

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 358

BY CANNON

AN ACT

1 RELATING TO THE UNIFORM POST-CONVICTION PROCEDURE ACT; AMENDING SECTION
2 19-4901, IDAHO CODE, TO PROVIDE FOR THE CONSIDERATION OF FORENSIC SCI-
3 ENTIFIC EVIDENCE, TO DEFINE TERMS, TO PROVIDE THAT FORENSIC SCIENTIFIC
4 EVIDENCE MAY BE UNDERMINED IN CERTAIN INSTANCES, AND TO MAKE TECHNICAL
5 CORRECTIONS; AMENDING SECTION 19-4902, IDAHO CODE, TO PROVIDE FOR
6 THE CONSIDERATION OF FORENSIC SCIENTIFIC EVIDENCE, TO PROVIDE THAT AN
7 EXPERT SHALL NOT BE LIABLE IN CERTAIN INSTANCES, AND TO MAKE TECHNICAL
8 CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
9 DATE.
10

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

12 SECTION 1. That Section 19-4901, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 19-4901. REMEDY -- TO WHOM AVAILABLE -- CONDITIONS. (a) Any person who
15 has been convicted of, or sentenced for, a crime and who claims:

16 (1) That the conviction or the sentence was in violation of the consti-
17 tution of the United States or the constitution or laws of this state;

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

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

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

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

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

28 (7) That the conviction or sentence is otherwise subject to collateral
29 attack upon any ground of alleged error heretofore available under any
30 common law, statutory or other writ, motion, petition, proceeding, or
31 remedy; or

32 (8) That relevant forensic scientific evidence was not ascertainable
33 through the exercise of reasonable diligence that was offered by a per-
34 son at his trial and that new forensic scientific evidence undermines
35 forensic scientific evidence presented at trial: may institute, with-
36 out paying a filing fee, a proceeding under this act to secure relief.

37 (b) This remedy is not a substitute for nor does it affect any rem-
38 edy incident to the proceedings in the trial court, or of an appeal from
39 the sentence or conviction. Any issue ~~which~~ that could have been raised
40 on direct appeal, but was not, is forfeited and may not be considered in
41 post-conviction proceedings, unless it appears to the court, on the basis of
42 a substantial factual showing by affidavit, deposition or otherwise, that

1 the asserted basis for relief raises a substantial doubt about the reliabil-
 2 ity of the finding of guilt and could not, in the exercise of due diligence,
 3 have been presented earlier. Except as otherwise provided in this act, it
 4 comprehends and takes the place of all other common law, statutory, or other
 5 remedies heretofore available for challenging the validity of the convic-
 6 tion or sentence. It shall be used exclusively in place of them.

7 (c) For purposes of this section:

8 (1) "Forensic science" means the application of scientific or techni-
 9 cal practices to the recognition, collection, analysis, and interpre-
 10 tation of evidence for criminal law.

11 (2) "Forensic scientific evidence" includes scientific or technical
 12 knowledge; a forensic analyst's or expert's scientific or techni-
 13 cal knowledge or opinion; reports or testimony offered by experts or
 14 forensic analysts; scientific standards set by an authorized standard
 15 setting body, including the national institute of standards and tech-
 16 nology; or a scientific method or technique from which the evidence is
 17 derived.

18 (3) Forensic scientific evidence is undermined when new research or in-
 19 formation exists that repudiates:

20 (i) The foundational validity of the challenged forensic scien-
 21 tific evidence by showing that the scientific method or technique
 22 cannot be reliably and accurately repeated or reproduced in a sci-
 23 entific setting; or

24 (ii) The applied validity of the challenged forensic scientific
 25 evidence by showing that the scientific method or technique is not
 26 reliable in practice.

27 SECTION 2. That Section 19-4902, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 19-4902. COMMENCEMENT OF PROCEEDINGS -- VERIFICATION -- FILING --
 30 SERVICE -- DNA TESTING -- FORENSIC SCIENTIFIC EVIDENCE. (a) A proceeding is
 31 commenced by filing an application verified by the applicant with the clerk
 32 of the district court in which the conviction took place. An application may
 33 be filed at any time within one (1) year from the expiration of the time for
 34 appeal or from the determination of an appeal or from the determination of a
 35 proceeding following an appeal, whichever is later. Facts within the per-
 36 sonal knowledge of the applicant and the authenticity of all documents and
 37 exhibits included in or attached to the application must be sworn to affirma-
 38 tively as true and correct. The supreme court may prescribe the form of the
 39 application and verification. The clerk shall docket the application upon
 40 its receipt and promptly bring it to the attention of the court and deliver a
 41 copy to the prosecuting attorney.

42 (b) A petitioner may, at any time, file a petition before the trial
 43 court that entered the judgment of conviction in his or her case for the
 44 performance of fingerprint or forensic deoxyribonucleic acid (DNA) testing
 45 on evidence that was secured in relation to the trial ~~which that~~ resulted in
 46 his or her conviction but ~~which that~~ was not subject to the testing that is
 47 now requested because the technology for the testing was not available at
 48 the time of trial. The clerk shall docket the application upon its receipt

1 and promptly bring it to the attention of the court and deliver a copy to the
2 prosecuting attorney.

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

4 (1) Identity was an issue in the trial ~~which~~ that resulted in his or her
5 conviction; and

6 (2) The evidence to be tested has been subject to a chain of custody suf-
7 ficient to establish that such evidence has not been substituted, tam-
8 pered with, replaced or altered in any material aspect.

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

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

14 (1) The result of the testing has the scientific potential to produce
15 new, noncumulative evidence that would show that it is more probable
16 than not that the petitioner is innocent; and

17 (2) The testing method requested would likely produce admissible re-
18 sults under the Idaho rules of evidence.

19 (f) In the event the fingerprint or forensic DNA test results demon-
20 strate, in light of all admissible evidence, that the petitioner is not the
21 person who committed the offense, the court shall order the appropriate re-
22 lief.

23 (g) The cost of the forensic DNA test shall be at the petitioner's ex-
24 pense, except to the extent the petitioner qualifies for the test at public
25 expense pursuant to chapter 8, title 19, Idaho Code, in which case the fin-
26 gerprint or forensic DNA test shall be performed by, and paid for by funds
27 allocated for, Idaho state police forensic services, provided the requested
28 method of testing or specific technology is validated by the lab, within the
29 laboratory accreditation scope, and laboratory staff are qualified and sat-
30 isfactorily performing proficiency testing in the testing method. If the
31 laboratory does not offer the specific type of testing required, the Idaho
32 state police shall not be required to outsource the testing or in any way pay
33 for or reimburse any entity for the testing to be performed. For the purposes
34 of this subsection, "validated" means the accumulation of test data within
35 the laboratory to demonstrate that established methods and procedures per-
36 form as expected in the laboratory. The petitioner may choose an ISO/IEC
37 17025 or an American society of crime laboratory directors/laboratory ac-
38 creditation board accredited DNA testing laboratory to perform the DNA test-
39 ing. Such testing shall be at the petitioner's expense.

40 (h) A petitioner filing under section 19-4901(a)(8), Idaho Code, may,
41 at any time, file a petition before the trial court that entered the judg-
42 ment of conviction in his case. The clerk shall docket the application upon
43 its receipt, promptly bring it to the attention of the court, and deliver a
44 copy to the prosecuting attorney. The petitioner must show that relevant
45 forensic scientific evidence was not ascertainable through the exercise of
46 reasonable diligence that was offered by the petitioner at his trial, and
47 that the new forensic scientific evidence undermines forensic scientific
48 evidence presented at trial.

49 (i) If the court finds by a preponderance of evidence that the peti-
50 tioner would have been convicted absent the relevant forensic scientific

1 evidence presented in accordance with subsection (h) of this section, the
2 court may dismiss the petition. A court may grant appropriate relief if the
3 court finds by a preponderance of evidence that, had the evidence been pre-
4 sentated at trial, the petitioner would not have been convicted.

5 (j) In determining whether relevant forensic scientific evidence was
6 ascertainable through the exercise of reasonable diligence on or before a
7 specific date, the court shall consider whether the forensic scientific evi-
8 dence has changed since the applicable trial or date of entry of guilty plea.

9 (k) The provisions of this section do not create liability for an expert
10 who repudiates his original opinion provided at a hearing or trial or whose
11 opinion has been undermined by later scientific research or technological
12 advancements.

13 SECTION 3. An emergency existing therefor, which emergency is hereby
14 declared to exist, this act shall be in full force and effect on and after
15 July 1, 2023.