West's General Laws of Rhode Island Annotated Currentness
Title 10. Courts and Civil Procedure--Procedure in Particular Actions
➡ Chapter 9.1. Post Conviction Remedy
➡ **§ 10-9.1-1. Remedy--To whom available--Conditions**

(a) Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;

may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

§ 10-9.1-2. Court in which brought--Appeal of district court denial

(a) An action to secure post conviction relief under this chapter shall be brought in the court in which the judgment of conviction was entered.

(b) If an action for post conviction relief is brought in the district court where the judgment of conviction was entered and the relief is denied, the denial may be appealed to the superior court within twenty (20) days of the finding.

§ 10-9.1-3. Commencement of proceedings--Verification--Filing--Service

A proceeding is commenced by filing an application verified by the applicant with the clerk of the appropriate court. An application may be filed at any time. 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 clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the attorney general. A filing fee shall not be required for a proceeding under this chapter.

§ 10-9.1-4. Application--Contents

The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in § 10-9.1-3. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his or her conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

§ 10-9.1-5. Representation for indigent applicants

An applicant who is indigent shall be entitled to be represented by the public defender. If the public defender is excused from representing the applicant because of a conflict of interest or is otherwise unable to provide representation, the court shall assign counsel to represent the applicant. An indigent applicant is entitled, to the extent deemed appropriate by the court, to be provided with stenographic, printing, and other costs necessary to proceed under this chapter.

§ 10-9.1-6. Pleadings and judgment on pleadings

(a) Within twenty (20) days after receiving notice of the docketing of the application, or within any further time the court may fix, the attorney general shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the attorney general shall file with his

or her answer the record or portions thereof that are material to the questions raised in the application.

(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a genuine issue of material fact.

(c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

§ 10-9.1-7. Procedure--Evidence--Order

A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings shall apply except that pretrial discovery proceedings shall be available only upon order of the court. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may, if deemed appropriate, order the applicant be brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

§ 10-9.1-8. Waiver of or failure to assert claims

All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief.

§ 10-9.1-9. Appeal

A final judgment entered in a proceeding brought under this chapter shall be appealable to the supreme court in the same manner and subject to the same requirements as a final judgment in a civil action.

§ 10-9.1-10. Innocence protection--Definitions

(a) “DNA Testing” means forensic deoxyribonucleic acid testing.

(b) “Agent” means a firm, person or corporation to whom the Rhode Island state police or local municipal police department entrusts or delivers evidence to undergo DNA testing.

§ 10-9.1-11. Innocence protection--Mandatory preservation of biological evidence

(a) *Mandatory preservation.*During the term of the defendant's incarceration resulting from his or her conviction after trial, the Rhode Island state police and each and every municipal police department in the state of Rhode Island, their agents, and any person to whom biological evidence has been transferred shall be obligated to preserve all biological evidence that comes into its possession during the course of a criminal investigation.

(b) *Petition to destroy evidence.*A police department or agent may be relieved of the obligation of mandatory preservation by applying to a justice of the superior court for permission to destroy biological evidence. Upon receipt of the petition, a justice of the superior court shall hold a hearing, and after giving notice to all defendants charged in connection with the prosecution, the justice shall grant the petition upon finding that:

(1) The Rhode Island Supreme Court has decided the defendant's appeal; and

(2) The defendant does not seek further preservation of the biological evidence.

(c) *Petition by defendant requesting testing.* Notwithstanding any other provision of law governing postconviction relief, any person who was convicted of and sentenced for a crime and who is currently serving an actual term of imprisonment and incarceration pursuant to that sentence may, at any time, file a petition with the superior court requesting the forensic DNA testing of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court. A person filing a petition under this section must certify under the pains and penalties of perjury that the requested testing is related to the investigation or prosecution that resulted in the judgment of conviction and that the evidence sought to be tested contains biological evidence.

§ 10-9.1-12. Innocence protection--DNA testing of evidence

(a) *Mandatory testing.* After notice to the prosecution and a hearing, a justice of the superior court shall order testing after finding that:

(1) A reasonable probability exists that petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing.

(2) The evidence is still in existence and is capable of being subjected to DNA testing.

(3) The evidence, or a specific portion of the evidence identified by the petitioner, was never previously subjected to DNA testing; or that the testing requested by the petitioner may resolve an issue that was never previously resolved by previous testing.

(4) The petition before the Superior Court was filed in order to demonstrate the petitioner's innocence and not to delay the administration of justice.

(b) *Discretionary testing.* After notice to the prosecution and a hearing, a justice of the superior court may order testing after finding that:

(1) A reasonable probability exists that the requested testing will produce DNA results which would have altered the verdict or reduced the petitioner's sentence if the results had been available at the prior proceedings leading to the judgment of conviction.

(2) The evidence is still in existence and is capable of being subjected to DNA testing.

(3) The evidence, or a specific portion of the evidence identified by the petitioner was never previously subjected to DNA testing; or that the testing requested by the petitioner may resolve an issue that was never previously resolved by previous testing.

(4) The petition before the superior court was filed in order to demonstrate the petitioner's innocence and not to delay the administration of justice.

(c) *Costs.* Unless the justice hearing the motion finds that the defendant has the present ability to pay the costs associated with DNA testing, the justice shall order that the state of Rhode Island pay for the costs of the DNA testing ordered under this chapter. Unless good cause is shown, all testing ordered under this section shall be conducted by the Rhode Island department of health.

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