

Effective 5/4/2022

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 day on which the cause of action has accrued.
- (2) For purposes of this section, the cause of action accrues on the later 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 that 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)(g) is established.
- (3)
 - (a) 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, due to physical or mental incapacity, or for claims arising under Subsection 78B-9-104(1)(h), due to force, fraud, or coercion as defined in Section 76-5-308.
 - (b) 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-9-402.
- (5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations period established in this section.
- (6) This section does not apply to a petition filed under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

Amended by Chapter 120, 2022 General Session