

**RULE 23. CUSTODY OR RELEASE OF A PRISONER[S] IN A  
HABEAS CORPUS PROCEEDING[S]**

**(a) Transfer of Custody Pending Review.** Pending review of a decision in a habeas corpus proceeding commenced before a court, justice<sub>2</sub> or judge of this state for the release of a prisoner, the person having custody of the prisoner ~~[shall]~~ must not transfer custody to another unless a transfer is directed in accordance with ~~[the provisions of]~~ this Rule and NRS 174.325. When, upon application, a custodian shows the need for a transfer, the court, justice<sub>2</sub> or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

**(b) Detention or Release ~~[of Prisoner]~~ Pending Review of Decision Not to Release.** While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the Supreme Court or Court of Appeals or a justice or judge thereof<sub>2</sub> may order that the prisoner be:

- (1) detained in the custody from which release is sought;
- (2) detained in other appropriate custody; or
- (3) released on personal recognizance, with or without surety.

**(c) Release ~~[of Prisoner]~~ Pending Review of Decision Ordering Release.** While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the Supreme Court or Court of Appeals or a justice or judge thereof orders otherwise — be released on personal recognizance, with or without surety.

**(d) Modification of the Initial Order on Custody.** An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the Supreme Court or Court of Appeals or to a justice or judge thereof, the

order is modified or an independent order regarding custody, release, or surety is issued.