning assisted reproduction and gestational surrogacy. In particular, section 99 includes a donor is not a parent of a child conceived by assisted reproduction and stipulates the consent of a spouse or domestic partner of a donor is not required. Section 101 states failure to consent on the record does not preclude a finding of parentage if there is clear and convincing evidence of an agreement under certain circumstances.

Section 107 of A.B. 371 addresses the requirements of an enforceable gestational agreement. Section 108 addresses the impact on the agreement of the marriage or domestic partnership of the gestational carrier. Section 109 addresses noncompliance with the gestational agreement.

Section 135 requires the Legislative Counsel Bureau to make appropriate language changes. It makes conforming changes to reflect revisions made to

law after the establishment of the provisions modeled after those of the UPA in sections 28 through 91. The repeal of those unnecessary provisions is in section 136.

KIMBERLY SURRATT (Nevada Justice Association):
The big picture with all of this is we have a legal mess. We do not have procedures; family law attorneys make up most of this as we go along. When we go to the court, we hope for the best. For once, we might have some guidance for all these issues in A.B. 371. You have my proposed amendment (Exhibit H) to section 107 of the bill.

Nevada has made massive parenting law changes over the years. I have worked hard at picking and choosing bits and pieces of the UPA and helping to craft legislation. However, I did not quite have the endurance to vet this bill through the Family Law Section of the State Bar of Nevada to make sure the wording is right. Now, we feel this is something that will help the practice of family law.

Probably one of the best examples I can give is a scenario in which a man believes he is a parent of a child to whom he is genetically related. He raises the child for ten years. Then <23andme.com> or <Ancestry.com> comes along and a DNA test proves somebody else is the child's genetic father. The genetic father comes in and wants to be a parent. We do not have answers in our laws now as to what I do with the parent who is not genetic. How do I bring in the now-genetic father who has been out of the picture for ten years?

Assembly Bill 371 allows for that. It gives us room without having to be relegated to seeing the nongenetic father being pushed aside as a third-party person who is not a real parent. Nongenetic parents will have legal standing as a parent under this law. The bill allows us to move forward in the best interest of the child. The rest of the bill is just a bunch of procedures, which I am begging for in my practice of law. You might ask if other attorneys who practice in this area of law would think we would want to be subject to this? Yes.

SENATOR KRASNER:
Would the bill only allow for more than two persons to be identified as the parents of the child when it is found by a judge to be in the best interest of the child?

MS. SURRATT:
It takes court intervention to make that determination. We must argue that now, but the judge does not have anything to lean on. We are making it up once we take it to the judge. The bill will give us some guidance.

VICE CHAIR HARRIS:
We see proposed changes to uniform acts every Session. Hopefully these UPA revisions pass in Nevada and other jurisdictions adopt it. Assembly Bill 371 will maybe make legal fights less tough on everybody going through the family court system, especially if the children are in other states.

ASSEMBLYWOMAN COHEN:
I want to refer everyone to Ms. Surratt's amendment, Exhibit H. Brigid Duffy, director of the Juvenile Division of the Office of the Clark County District Attorney, has some concern about how this might impact NRS 432B. I will work with her to make sure we are not causing problems for her Office.

MS. BROWN:
Advocates for the Inmates and the Innocent support this darn good bill, A.B. 371.

VICE CHAIR HARRIS:
We will close the hearing on A.B. 371 and open public comment.

MS. GRANT:
My brother Thomas Purdy was murdered by Reno police and the Washoe County Sheriff's Office during a mental health crisis. He was hog-tied for more than 40 minutes and asphyxiated to death.

I am calling upon you as elected officials to do your duty and protect all Nevadans. Please call upon Attorney General Aaron Ford to use his authority under A.B. No. 58 of the 81st Session to open an investigation into the Washoe County jail regarding constitutional violations occurring there.

My brother's murder received no death review by District Attorney Hicks, nor did the asphyxiation deaths of Niko Smith and Justin Thompson. This would lead one to conclude that if you die at the Washoe County Jail while your constitutional rights are being violated, there will be no consequences for the perpetrators.

I am putting you on notice about the crimes against humanity occurring inside that detention facility as we speak. I do not know how anyone can turn a blind eye to it when someone tells him or her what is going on. My family suffers an unimaginable never-ending nightmare. My brother was robbed of his right to due process and to life. Act now before it is too late and other community members in Washoe County lose their life in that deplorable facility.

ANGELA CAMPBELL (Advocates for the Inmates and the Innocent):
I am also calling in regard to the Washoe County Jail and the constitutional rights being dishonored there. There are other things going on: mold on the floors creating an unsanitary environment, food not being inspected, medication not being given to the wards, no extra clothing for warmth.

These problems need to be investigated as well as some of the abuses going on. The Advocates for the Inmates and the Innocent is watching them. We want humane things put in place at the Washoe County Jail and would like you to look into the conditions there.

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VICE CHAIR HARRIS:
We will close public comment. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 1:48 p.m.

RESPECTFULLY SUBMITTED:

_____
Pat Devereux,
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
A.B. 49	C	3	Michael K. Morton / Office of the Attorney General	Proposed Amendment
A.B. 49	D	4	Tonja Brown / Advocates for the Inmates and the Innocent	Proposed Amendment
A.B. 49	E	6	Annemarie Grant / Advocates for the Inmates and the Innocent	Explanation of Proposed Amendment
A.B. 49	F	6	Annemarie Grant / Advocates for the Inmates and the Innocent	Responses to Possible Questions on Proposed Amendment
A.B. 49	G	7	Senator Melanie Scheible	Support Testimony / Tonja Brown Proposed Amendment / Stewart Handt
A.B. 371	H	11	Kimberly Surratt / Nevada Justice Association	Proposed Amendment