

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