

SENATE BILL NO. 4—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing remittiturs.
(BDR 3-412)

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.

AN ACT relating to criminal procedure; requiring the service of remittiturs; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides, unless there is good cause for delay, that a
2 postconviction petition for a writ of habeas corpus must be filed: (1) within 1 year
3 after entry of the judgment of conviction; or (2) if an appeal has been taken from
4 the judgment, within 1 year after the appellate court issues its remittitur. (NRS
5 34.726) The Nevada Rules of Appellate Procedure require an appellate court to
6 issue a remittitur, under certain circumstances, within 25 days after the entry of
7 judgment. (NRAP 41) Purposes of a remittitur include, without limitation: (1)
8 divesting the appellate court of jurisdiction over an appeal and returning
9 jurisdiction to the district court; (2) formally informing the district court of the
10 appellate court’s final resolution of the appeal; and (3) in the case of an untimely
11 appeal, removing or transferring the matter to the district court and informing the
12 district court that the appellate court never obtained jurisdiction over the appeal.
13 (*Dickerson v. State*, 114 Nev. 1084 (1998)) **Section 1** of this bill requires the clerk
14 of the appellate court to serve a copy of the remittitur upon the petitioner, the
15 petitioner’s attorney, if any, the respondent, the Attorney General and the district
16 attorney of the county where the petitioner was convicted. **Sections 2-4** of this bill
17 make conforming changes.



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 *A copy of any remittitur issued by the appellate court of*
4 *competent jurisdiction pursuant to the rules fixed by the Supreme*
5 *Court pursuant to Section 4 of Article 6 of the Nevada*
6 *Constitution must be served by the clerk of the court upon the*
7 *petitioner and the petitioner's counsel, if any, the respondent, the*
8 *Attorney General and the district attorney of the county in which*
9 *the petitioner was convicted.*

10 **Sec. 2.** NRS 34.720 is hereby amended to read as follows:

11 34.720 The provisions of NRS 34.720 to 34.830, inclusive, *and*
12 *section 1 of this act* apply only to petitions for writs of habeas
13 corpus in which the petitioner:

14 1. Requests relief from a judgment of conviction or sentence in
15 a criminal case; or

16 2. Challenges the computation of time that the petitioner has
17 served pursuant to a judgment of conviction.

18 **Sec. 3.** NRS 34.722 is hereby amended to read as follows:

19 34.722 As used in NRS 34.720 to 34.830, inclusive, *and*
20 *section 1 of this act*, unless the context otherwise requires,
21 "petition" means a postconviction petition for habeas corpus filed
22 pursuant to NRS 34.724.

23 **Sec. 4.** NRS 34.780 is hereby amended to read as follows:

24 34.780 1. The Nevada Rules of Civil Procedure, to the extent
25 that they are not inconsistent with NRS 34.360 to 34.830, inclusive,
26 apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive
27 *⊞, and section 1 of this act.*

28 2. After the writ has been granted and a date set for the hearing,
29 a party may invoke any method of discovery available under the
30 Nevada Rules of Civil Procedure if, and to the extent that, the judge
31 or justice for good cause shown grants leave to do so.

32 3. A request for discovery which is available under the Nevada
33 Rules of Civil Procedure must be accompanied by a statement of the
34 interrogatories or requests for admission and a list of any documents
35 sought to be produced.

36 **Sec. 5.** This act becomes effective on July 1, 2019.

