TITLE 19
CRIMINAL PROCEDURE

CHAPTER 49
UNIFORM POST-CONVICTION PROCEDURE ACT

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

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

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

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

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

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

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

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

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

[19-4901, added 1967, ch. 25, sec. 1, p. 42; am. 1975, ch. 8, sec. 1, p. 13; am. 1986, ch. 126, sec. 1, p. 326; am. 2001, ch. 317, sec. 2, p. 1129; am. 2010, ch. 135, sec. 2, p. 288.]

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

(b) A petitioner may, at any time, file a petition before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint or forensic deoxyribonucleic acid (DNA) testing on evidence that was secured in relation to the trial which resulted in his or her conviction but which was not subject to the testing that is now requested because the technology for the testing was not available at the time of trial. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

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

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

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material aspect.

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

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

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

(2) The testing method requested would likely produce admissible results under the Idaho rules of evidence.

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

(g) The cost of the forensic DNA test shall be at the petitioner's expense, except to the extent the petitioner qualifies for the test at public expense pursuant to chapter 8, title 19, Idaho Code, in which case the fingerprint or forensic DNA test shall be performed by, and paid for by funds allocated for, Idaho state police forensic services, provided the requested method of testing or specific technology is validated by the lab, within the laboratory accreditation scope, and laboratory staff are qualified and satisfactorily performing proficiency testing in the testing method. If the laboratory does not offer the specific type of testing required, the Idaho state police shall not be required to outsource the testing or in any way pay for or reimburse any entity for the testing to be performed. For the purposes of this subsection, "validated" means the accumulation of test data within the laboratory to demonstrate that established methods and procedures perform as expected in the laboratory. The petitioner may choose an ISO/IEC 17025 or an American society of crime laboratory directors/laboratory accreditation board accredited DNA testing laboratory to perform the DNA testing. Such testing shall be at the petitioner's expense.

[19-4902, added 1967, ch. 25, sec. 2, p. 42; am. 1979, ch. 133, sec. 1, p. 428; am. 1988, ch. 76, sec. 1, p. 131; am. 1993, ch. 265, sec. 1, p. 898; am. 1996, ch. 420, sec. 2, p. 1399; am. 2001, ch. 317, sec. 3, p. 1129; am. 2010, ch. 135, sec. 3, p. 289; am. 2012, ch. 180, sec. 1, p. 471.]

19-4903. APPLICATION -- CONTENTS. The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 19-4902. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

[19-4903, added 1967, ch. 25, sec. 3, p. 42.]

19-4904. INABILITY TO PAY COSTS. If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, witness fees and expenses, and legal services, these costs and expenses, and a court-appointed attorney may be made available to the applicant in the preparation of the application, in the trial court, and on appeal, and paid, on order of the district court, by the county in which the application is filed.

[19-4904, added 1967, ch. 25, sec. 4, p. 42; am. 1993, ch. 265, sec. 2, p. 898.]

19-4905. COSTS OF STATE. All costs and expenses necessarily incurred by the state in the proceedings shall be paid by the county in which the application is filed.

[19-4905, added 1967, ch. 25, sec. 5, p. 42.]

19-4906. PLEADINGS AND JUDGMENT ON PLEADINGS. (a) Within 30 days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply within 20 days to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or, direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

(c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

[19-4906, added 1967, ch. 25, sec. 6, p. 42.]

19-4907. HEARING -- EVIDENCE -- ORDER -- PRESENCE OF APPLICANT. (a) The application shall be heard in, and before any judge of, the court in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pre-trial, discovery and appellate procedures are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

(b) The applicant should be produced at the hearing on a motion attacking a sentence where there are substantial issues of fact as to evidence in which he participated. The sentencing court has discretion to ascertain whether the claim is substantial before granting a full evidentiary hearing and requiring the applicant to be present.

[19-4907, added 1967, ch. 25, sec. 7, p. 42.]

19-4908. WAIVER OF OR FAILURE TO ASSERT CLAIMS. All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

[19-4908, added 1967, ch. 25, sec. 8, p. 42.]

19-4909. REVIEW. A final judgment entered under this act may be reviewed by the Supreme Court of this state on appeal brought either by the applicant or by the state within forty-two (42) days from the entry of the judgment. On appeal the state shall be represented by the attorney general.

[19-4909, added 1967, ch. 25, sec. 9, p. 42; am. 1985, ch. 75, sec. 1, p. 150.]

19-4910. UNIFORMITY OF INTERPRETATION. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[19-4910, added 1967, ch. 25, sec. 10, p. 42.]

19-4911. SHORT TITLE. This act may be cited as the Uniform Post-Conviction Procedure Act.

[19-4911, added 1967, ch. 25, sec. 11, p. 42.]