

IN THE SENATE

SENATE BILL NO. 1040, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-2719, IDAHO CODE, TO
2 CLARIFY LANGUAGE REGARDING FILING REQUIREMENTS OF CERTAIN APPEALS WHEN
3 PUNISHMENT OF DEATH HAS BEEN IMPOSED; AND DECLARING AN EMERGENCY AND
4 PROVIDING APPLICATION.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 19-2719, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 19-2719. SPECIAL APPELLATE AND POST-CONVICTION PROCEDURE FOR CAPITAL
10 CASES -- AUTOMATIC STAY. The following special procedures shall be inter-
11 preted to accomplish the purpose of eliminating unnecessary delay in carry-
12 ing out a valid death sentence.

13 (1) When the punishment of death is imposed the time for filing an ap-
14 peal shall begin to run when the death warrant is filed.

15 (2) The death warrant shall not be filed until forty-two (42) days after
16 the judgment imposing the death sentence has been filed, or, in the event a
17 post-conviction challenge to the conviction or sentence is filed, until the
18 order deciding such post-conviction challenge is filed.

19 (3) Within forty-two (42) days of the filing of the judgment imposing
20 the punishment of death, and before the death warrant is filed, the defendant
21 must file any legal or factual challenge to the sentence or conviction that
22 is known or reasonably should be known. The defendant must file any claims
23 of ineffective assistance of appellate counsel within forty-two (42) days of
24 the Idaho supreme court issuing the final remittitur in the unified appeal
25 from which no further proceedings except issuance of a death warrant are or-
26 dered.

27 (4) Any remedy available by post-conviction procedure, habeas corpus
28 or any other provision of state law must be pursued according to the proce-
29 dures set forth in this section and within the time limitations of subsec-
30 tion (3) of this section. The special procedures for fingerprint or foren-
31 sic DNA testing set forth in sections 19-4901(a)(6) and 19-4902(b) through
32 (g), Idaho Code, are fully applicable in capital cases and are subject to
33 the procedures set forth in this section, and must be pursued through a pe-
34 tition filed within the time limitations of subsection (3) of this section or
35 by July 1, 2002, whichever is later.

36 (5) If the defendant fails to apply for relief as provided in this sec-
37 tion and within the time limits specified, he shall be deemed to have waived
38 such claims for relief as were known, or reasonably should have been known.
39 The courts of Idaho shall have no power to consider any such claims for relief
40 as have been so waived or grant any such relief.

41 (a) An allegation that a successive post-conviction petition may be
42 heard because of the applicability of the exception herein for issues

1 that were not known or could not reasonably have been known shall not be
2 considered unless the applicant shows the existence of such issues by
3 (i) a precise statement of the issue or issues asserted together with
4 (ii) material facts stated under oath or affirmation by credible per-
5 sons with first hand knowledge that would support the issue or issues
6 asserted. A pleading that fails to make a showing of excepted issues
7 supported by material facts, or which is not credible, must be summarily
8 dismissed.

9 (b) A successive post-conviction pleading asserting the exception
10 shall be deemed facially insufficient to the extent it alleges matters
11 that are cumulative or impeaching or would not, even if the allegations
12 were true, cast doubt on the reliability of the conviction or sentence.

13 (c) A successive post-conviction pleading asserting the exception
14 shall be deemed facially insufficient to the extent it seeks retroac-
15 tive application of new rules of law.

16 (6) In the event the defendant desires to appeal from any post-convic-
17 tion order entered pursuant to this section, his appeal must be part of any
18 appeal taken from the conviction or sentence. All issues relating to convic-
19 tion, sentence and post-conviction challenge shall be considered in the same
20 appellate proceeding.

21 (7) If post-conviction challenge is made under this section, questions
22 raised thereby shall be heard and decided by the district court within ninety
23 (90) days of the filing of any motion or petition for relief timely filed as
24 provided by this section. The court shall give first priority to capital
25 cases. In the event the district court fails to act within the time speci-
26 fied, the supreme court of Idaho shall, on its own motion or the motion of
27 any party, order the court to proceed forthwith, or if appropriate, reassign
28 the case to another judge. When the supreme court intervenes as provided,
29 it shall set a reasonable time limit for disposition of the issues before the
30 district court.

31 (8) The time limit provided in subsection (7) of this section for dis-
32 position of post-conviction claims may be extended only upon a showing of
33 extraordinary circumstances which would make it impossible to fairly con-
34 sider defendant's claims in the time provided. Such showing must be made un-
35 der oath and the district court's finding that extraordinary circumstances
36 exist for extending the time shall be in writing and shall be immediately re-
37 ported to the supreme court, which shall at once independently consider the
38 sufficiency of the circumstances shown and determine whether an extension of
39 time is warranted.

40 (9) When a judgment imposing the penalty of death is filed, the clerk
41 and the reporter shall begin preparation of the transcripts of the trial, and
42 other proceedings, and the clerk's transcript.

43 (10) When the procedures specified in this section and section 19-2827,
44 Idaho Code, have been carried out and a remittitur issued, and an execution
45 date set as provided by law, the defendant shall be deemed to have exhausted
46 all state remedies.

47 (11) Any successive petition for post-conviction relief not within the
48 exception of subsection (5) of this section shall be dismissed summarily.
49 Notwithstanding any other statute or rule, the order of dismissal shall not
50 be subject to any motion to alter, amend or reconsider. Such order shall not

1 be subject to any requirement for the giving of notice of the court's intent
2 to dismiss. The order of dismissal shall not be appealable.

3 (12) A stay of execution while the special appellate procedures speci-
4 fied herein are followed and during the pendency of automatic review of death
5 sentences shall be automatically entered by the clerk of the supreme court
6 at the time the district court transmits to the supreme court the report re-
7 quired by section 19-2827, Idaho Code. If the sentence is upheld, the clerk
8 shall dissolve such stay when the remittitur is filed. Thereafter the dis-
9 trict court shall set a new execution date.

10 SECTION 2. An emergency existing therefor, which emergency is hereby
11 declared to exist, this act shall be in full force and effect on and after its
12 passage and approval, and shall apply to any cases where an appellant's brief
13 in the unified appeal has not been filed with the Idaho Supreme Court.