

## STATEMENT OF PURPOSE

### RS23235

The purpose of this legislation is to update Chapter 27, Title 19, Idaho Code, to prevent the premature expenditure of state funds on potentially unnecessary court actions. Idaho Code §19-2719 has been interpreted by the Idaho Supreme Court to require capital defendants to file claims of ineffective assistance of appellate counsel "within a reasonable time after they are known or reasonably could have been known." State v. Paz, 123 Idaho 758, 760 (1993). The Court has recognized claims not raised by appellate counsel are "known" when the Appellant's Brief is filed. Id. The Court has not defined a "reasonable time," but Chapter 19-2719 applies a 42 day time limit to most post-conviction issues. As a result, capital defendants must file claims of ineffective assistance of appellate counsel within 42 days of the Appellant's Brief, or risk waiving them. The amendment would clarify that a capital defendant must file any claim that his appellate counsel was ineffective, within 42 days of the completion of his unified appeal, unless the case is remanded for further proceedings. Once a defendant receives a death sentence, the Office of the Idaho State Appellate Public Defender (SAPD) is typically appointed to represent the defendant on direct appeal before the Supreme Court and in post-conviction proceedings before the district court. When the SAPD files an Appellant's Brief on behalf of a capital defendant, that brief includes challenges to both the denial of post-conviction relief and the underlying conviction. However, the filing of an Appellant's Brief does not end a capital defendant's unified appeal nor the SAPD's involvement in the case. The appeal continues for many months after the Appellant's Brief is filed, and includes the filing of a Reply Brief, presentation of Oral Argument to the Supreme Court, and upon request or order, may include supplemental briefing. When a capital defendant claims the SAPD was ineffective on appeal, the SAPD is still representing the capital defendant in the unified appeal; as a result, the SAPD is representing the capital client at the same time the client is claiming the SAPD is ineffective. The SAPD also has a conflict and must provide the client with conflict counsel in the successive case, paid from operating funds. If the capital defendant's appeal is successful, the question of ineffective assistance of appellate counsel often becomes moot. This legislation would clarify that claims which allege the ineffective assistance of appellate counsel must be filed within 42 days of the completion of the unified appeal. This would provide clarity on what is a reasonable time to file such claims, prevent conflicts of interest for the SAPD, and eliminate unnecessary spending on claims which could ultimately become moot.

### FISCAL NOTE

This legislation only clarifies the time in which claims must be filed. It will, thus, not increase the costs of capital case litigation for either the state or counties. This will not increase expenditures from the General Fund. In some cases it may reduce the expenditure of state funds on litigation which ultimately becomes moot.

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