

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 620

BY EDUCATION COMMITTEE

AN ACT

RELATING TO BIOLOGICAL EVIDENCE; AMENDING SECTION 19-4902, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DNA TESTING; AMENDING CHAPTER 55, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-5519, IDAHO CODE, TO REQUIRE THAT CERTAIN BIOLOGICAL EVIDENCE BE RETAINED AND PRESERVED, TO PROVIDE REQUIREMENTS RELATING TO THE RETENTION AND PRESERVATION OF CERTAIN BIOLOGICAL EVIDENCE AND TO DEFINE TERMS; AMENDING SECTION 6-904B, IDAHO CODE, TO PROVIDE AN EXCEPTION TO GOVERNMENTAL LIABILITY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 19-4901, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 19-4902, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ underlying case 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 or at the time that the petitioner entered a guilty plea in the underlying case. 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 or was an issue when the petitioner pled guilty in the underlying case; 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.

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

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

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

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

11 ~~(fe)~~ In the event the fingerprint or forensic DNA test results demon-
 12 strate, in light of all admissible evidence, that the petitioner is not the
 13 person who committed the offense, the court shall order the appropriate re-
 14 lief.

15 ~~(gf)~~ The cost of the forensic DNA test shall be at the petitioner's ex-
 16 pense, except to the extent the petitioner qualifies for the test at public
 17 expense pursuant to chapter 8, title 19, Idaho Code, in which case the fin-
 18 gerprint or forensic DNA test shall be performed by, and paid for by funds
 19 allocated for, Idaho state police forensic services. The petitioner may
 20 choose an ISO/IEC 17025 or an American society of crime laboratory direc-
 21 tors/laboratory accreditation board accredited DNA testing laboratory to
 22 perform the DNA testing. Such testing shall be at the petitioner's expense.

23 SECTION 2. That Chapter 55, Title 19, Idaho Code, be, and the same is
 24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 25 ignated as Section 19-5519, Idaho Code, and to read as follows:

26 19-5519. RETENTION AND PRESERVATION OF BIOLOGICAL EVIDENCE -- DEFINI-
 27 TIONS. (1) A custodial entity shall retain and preserve all biological evi-
 28 dence collected in connection with any felony crime in which identity is or
 29 was an issue in the underlying case, together with a record showing a chain of
 30 custody for such evidence. Biological evidence shall be preserved in a con-
 31 dition that is suitable for DNA analysis. Such evidence shall be retained
 32 and preserved as follows:

33 (a) Until sixty (60) days after completion of the sentence, including
 34 incarceration, probation or parole, by the offender to whom the biolog-
 35 ical evidence pertains; or

36 (b) During the time that a case remains unresolved.

37 (2) Biological evidence retained and preserved pursuant to this sec-
 38 tion shall be made available for DNA testing pursuant to section 19-4902,
 39 Idaho Code.

40 (3) The investigatory agency shall establish procedures for retaining
 41 and preserving biological evidence. The custodial entity is not required
 42 to preserve biological evidence that is of a size, bulk, quantity or phys-
 43 ical character that renders preservation impracticable. When preservation
 44 of biological evidence is impracticable, the custodial entity shall, before
 45 releasing or disposing of the evidence, remove and preserve those portions
 46 of the evidence likely to contain relevant biological evidence of the crime
 47 in a quantity sufficient to permit future DNA analysis.

48 (4) The custodial entity may petition the court at any time for an or-
 49 der allowing the custodial entity to dispose of the biological evidence. If,

1 after notice to the defendant and a hearing, the court determines by a pre-
 2 ponderance of the evidence that the biological evidence does not have sig-
 3 nificant value for DNA analysis or for other relevant forensic analysis, the
 4 court may order its disposal.

5 (5) Nothing in this section shall be construed to limit the discretion
 6 of a custodial entity relating to the conditions under which biological ev-
 7 idence is retained, preserved or transferred among different custodial en-
 8 tities so long as the evidence is retain and preserved in a condition that is
 9 suitable for DNA analysis.

10 (6) The provisions of this section shall apply to biological evidence
 11 in the custody of a custodial entity upon the effective date of this act.

12 (7) The failure of a custodial entity to preserve biological evidence
 13 as required in this section shall not entitle the applicant under section
 14 19-4902, Idaho Code, to any relief from conviction or adjudication, but does
 15 not prohibit the use of information relating to such failure at a subsequent
 16 hearing or trial.

17 (8) As used in this section:

18 (a) "Biological evidence" means biological material suitable for DNA
 19 analysis including, but not limited to, a sexual assault forensic exam-
 20 ination kit, semen, blood, saliva, hair or skin tissue.

21 (b) "Custodial entity" means any state, county or city agency, or de-
 22 partment or division thereof, having custody or control of biological
 23 evidence relating to a criminal investigation or prosecution of any
 24 felony offense.

25 (c) "Investigating agency" means any state, county or city law enforce-
 26 ment agency that investigates a crime report and collects biological
 27 evidence relating to any felony offense. An "investigating agency"
 28 also includes a custodial entity with respect to any specific biolog-
 29 ical evidence from the time that it actually collects the biological
 30 evidence.

31 SECTION 3. That Section 6-904B, Idaho Code, be, and the same is hereby
 32 amended to read as follows:

33 6-904B. EXCEPTIONS TO GOVERNMENTAL LIABILITY. A governmental entity
 34 and its employees while acting within the course and scope of their employ-
 35 ment and without malice or criminal intent and without gross negligence or
 36 reckless, willful and wanton conduct as defined in section 6-904C, Idaho
 37 Code, shall not be liable for any claim which:

38 (1-) Arises out of the detention of any goods or merchandise by any law
 39 enforcement officer.

40 (2-) Arises out of the cancellation or rescission, or the failure to
 41 cancel or rescind, any motor vehicle registration and license plates for
 42 failure of the owner to verify or maintain motor vehicle liability insurance
 43 coverage.

44 (3-) Arises out of the issuance, denial, suspension or revocation of,
 45 or failure or refusal to issue, deny, suspend, or revoke a permit, license,
 46 certificate, approval, order or similar authorization.

47 (4-) Arises out of the failure to make an inspection, or the making of
 48 an inadequate inspection of any property, real or personal, other than the
 49 property of the governmental entity performing the inspection.

1 ~~(5-)~~ Arises out of any act or omission providing or failing to provide
 2 medical care to a prisoner or person in the custody of any city, county or
 3 state jail, detention center or correctional facility.

4 ~~(6-)~~ Arises out of a decision of the state commission of pardons and pa-
 5 role or its executive director when carrying out the business of the commis-
 6 sion.

7 ~~(7-)~~ Arises out of a decision, act or omission of a city, county, the
 8 Idaho board of correction or Idaho department of correction when carrying
 9 out duties and responsibilities as set forth in chapter 8, title 20, Idaho
 10 Code.

11 ~~(8-)~~ Arises out of the operation of a sport shooting range as defined in
 12 section 6-2701, Idaho Code.

13 (9) Arises out of a negligent act or omission when carrying out the du-
 14 ties and responsibilities pursuant to section 19-5519, Idaho Code.

15 SECTION 4. That Section 19-4901, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 19-4901. REMEDY -- TO WHOM AVAILABLE -- CONDITIONS. (a) Any person who
 18 has been convicted of, or sentenced for, a crime and who claims:

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

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

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

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

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

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

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

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