

78B-9-107 Statute of limitations for postconviction relief.

- (1) A petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued.
- (2) For purposes of this section, the cause of action accrues on the latest of the following dates:
 - (a) the last day for filing an appeal from the entry of the final judgment of conviction, if no appeal is taken;
 - (b) the entry of the decision of the appellate court which has jurisdiction over the case, if an appeal is taken;
 - (c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or the United States Supreme Court, if no petition for writ of certiorari is filed;
 - (d) the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed;
 - (e) the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based; or
 - (f) the date on which the new rule described in Subsection 78B-9-104(1)(f) is established.
- (3) The limitations period is tolled for any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, or due to physical or mental incapacity. The petitioner has the burden of proving by a preponderance of the evidence that the petitioner is entitled to relief under this Subsection (3).
- (4) The statute of limitations is tolled during the pendency of the outcome of a petition asserting:
 - (a) exoneration through DNA testing under Section 78B-9-303; or
 - (b) factual innocence under Section 78B-9-401.
- (5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations period established in this section.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session
Amended by Chapter 358, 2008 General Session