

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 497

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO DNA TESTING; AMENDING SECTION 19-4902, IDAHO CODE, TO PROVIDE CONDITIONS RELATING TO CERTAIN DNA TESTING AND TO PROVIDE THAT THE IDAHO STATE POLICE SHALL NOT BE REQUIRED TO OUTSOURCE OR PAY FOR TESTING UNDER CERTAIN CIRCUMSTANCES; AND DECLARING AN EMERGENCY.

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 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. 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; 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.

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

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

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

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

6 (f) In the event the fingerprint or forensic DNA test results demon-
7 strate, in light of all admissible evidence, that the petitioner is not the
8 person who committed the offense, the court shall order the appropriate re-
9 lief.

10 (g) The cost of the forensic DNA test shall be at the petitioner's ex-
11 pense, except to the extent the petitioner qualifies for the test at public
12 expense pursuant to chapter 8, title 19, Idaho Code, in which case the fin-
13 gerprint or forensic DNA test shall be performed by, and paid for by funds
14 allocated for, Idaho state police forensic services, provided the requested
15 method of testing or specific technology is currently validated by the
16 lab, within the laboratory accreditation scope, and laboratory staff are
17 qualified and satisfactorily performing proficiency testing in the testing
18 method. If the laboratory does not offer the specific type of testing re-
19 quired, the Idaho state police shall not be required to outsource the testing
20 or in any way pay for or reimburse any entity for the testing to be performed.
21 The petitioner may choose an ISO/IEC 17025 or an American society of crime
22 laboratory directors/laboratory accreditation board accredited DNA testing
23 laboratory to perform the DNA testing. Such testing shall be at the peti-
24 tioner's expense.

25 SECTION 2. An emergency existing therefor, which emergency is hereby
26 declared to exist, this act shall be in full force and effect on and after its
27 passage and approval.