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Criminal Procedure; post-convictioll relief

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be eligible for release pursuant to Chapter 416.⁷ Furthermore, a prisoner whose parole⁸ is revoked for a violation of any rule or regulation governing their conduct, must: (a) Forfeit all credits for good behavior earned before parole; (b) serve the entire unexpired term of the original sentence; and (c) not be paroled during their term of imprisonment.⁹

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7. *Id.* sec. 5, at ___ (enacting NEV. REV. STAT. § 213.1099'4).

8. *Id.* sec. 2, at ___ (enacting NEV. REV. STAT. § 213.____) (parolee released on parole pursuant to Chapter 416).

9. *Id.* sec. 6, at ___ (amending NEV. REV. STAT. § 213.1519). *See supra*, note 4 (discussion of credits for good behavior).

Criminal Procedure; post-conviction relief

NEV. REV. STAT. §§ 34.____, 176.____, 177.____, 178.____ (new); §§ 34.370, 34.530, 34.540, 34.710, 34.720, 34.730, 34.750, 34.780, 34.800, 34.820, 34.830, 176.415, 177.315, 177.325, 177.335, 177.345, 177.355, 177.365, 177.375 (amended).

SB 286 (Committee on Judiciary); 1987 STAT. Ch 539

Under existing law, any person unlawfully detained, confined, or restrained may prosecute a writ of habeas corpus¹ and inquire into the reason for such restraint.² A person convicted of a crime and sentenced to death or imprisonment, who claims that the conviction is in violation of the United States Constitution, may file a petition³ for post-conviction relief in the district court.⁴ Chapter 539 provides that a petition for a post-conviction writ of habeas corpus⁵ may not be filed unless the petitioner first files a petition for post-conviction

1. BLACK'S LAW DICTIONARY 638 (6th ed. 1979) (purpose of a writ of habeas corpus is to bring the party before the court, or to release the party from unlawful imprisonment).

2. NEV. REV. STAT. § 34.360. *See also* NEV. CONST. art. V, § 14 (Nevada Constitution gives the governor the power to grant pardons and suspend sentences).

3. NEV. REV. STAT. § 177.355 (amended by 1987 Nev. Stat. ch. 539, sec. 43, at ___) (deadlines for filing supplementary petitions).

4. *Id.* § 177.315 (amended by 1987 Nev. Stat. ch. 539, sec. 39, at ___). *See also id.* § 34.360 (form of petition for post-conviction relief).

5. 1987 Nev. Stat. ch. 539, sec. 7, at ___ (enacting NEV. REV. STAT. 34.____) (form for writ of habeas corpus).

relief.⁶ Furthermore, a post-conviction writ of habeas corpus may be appealed to the supreme court by the petitioner or the State.⁷ If a petition is filed for post-conviction relief or an appeal is pending, the petitioner shall not be released on his own recognizance or admitted to bail.⁸ If a petitioner alleges inability to pay the cost of proceeding or to employ counsel, the court may⁹ appoint counsel.¹⁰

A period of five years between the filing of a judgment of correction, an order imposing a prison sentence, or a decision on direct appeal of a judgment of conviction, and the filing of a petition for a writ of habeas corpus creates a rebuttable presumption¹¹ of prejudice¹² to the state.¹³ Under Chapter 539, in the motion to dismiss based on this prejudice, the state must plead laches.¹⁴ The petitioner must be given an opportunity to respond before a ruling on the motion may be made.¹⁵

Prior law permitted a stay of execution to be granted by the governor, the state board of pardons commissioners, by order of the court, or when an appeal is taken to the Supreme Court of Nevada.¹⁶ Chapter 539 abolishes the authority of the governor to grant a stay of execution¹⁷ and requires appropriate notice to be given to the

6. *Id.* sec. 3 (enacting NEV. REV. STAT. § 34.____) (must file pursuant to post-conviction procedures, in the form and following the procedures provided in sections 28 to 39 of this Act, and petition must be verified by petitioner or counsel). See also NEV. REV. STAT. §§ 34.730 (amended by 1987 Nev. Stat. ch. 539, sec. 13, at ____), 177.315 (amended by 1987 Nev. Stat. ch. 539, sec. 39, at ____) (requires verification). See 1987 Nev. Stat. ch. 539, sec. 30, at ____ (enacting NEV. REV. STAT. § 177.____) (form of petition). See generally NEV. REV. STAT. §§ 177.315-177.385 (post-conviction procedures).

7. 1987 Nev. Stat. ch. 539, sec. 4, at ____ (enacting NEV. REV. STAT. § 34.____). See also *id.* sec. 48, at ____ (enacting NEV. REV. STAT. § 178.____) (appeal must be made within 30 days). Petition for habeas corpus must be in the form shown. *Id.* sec. 7, at ____ (enacting NEV. REV. STAT. § 34.____).

8. *Id.* sec. 48, at ____ (enacting NEV. REV. STAT. § 178.____); *id.* sec. 47, at ____ (enacting NEV. REV. STAT. § 178.____) (if justice requires special treatment and specific conditions are met, petitioner may be admitted to bail).

9. NEV. REV. STAT. § 177.345 (amended by 1987 Nev. Stat. ch. 539, sec. 42, at ____) (prior law required the court to appoint counsel).

10. 1987 Nev. Stat. ch. 539, sec. 42 (amending NEV. REV. STAT. § 177.345), at ____ See also NEV. REV. STAT. § 34.750 (amended by 1987 Nev. Stat. ch. 539, sec. 14, at ____). The Nevada Supreme Court should consider: (1) the difficulty of the issues presented, (2) whether the petitioner is able to comprehend the proceedings, and (3) whether counsel is necessary for discovery. *Id.* The fund of the state public defenders office must pay the cost and expenses of indigent petitioners. *Id.* § 177.345 (amended by 1987 Nev. Stat. ch. 539, sec. 42, at ____).

11. NEV. REV. STAT. § 47.180 (purpose of presumptions).

12. *Id.* § 34.800 (amended by 1987 Nev. Stat. ch. 539, sec. 16, at ____) (specifies grounds petitioner can raise to rebut prejudice charge).

13. *Id.*

14. Nev. R. of Civ. P. § 8(c) (definition of laches).

15. 1987 Nev. Stat. ch. 539, sec. 16, at ____ (amending NEV. REV. STAT. § 34.800).

16. 1967 Nev. Stat. ch. 523, sec. 270, at 1440.

17. *Id.* (repealed by 1987 Nev. Stat. ch. 539, sec. 27, at ____).

respondent of a petition for post-conviction relief in order for the court to stay the execution.¹⁸ If a petitioner files for post-conviction relief, the court must enter a stay of execution if the petitioner is under a death sentence and it is necessary to consider the claim for relief.¹⁹ A respondent may file a petition to dissolve the stay,²⁰ and if the petition or an appeal is denied, the stay of execution must be vacated by the court.²¹ After determination on a petition for post-conviction relief, the court must make a finding of fact and state a conclusion of law.²²

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18. 1987 Nev. Stat. ch. 539, sec. 21, at ___ (enacting NEV. REV. STAT. § 176.____). *But see* NEV. CONST. art. V, § 14 (the governor with the supreme court and attorney general can grant pardons).

19. 1987 Nev. Stat. ch. 539, sec. 22, at ___ (enacting NEV. REV. STAT. § 176.____). The court should consider: (1) whether this is petitioner's first effort to raise constitutional claims; (2) whether the petition was timely filed; (3) if this is not the first attempt for post-conviction relief, whether the petition raises constitutional claims which are not barred by procedural default; (4) whether the petition presents substantial grounds for relief; and (5) whether the claims are based on facts or law which entitle the petitioner to relief if true. *Id.*

20. *Id.* sec. 26, at ___ (enacting Nev. Rev. Stat. § 176.____) (the petition must be filed with the supreme court within 10 days after the entry of a stay of execution).

21. *Id.* sec. 24, at ___ (enacting NEV. REV. STAT. § 176.____); *id.* sec. 25, at ___ (enacting NEV. REV. STAT. § 176.____).

22. *Id.* sec. 35, at ___ (enacting NEV. REV. STAT. § 177.____).

Criminal Procedure; forfeiture of property

NEV. REV. STAT. §§ 179.116, 179.117, 179.1195 (repealed); § 179.____ (new); §§ 31.840, 179.1165, 179.1175, 179.118, 179.1185, 179.119, 200.760, 453.301 (amended).

SB 270 (Committee on Judiciary); 1987 STAT. Ch 571

Prior law specified procedures for the forfeiture of property¹ used in or obtained through criminal activity.² Chapter 571 establishes a uniform forfeiture procedure.³ Property or proceeds⁴ derived from

1. 1987 Nev. Stat. ch. 571, sec. 7, at ___ (enacting NEV. REV. STAT. § 179.____) (definition of property).

2. 1985 Nev. Stat. ch. 478, sec. 4, at 1466.

3. 1987 Nev. Stat. ch. 571, sec. 2, at ___(enacting NEV. REV. STAT. § 179.____).

4. *Id.* sec. 6, at ___(definition of proceeds).