

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 498

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM POST-CONVICTION PROCEDURE ACT; AMENDING SECTION
2 19-2719, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING
3 SECTION 19-4901, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND
4 AMENDING SECTION 19-4902, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
5 A PETITION FOR THE PERFORMANCE OF CERTAIN FINGERPRINT OR DNA TESTING AND
6 TO PROVIDE THAT PETITIONER MAY CHOOSE CERTAIN DNA TESTING LABORATORIES
7 TO PERFORM DNA TESTING AND THAT SUCH TESTING SHALL BE AT PETITIONER'S
8 EXPENSE.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 19-2719, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 19-2719. SPECIAL APPELLATE AND POST-CONVICTION PROCEDURE FOR
14 CAPITAL CASES -- AUTOMATIC STAY. The following special procedures shall be
15 interpreted to accomplish the purpose of eliminating unnecessary delay in
16 carrying out a valid death sentence.

17 (1) When the punishment of death is imposed the time for filing an
18 appeal shall begin to run when the death warrant is filed.

19 (2) The death warrant shall not be filed until forty-two (42) days after
20 the judgment imposing the death sentence has been filed, or, in the event a
21 post-conviction challenge to the conviction or sentence is filed, until the
22 order deciding such post-conviction challenge is filed.

23 (3) Within forty-two (42) days of the filing of the judgment imposing
24 the punishment of death, and before the death warrant is filed, the defendant
25 must file any legal or factual challenge to the sentence or conviction that
26 is known or reasonably should be known.

27 (4) Any remedy available by post-conviction procedure, habeas corpus
28 or any other provision of state law must be pursued according to the
29 procedures set forth in this section and within the time limitations of
30 subsection (3) of this section. The special procedures for fingerprint or
31 forensic DNA testing set forth in sections 19-4901(a)(6) and 19-4902(b)
32 through (~~fg~~), Idaho Code, are fully applicable in capital cases and are
33 subject to the procedures set forth in this section, and must be pursued
34 through a petition filed within the time limitations of subsection (3) of
35 this section or by July 1, 2002, whichever is later.

36 (5) If the defendant fails to apply for relief as provided in this
37 section and within the time limits specified, he shall be deemed to have
38 waived such claims for relief as were known, or reasonably should have been
39 known. The courts of Idaho shall have no power to consider any such claims
40 for relief as have been so waived or grant any such relief.

41 (a) An allegation that a successive post-conviction petition may be
42 heard because of the applicability of the exception herein for issues

1 that were not known or could not reasonably have been known shall not
2 be considered unless the applicant shows the existence of such issues
3 by (i) a precise statement of the issue or issues asserted together
4 with (ii) material facts stated under oath or affirmation by credible
5 persons with first hand knowledge that would support the issue or issues
6 asserted. A pleading that fails to make a showing of excepted issues
7 supported by material facts, or which is not credible, must be summarily
8 dismissed.

9 (b) A successive post-conviction pleading asserting the exception
10 shall be deemed facially insufficient to the extent it alleges matters
11 that are cumulative or impeaching or would not, even if the allegations
12 were true, cast doubt on the reliability of the conviction or sentence.

13 (c) A successive post-conviction pleading asserting the exception
14 shall be deemed facially insufficient to the extent it seeks
15 retroactive application of new rules of law.

16 (6) In the event the defendant desires to appeal from any
17 post-conviction order entered pursuant to this section, his appeal must
18 be part of any appeal taken from the conviction or sentence. All issues
19 relating to conviction, sentence and post-conviction challenge shall be
20 considered in the same appellate proceeding.

21 (7) If post-conviction challenge is made under this section, questions
22 raised thereby shall be heard and decided by the district court within
23 ninety (90) days of the filing of any motion or petition for relief timely
24 filed as provided by this section. The court shall give first priority
25 to capital cases. In the event the district court fails to act within the
26 time specified, the supreme court of Idaho shall, on its own motion or the
27 motion of any party, order the court to proceed forthwith, or if appropriate,
28 reassign the case to another judge. When the supreme court intervenes as
29 provided, it shall set a reasonable time limit for disposition of the issues
30 before the district court.

31 (8) The time limit provided in subsection (7) of this section for
32 disposition of post-conviction claims may be extended only upon a showing
33 of extraordinary circumstances which would make it impossible to fairly
34 consider defendant's claims in the time provided. Such showing must
35 be made under oath and the district court's finding that extraordinary
36 circumstances exist for extending the time shall be in writing and shall be
37 immediately reported to the supreme court, which shall at once independently
38 consider the sufficiency of the circumstances shown and determine whether an
39 extension of time is warranted.

40 (9) When a judgment imposing the penalty of death is filed, the clerk
41 and the reporter shall begin preparation of the transcripts of the trial, and
42 other proceedings, and the clerk's transcript.

43 (10) When the procedures specified in this section and section 19-2827,
44 Idaho Code, have been carried out and a remittitur issued, and an execution
45 date set as provided by law, the defendant shall be deemed to have exhausted
46 all state remedies.

47 (11) Any successive petition for post-conviction relief not within the
48 exception of subsection (5) of this section shall be dismissed summarily.
49 Notwithstanding any other statute or rule, the order of dismissal shall not
50 be subject to any motion to alter, amend or reconsider. Such order shall not

1 be subject to any requirement for the giving of notice of the court's intent
2 to dismiss. The order of dismissal shall not be appealable.

3 (12) A stay of execution while the special appellate procedures
4 specified herein are followed and during the pendency of automatic review of
5 death sentences shall be automatically entered by the clerk of the supreme
6 court at the time the district court transmits to the supreme court the
7 report required by section 19-2827, Idaho Code. If the sentence is upheld,
8 the clerk shall dissolve such stay when the remittitur is filed. Thereafter
9 the district court shall set anew execution date.

10 SECTION 2. That Section 19-4901, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 19-4901. REMEDY -- TO WHOM AVAILABLE -- CONDITIONS. (a) Any person who
13 has been convicted of, or sentenced for, a crime and who claims:

14 (1) That the conviction or the sentence was in violation of the
15 constitution of the United States or the constitution or laws of this
16 state;

17 (2) That the court was without jurisdiction to impose sentence;

18 (3) That the sentence exceeds the maximum authorized by law;

19 (4) That there exists evidence of material facts, not previously
20 presented and heard, that requires vacation of the conviction or
21 sentence in the interest of justice;

22 (5) That his sentence has expired, his probation, or conditional
23 release was unlawfully revoked by the court in which he was convicted,
24 or that he is otherwise unlawfully held in custody or other restraint;

25 (6) Subject to the provisions of section 19-4902(b) through (~~fg~~), Idaho
26 Code, that the petitioner is innocent of the offense; or

27 (7) That the conviction or sentence is otherwise subject to collateral
28 attack upon any ground of alleged error heretofore available under any
29 common law, statutory or other writ, motion, petition, proceeding, or
30 remedy: may institute, without paying a filing fee, a proceeding under
31 this act to secure relief.

32 (b) This remedy is not a substitute for nor does it affect any remedy
33 incident to the proceedings in the trial court, or of an appeal from
34 the sentence or conviction. Any issue which could have been raised on
35 direct appeal, but was not, is forfeited and may not be considered in
36 post-conviction proceedings, unless it appears to the court, on the basis
37 of a substantial factual showing by affidavit, deposition or otherwise,
38 that the asserted basis for relief raises a substantial doubt about the
39 reliability of the finding of guilt and could not, in the exercise of due
40 diligence, have been presented earlier. Except as otherwise provided
41 in this act, it comprehends and takes the place of all other common law,
42 statutory, or other remedies heretofore available for challenging the
43 validity of the conviction or sentence. It shall be used exclusively in
44 place of them.

45 SECTION 3. That Section 19-4902, Idaho Code, be, and the same is hereby
46 amended to read as follows:

1 19-4902. COMMENCEMENT OF PROCEEDINGS -- VERIFICATION -- FILING
2 -- SERVICE -- DNA TESTING. (a) A proceeding is commenced by filing an
3 application verified by the applicant with the clerk of the district
4 court in which the conviction took place. An application may be filed at
5 any time within one (1) year from the expiration of the time for appeal
6 or from the determination of an appeal or from the determination of a
7 proceeding following an appeal, whichever is later. Facts within the
8 personal knowledge of the applicant and the authenticity of all documents
9 and exhibits included in or attached to the application must be sworn to
10 affirmatively as true and correct. The supreme court may prescribe the form
11 of the application and verification. The clerk shall docket the application
12 upon its receipt and promptly bring it to the attention of the court and
13 deliver a copy to the prosecuting attorney.

14 (b) A petitioner may, at any time, file a petition before the trial
15 court that entered the judgment of conviction in his or her case for the
16 performance of fingerprint or forensic deoxyribonucleic acid (DNA) testing
17 on evidence that was secured in relation to the trial which resulted in
18 his or her conviction but which was not subject to the testing that is now
19 requested because the technology for the testing was not available at the
20 time of trial. ~~The petition must be filed by July 1, 2002, or within one (1)~~
21 ~~year after the filing of the judgment of conviction, whichever is later.~~ The
22 clerk shall docket the application upon its receipt and promptly bring it to
23 the attention of the court and deliver a copy to the prosecuting attorney.

24 (c) The petitioner must present a prima facie case that:

- 25 (1) Identity was an issue in the trial which resulted in his or her
26 conviction; and
27 (2) The evidence to be tested has been subject to a chain of custody
28 sufficient to establish that such evidence has not been substituted,
29 tampered with, replaced or altered in any material aspect.

30 (d) A petitioner who pleaded guilty in the underlying case may file a
31 petition under subsection (b) of this section.

32 (e) The trial court shall allow the testing under reasonable conditions
33 designed to protect the state's interests in the integrity of the evidence
34 and the testing process upon a determination that:

- 35 (1) The result of the testing has the scientific potential to produce
36 new, noncumulative evidence that would show that it is more probable
37 than not that the petitioner is innocent; and
38 (2) The testing method requested would likely produce admissible
39 results under the Idaho rules of evidence.

40 (ef) In the event the fingerprint or forensic DNA test results
41 demonstrate, in light of all admissible evidence, that the petitioner is not
42 the person who committed the offense, the court shall order the appropriate
43 relief.

44 (fg) The cost of the forensic DNA test shall be at the petitioner's
45 expense, except to the extent the petitioner qualifies for the test at
46 public expense pursuant to chapter 8, title 19, Idaho Code, in which case
47 the fingerprint or forensic DNA test shall be performed by, and paid for by
48 funds allocated for, Idaho state police forensic services. The petitioner
49 may choose an ISO/IEC 17025 or an American society of crime laboratory
50 directors/laboratory accreditation board accredited DNA testing laboratory

1 to perform the DNA testing. Such testing shall be at the petitioner's
2 expense.