

## **Part 1 General Provisions**

### **78B-9-101 Title.**

This chapter is known as the "Post-Conviction Remedies Act."

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 288, 2008 General Session

### **78B-9-102 Replacement of prior remedies.**

- (1) This chapter establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal except as provided in Subsection (2). This chapter replaces all prior remedies for review, including extraordinary or common law writs. Proceedings under this chapter are civil and are governed by the rules of civil procedure. Procedural provisions for filing and commencement of a petition are found in Rule 65C, Utah Rules of Civil Procedure.
- (2) This chapter does not apply to:
  - (a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense;
  - (b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal Procedure; or
  - (c) actions taken by the Board of Pardons and Parole.

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 288, 2008 General Session

### **78B-9-103 Applicability -- Effect on petitions.**

Except for the limitation period established in Section 78B-9-107, this chapter applies only to post-conviction proceedings filed on or after July 1, 1996.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-9-104 Grounds for relief -- Retroactivity of rule.**

- (1) Unless precluded by Section 78B-9-106 or 78B-9-107, a person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence upon the following grounds:
  - (a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;
  - (b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected;
  - (c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;
  - (d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution;
  - (e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because:
    - (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or

- post-conviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence;
- (ii) the material evidence is not merely cumulative of evidence that was known;
  - (iii) the material evidence is not merely impeachment evidence; and
  - (iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received; or
- (f) the petitioner can prove entitlement to relief under a rule announced by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction and sentence became final on direct appeal, and that:
- (i) the rule was dictated by precedent existing at the time the petitioner's conviction or sentence became final; or
  - (ii) the rule decriminalizes the conduct that comprises the elements of the crime for which the petitioner was convicted.
- (2) The court may not grant relief from a conviction or sentence unless the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome in light of the facts proved in the post-conviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing.
- (3) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3, Postconviction Testing of DNA , or Part 4, Postconviction Determination of Factual Innocence. Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination of Factual Innocence of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination of Factual Innocence.

Amended by Chapter 153, 2010 General Session

**78B-9-105 Burden of proof.**

- (1) The petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief. The court may not grant relief without determining that the petitioner is entitled to relief under the provisions of this chapter and in light of the entire record, including the record from the criminal case under review.
- (2) The respondent has the burden of pleading any ground of preclusion under Section 78B-9-106, but once a ground has been pled, the petitioner has the burden to disprove its existence by a preponderance of the evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 288, 2008 General Session

**78B-9-106 Preclusion of relief -- Exception.**

- (1) A person is not eligible for relief under this chapter upon any ground that:
  - (a) may still be raised on direct appeal or by a post-trial motion;
  - (b) was raised or addressed at trial or on appeal;
  - (c) could have been but was not raised at trial or on appeal;
  - (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or
  - (e) is barred by the limitation period established in Section 78B-9-107.

- (2)
  - (a) The state may raise any of the procedural bars or time bar at any time, including during the state's appeal from an order granting post-conviction relief, unless the court determines that the state should have raised the time bar or procedural bar at an earlier time.
  - (b) Any court may raise a procedural bar or time bar on its own motion, provided that it gives the parties notice and an opportunity to be heard.
- (3) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis that the ground could have been but was not raised at trial or on appeal, if the failure to raise that ground was due to ineffective assistance of counsel.
- (4) This section authorizes a merits review only to the extent required to address the exception set forth in Subsection (3).

Amended by Chapter 48, 2010 General Session

**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

**78B-9-108 Effect of granting relief -- Notice.**

- (1) If the court grants the petitioner's request for relief, it shall either:
  - (a) modify the original conviction or sentence; or
  - (b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.

- (2)
- (a) If the petitioner is serving a felony sentence, the order shall be stayed for five days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action.
  - (b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the custodian of the petitioner.
  - (c) If the respondent gives notice of intent to appeal the court's decision, the stay provided for by Subsection (2)(a) shall remain in effect until the appeal concludes, including any petitions for rehearing or for discretionary review by a higher court. The court may lift the stay if the petitioner can make the showing required for a certificate of probable cause under Section 77-20-10 and URCP 27.
  - (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the trial court may order any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary.

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

**78B-9-109 Appointment of pro bono counsel.**

- (1) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent the petitioner in the post-conviction court or on post-conviction appeal. Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section.
- (2) In determining whether to appoint counsel, the court shall consider the following factors:
  - (a) whether the petition or the appeal contains factual allegations that will require an evidentiary hearing; and
  - (b) whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication.
- (3) An allegation that counsel appointed under this section was ineffective cannot be the basis for relief in any subsequent post-conviction petition.

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

**78B-9-110 Appeal -- Jurisdiction.**

Any party may appeal from the trial court's final judgment on a petition for post-conviction relief to the appellate court having jurisdiction pursuant to Section 78A-3-102 or 78A-4-103.

Renumbered and Amended by Chapter 3, 2008 General Session