

# THE SUPREME COURT *of* OHIO

## TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

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### **Postconviction Relief Petitions and Conviction Integrity**

#### **50 State Survey**

#### **Summary**

##### **Post-Conviction Relief Petitions**

This survey of the states' PCR mechanisms is a cursory overview relying mostly upon the plain language of statutes and court rules. States with particularly robust, well-organized, or unique statutes are indicated in the "Notes" section for each state below.

All states have some form of post-conviction remedy. Some states allow only such narrow grounds for relief that for purposes of this survey, 8 states are considered not to have a PCR petition statute.

42/50 states have PCR petition statutes or rules similar to Ohio's PCR statutes, though the states vary greatly in the breadth and depth of relief mechanisms.

Of the 8 states which have very narrow PCR statutes (CA, CT, GA, NV, NH, SD, TX, VT), most had a combination of habeas corpus statutes with limited factual innocence statutes or various motions for relief from judgment.

##### **Time Requirement for Ruling on Post-Conviction Relief Petition**

8/50 Time requirement for death penalty PCR petition

AL, AR, DE, FL, MT, NV, SC, TN

7/50 Time requirement for general PCR petition

AZ, CO, NE, NH, NJ, OH, TN

30/50 states had some sort of time guidelines mentioned in their rule or statute regarding pleading deadlines, usually specifying how long the prosecutor had to respond to a petition.

AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KY, MD, MA, MI, MN, NV, NM, NC, ND, OK, OR, RI, SD, TX, UT, VA, WY

10/50 No time requirements found

CT, HI, ME, MS, MO, NY, PA, VT, WA, WV, WI

### **Findings of Fact and Conclusions of Law**

43/50 states specifically mention that findings of fact and conclusions of law are required

1/50 states does not require findings of fact and conclusions of law

6/50 states make no mention of findings of fact and conclusions of law

### **Hearings**

The question of whether or not an evidentiary hearing is required during a post-conviction relief proceeding is complicated.

Almost all states will hold an evidentiary hearing only if the petition overcomes some sort of judicial scrutiny, screening, or the state's responsive pleading. For example, some states will only schedule a hearing if a petition survives the state's motion for summary judgment or the court's own dismissal. Some examples of the circumstances under which states will hold an evidentiary hearing follow.

In Alabama, "Unless the court dismisses the petition, the petitioner shall be entitled to an evidentiary hearing to determine disputed issues of material fact, with the right to subpoena material witnesses on his behalf. The court in its discretion may take evidence by affidavits, written interrogatories, or depositions, in lieu of an evidentiary hearing, or the court may take some evidence by such means and other evidence in an evidentiary hearing." [ARCrP Rule 32.9](#)

In Maryland, "A hearing shall be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief. The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner." [Rule 4-406](#)

In Michigan, "After reviewing the motion and response, the record, and the expanded record, if any, the court shall determine whether an evidentiary hearing is required. If the court decides that an evidentiary hearing is not required, it may rule on the motion or, in its discretion, afford the parties an opportunity for oral argument. [Rule 6.508](#)"

In North Carolina, "Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit." [NCGS 15A-1420](#). Oregon's PCR hearing statute, [Or.Rev.Stat. 138.620](#), states that, "After the response of the defendant to the petition, the court shall proceed to a hearing on the issues raised. If the defendant's response is by demurrer or motion raising solely issues of law, the circuit court need not

order that petitioner be present at such hearing, as long as petitioner is represented at the hearing by counsel. At the hearing upon issues raised by any other response, the circuit court shall order that petitioner be present.”

### **Standard of Review**

States vary on standards of review for appeals of post-conviction relief petitions. Most do not mention the standard in the PCR statute or rules. Case law may vary on the standard of review depending upon the grounds in the PCR petition. When a standard of review was found, common standards of review were abuse of discretion, clearly erroneous, or de novo.

### **Counsel Provided**

45/50 states appointed counsel if the petitioner/applicant was indigent.

2/50 states appointed counsel only in death penalty cases (CA, OH)

1/50 did not provide counsel (GA)

2/50 did not make it clear in statute or rule whether counsel would be provided or not (NH, NY)

Some of the 45 states that do provide counsel for indigent petitioners do not provide counsel unless the petition survives a motion to dismiss or a motion for summary judgment. In some states the petitioner must make the request for counsel when they file their petition.

Delaware may deem the failure to file a request for appointment of counsel with the postconviction motion as a waiver of counsel.

Idaho and Iowa will provide counsel to indigent petitioners to aid in preparation of post-conviction relief petition.

Mississippi has an Office of Post-Conviction Counsel, which oversees and provides representation to indigent parties under sentences of death in post-conviction proceedings.

Missouri will provide two counsel in post-conviction relief cases involving the death penalty.

Nevada, which does not have a PCR petition, provides counsel regardless of indigency for death sentence cases and for factual innocence cases.

Wyoming specifically will not provide counsel for constitutional violation cases, but will provide counsel for indigent petitioners seeking factual innocence.

New York's statute does not address assigned counsel.

### **Issues to Be Raised**

37/50 Conviction or the sentence was in violation of the constitution/laws of the United States or the constitution/laws of the state

29/50 Court was without jurisdiction to impose sentence

22/50 Sentence exceeds the maximum authorized by law

20/50 Newly discovered material facts exist, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice

15/50 Petitioner's sentence has expired, probation or conditional release was unlawfully revoked, petitioner is otherwise unlawfully held or detained

31/50 Conviction or sentence is otherwise subject to collateral attack

3/50 Petitioner failed to appeal within the prescribed time from the conviction or sentence itself and that failure was without fault on the petitioner's part

6/50 Factual or actual innocence

6/50 Ineffective assistance of counsel

8/50 Significant change in law material to the conviction should be applied retroactively

5/50 Judgment procured by duress, misrepresentation, or fraud on behalf of prosecutorial team or material evidence at trial was known to be false by prosecutor

3/50 Defendant had mental disease/defect and was incapable of understanding

5/50 Outdated or updated forensic science or non-biological science

These are the most common issues allowed to be raised. Some states had very specific issues they allowed to be raised. For example, Louisiana allowed "conviction or sentence subjected him to double jeopardy," as an issue to be raised. Some states were vague regarding issues that could be raised. For example, Michigan's rule simply states that petitions could raise "issues that had not been raised and argued on appeal."

### **Can DNA Issues Be Raised?**

50/50 states DNA issues can be raised.

In some states, DNA issues are raised as part of the PCR petition, in other states raising post-conviction DNA issues is its own proceedings, with appointment of counsel, a hearing, etc.

### **Conviction Integrity Mechanisms**

This survey relies on CI policy data from The Innocence Project. According to their website, "The Innocence Project's policy priorities reflect the lessons learned from DNA exonerations. Our policy work

addresses each of the contributors to wrongful convictions –eyewitness misidentification, misapplication of forensic science, false confessions, unreliable jailhouse informant testimony, and inadequate defense.”

<https://www.innocenceproject.org/policy/>

31/50 Eyewitness Identification Reform  
29/50 Recording of Interrogations  
41/50 Evidence Preservation  
34/50 Exoneree Compensation  
9/50 In-Custody Informants  
2/50 New Non-DNA Evidence and Changes in Science

## **State-by-State PCR and CI Highlights**

### **Alabama**

#### **Relevant Statutes or Rules**

[Alabama Rules of Criminal Procedure, Rule 32 Post-Conviction Remedies](#)

[Ala. Code 13A-5-53.1 Appeals of Capital Punishment](#)

[Ala. Code 15-18-200 Motion by persons convicted of capital offense for forensic DNA testing and analysis](#)

[Ala. Code Title 29, Chapter 2, Article 9 Committee on Compensation for Wrongful Incarceration](#)

#### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on a regular PCR petition.

Yes, time requirement to rule on death penalty PCR petition.

Within thirty (30) days after the service of the petition, or within the time otherwise specified by the court, the district attorney or municipal prosecutor shall file with the court and send to the petitioner or counsel for the petitioner, if any, a response. [ARCrP Rule 32.7](#)

Post-conviction relief in cases of capital punishment - within ninety (90) days of the filing of the state's answer to a properly filed petition for post-conviction relief, the circuit court shall issue an order setting forth those claims in the petition that should be summarily dismissed and those claims, if any, that should be set for an evidentiary hearing. If the properly filed petition for post-conviction relief is still pending at the time of the issuance of the certificate of judgment on direct appeal, the court in which the petition is pending shall issue a final order on the petition or appeal within 180 days. [Ala.Code 13A-5-53.1](#)

#### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

The court shall make specific findings of fact relating to each material issue of fact presented. [ARCrP Rule 32.9](#)

## **Hearing Required?**

Unless the court dismisses the petition, the petitioner shall be entitled to an evidentiary hearing to determine disputed issues of material fact, with the right to subpoena material witnesses on his behalf. The court in its discretion may take evidence by affidavits, written interrogatories, or depositions, in lieu of an evidentiary hearing, or the court may take some evidence by such means and other evidence in an evidentiary hearing. [ARCrP Rule 32.9](#)

## **Standard of Review on Appeal**

When reviewing a circuit court's summary dismissal of a post-conviction petition, the standard of review an appellate court uses is whether the circuit court abused its discretion; however, when the facts are undisputed and an appellate court is presented with pure questions of law, that court's review in a proceeding on postconviction relief is de novo. *Bedell v. State*, 285 So.3d 857 (Ala.Crim.App.2018).

## **Counsel Provided?**

The court will appoint counsel under specific circumstances.

If the court does not summarily dismiss the petition, and if it appears that the petitioner is indigent or otherwise unable to obtain the assistance of counsel and desires the assistance of counsel, and it further appears that counsel is necessary to assert or protect the rights of the petitioner, the court shall appoint counsel. [ARCrP Rule 32.7](#)

In death penalty cases post-conviction remedies are pursued concurrently and simultaneously with the direct appeal of a case in which the death penalty was imposed. In all cases where the defendant is deemed indigent or as the trial judge deems appropriate, the trial court shall appoint the defendant a separate counsel for the purposes of post-conviction relief. [Ala.Code 13A-5-53.1](#)

## **Issues Allowed to be Raised**

(1) Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief; (2) Court was without jurisdiction to impose sentence; (3) Sentence imposed exceeds the maximum authorized by law or is otherwise not authorized by law; (4) Petitioner is being held in custody after the petitioner's sentence has expired; (5) Newly discovered material facts exist which require that the conviction or sentence be vacated by the court; (6) Petitioner failed to appeal within the prescribed time from the conviction or sentence itself or from the dismissal or denial of a petition previously filed pursuant to this rule and that failure was without fault on the petitioner's part. [ARCrP Rule 32.1](#)

## **Can DNA Issues be Raised?**

DNA issues can be raised in some cases.

Individual convicted of a capital offense who is serving a term of imprisonment or awaiting execution of a sentence of death, may apply for the performance of forensic deoxyribonucleic acid (DNA) testing on specific evidence, if that evidence was secured in relation to the investigation or prosecution that resulted

in the conviction of the applicant, is still available for testing as of the date of the motion, forensic DNA testing was not performed on the case at the time of the initial trial, and the results of the forensic DNA testing, on its face, would demonstrate the convicted individual's factual innocence of the offense convicted. [Ala.Code 15-18-200](#)

### **Conviction Integrity Mechanisms**

Evidence Preservation [Ala.Code 15-18-200](#)

Exoneree Compensation [Ala.Code Title 29, Chapter 2, Article 9 Committee on Compensation for Wrongful Incarceration](#)

### **Notes**

Post-conviction remedies sought pursuant to Rule 32 of the Alabama Rules of Criminal Procedure in death penalty cases are pursued concurrently and simultaneously with the direct appeal of a case in which the death penalty was imposed. [Ala.Code 13A-5-53.1](#)

## **Alaska**

### **Relevant Statutes or Rules**

[Alaska Rules of Criminal Procedure, Rule 35.1 Post-Conviction Procedure](#)

[Alaska Stat. 12.47.060 Post-Conviction Determination of Mental Illness](#)

[Alaska Stat. Title 12, Chapter 72 Post-Conviction Relief Procedures for Persons Convicted of Criminal Offenses](#)

[Alaska Stat. Title 12, Chapter 73 Post-Conviction DNA Testing Procedure](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

The state shall file an answer or a motion within 45 days of service of an original, amended, or supplemental application filed by applicant. The applicant shall have 30 days to file an opposition, and the state shall have 15 days to file a reply. [Rule 35.1](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. [Rule 35.1](#)

### **Hearing Required?**

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.

The application shall be heard in the court in which the underlying criminal case was heard. The application may be heard before any judge of that court, but if the sentencing judge is available, the case shall be initially assigned to that judge. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. [Rule 35.1](#)

### **Standard of Review on Appeal**

Not mentioned.

### **Counsel Provided?**

The court will appoint counsel if the petitioner is indigent.

If the applicant is indigent counsel shall be appointed consistent with Alaska Stat. 18.85.100 to assist the applicant. [Rule 35.1](#)

### **Issues Allowed to be Raised**

(1) Conviction or the sentence was in violation of the Constitution of the United States or the constitution/laws of this state; (2) Court was without jurisdiction to impose sentence; (3) Prior conviction has been set aside and the prior conviction was used as a statutorily required enhancement of the sentence imposed; (4) Exists evidence of material facts, not previously presented and heard by the court; (5) Person's sentence has expired, or the person's probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held; (6) Conviction or sentence is otherwise subject to collateral attack; (7) There has been a significant change in law and the change in the law was not reasonably foreseeable and it is appropriate to retroactively apply the change in law; (8) After the imposition of sentence, the applicant seeks to withdraw a plea of guilty or nolo contendere in order to correct manifest injustice under the Alaska Rules of Criminal Procedure; (9) Applicant was not afforded effective assistance of counsel at trial or on direct appeal. [Alaska Stat. 12.72.010](#)

### **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person convicted of a felony against a person under AS 11.41 who has not been unconditionally discharged may apply to the superior court for an order for DNA testing of evidence. [Alaska Stat. 12.73.010](#)

### **Conviction Integrity Mechanisms**

Recording of Interrogations (711 P.2d 1156)  
Evidence Preservation [Alaska Stat.12.36.200](#)



## Notes

In Alaska there is a procedure for post conviction determination of mental illness. In a prosecution for a crime when the affirmative defense of insanity is not raised and when evidence of mental disease or defect of the defendant is not admitted at trial under Alaska Stat. 12.47.020, the defendant or the prosecuting attorney may raise the issue of whether the defendant is guilty but mentally ill. [Alaska Stat.12.47.060](#)

An applicant may move for expedited consideration of the application for post-conviction relief. [Rule 35.1](#)

## Arizona

### Relevant Statutes or Rules

[Arizona Rules of Criminal Procedure, Rule 32. Post-Conviction Relief for Defendants Sentenced Following a Trial or a Contested Probation Violation Hearing](#)

[Arizona Rules of Criminal Procedure, Rule 33. Post-Conviction Relief for Defendants Who Pled Guilty or No Contest, Who Admitted a Probation Violation, or Who Had an Automatic Probation Violation](#)

[Ariz. Rev. Stat. Ann. Title 13, Chapter 38, Article 29 Post-Conviction Relief](#)

### Time Required for Court to Rule on PCR Petition/Motion

Yes, there is a time requirement to rule on a PCR petition.

Forty-five days after the filing of the petition, the state shall file with the court a response. Within fifteen days after receipt of the response, the defendant may file a reply. The court shall review the petition within twenty days after the defendant's reply is due. If the court does not order the petition dismissed, the court shall set a hearing within thirty days on those claims that present a material issue of fact or law.

[A.R.S.13-4236](#)

The court shall rule within ten days after the evidentiary hearing ends.[A.R.S.13-4238](#)

### Findings of Fact and Conclusions of Law Required?

Yes, findings of fact and conclusions of law required.

The court shall make specific findings of fact and state expressly its conclusions of law relating to each issue presented. [A.R.S. 13-4238](#)

### Hearing Required?

The court at any time may hold an informal conference to expedite the proceeding, at which the defendant need not be present if he is represented by counsel who is present. [A.R.S.13-4237](#)

The defendant is entitled to a hearing to determine issues of material fact, with the right to be present and to subpoena witnesses. [A.R.S.13-4238](#)

## **Standard of Review on Appeal**

Not mentioned.

## **Counsel Provided?**

The court will appoint counsel if the petitioner requests counsel and is indigent.

No later than 15 days after the defendant has filed a timely first notice under Rule 32.4, the presiding judge must appoint counsel for the defendant if: the defendant requests it, the defendant is entitled to appointed counsel under Rule 6.1(b), or there has been a previous determination that the defendant is indigent. [Rule 32.5](#)

All indigent state prisoners under a capital sentence are entitled to the appointment of counsel to represent them in state postconviction proceedings. On application and if the trial court finds that such assistance is reasonably necessary, it must appoint co-counsel. [A.R.S.13-4234](#), [Rule 33.5](#)

## **Issues Allowed to be Raised**

(1) Conviction or the sentence was in violation of the Constitution of the United States or of this state; (2) Court was without jurisdiction to render judgment or to impose sentence; (3) Sentence imposed exceeded the maximum authorized by law or is otherwise not in accordance with the sentence authorized by law; (4) Person is being held in custody after his sentence has expired; (5) Newly discovered material facts probably exist and that the facts probably would have changed the verdict or sentence; (6) Defendant's failure to appeal from the judgment or sentence, or both, within the prescribed time was without fault on his part; (7) Significant change in the law that if determined to apply to the defendant's case would probably overturn the defendant's conviction or sentence. [A.R.S. 13-4231](#)

## **Can DNA Issues be Raised?**

A person who was convicted of and sentenced for a felony offense and meets the requirements of this statute may request the forensic DNA testing of any evidence that is in the possession or control of the court or the state. [A.R.S. 13-4240](#)

## **Conviction Integrity Mechanisms**

Evidence Preservation [A.R.S.13-4221](#)

## **Notes**

Arizona is a state worth looking into further. It is one of the only states that has a set amount of time in which a PCR petition must be ruled on, the statutes and rules regarding post-conviction relief are robust and well organized.

## **Arkansas**

### **Relevant Statutes or Rules**

[Arkansas Rules of Criminal Procedure, Rule 37. Other Post–Conviction Proceedings and Relief](#)

[Arkansas Code Ann. 16-91-202 Capital case](#)

[Arkansas Code Ann. 16-112-201. Writ of habeas corpus--New scientific evidence](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on a regular PCR petition.

Yes, time requirement to rule on death penalty PCR petition.

There are separate rules for people under sentence of death - if the circuit court determines that a hearing is necessary, the hearing shall be held within one hundred eighty (180) days from the date of the filing of the petition, if a hearing on the petition is held, the circuit court shall, within sixty (60) days of the conclusion of the hearing, make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition. If no hearing on the petition is held, the circuit court shall, within one hundred twenty (120) days after the filing of the petition, make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition. [Rule 37.5](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law are required. [Rule 37.3](#), [Rule37.5](#)

### **Hearing Required?**

A hearing is required unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief. [Rule 37.3](#)

In petitions involving the sentence of death penalty the circuit court determines if a hearing is necessary. [Rule 37.5](#)

### **Standard of Review on Appeal**

On appeal from a circuit court's ruling on a petitioner's request for post-conviction relief, an appellate court will not reverse the circuit court's decision granting or denying relief unless it is clearly erroneous. *Mason v. State*, 2013, 430 S.W.3d 759, 2013 Ark. 492.

### **Counsel Provided?**

Yes, the court will appoint counsel if the petitioner requests counsel and is indigent.

If the original petition, or a motion for appointment of counsel should allege that the petitioner is unable to pay the cost of the proceedings and to employ counsel, and if the court is satisfied that the allegation is

true, the court may at its discretion appoint counsel for the petitioner for any hearing held in the circuit court. [Rule 37.3](#), [Rule 37.5](#)

If a capital conviction and sentence are affirmed on direct appeal, the circuit court in which the conviction was obtained shall, within two (2) weeks after the affirmance, conduct a hearing and enter a written order appointing counsel to represent the petitioner in a post-conviction proceeding upon issuance of the mandate by the appellate court, should the petitioner desire to pursue such a post-conviction proceeding. [A.C.A. 16-91-202](#)

### **Issues Allowed to be Raised**

(1) Sentence was imposed in violation of the Constitution and laws of the United States or this state; (2) Court imposing the sentence was without jurisdiction to do so; (3) Sentence was in excess of the maximum sentence authorized by law; (4) Sentence is otherwise subject to collateral attack. [Rule 37.1](#)

### **Can DNA Issues be Raised?**

No, DNA issues cannot be raised in a petition for relief under Rule 37 (newly discovered evidence of innocence is not a ground for relief under Rule 37). However, new scientific evidence can be raised under habeas corpus. [A.C.A. 16-112-201](#)

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform  
Evidence Preservation [A.C.A.12-12-104](#)

## **California**

### **Relevant Statutes or Rules**

[Cal. Penal Code 1405 Motion for DNA testing](#)  
[Cal. Penal Code, Part 2, Title 12, Chapter 1 Habeas Corpus](#)  
[California Rules of Court, Title 4, Chapter 3 Habeas Corpus](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on petition for a writ of habeas corpus.

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

Any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial. An order only declaring the petition to be “denied” is insufficient. [Rule 4.551](#)  
Findings of fact and conclusions of law required in death penalty related habeas corpus proceeding. [Rule 4.575](#)

## **Hearing Required?**

An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact. [Rule 4.551](#), [Rule 4.574](#)

## **Standard of Review on Appeal**

Note mentioned.

## **Counsel Provided?**

In death penalty-related habeas corpus proceedings counsel will be appointed if petitioner is indigent. [Rule 4.561](#)

## **Issues Allowed to be Raised**

A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: (1) False evidence that is substantially was introduced against a person at a hearing or trial relating to his or her incarceration; (2) False physical evidence; (3) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial; (4) Competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings and is of such substance that, had the competent and substantial expert testimony been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different. [Cal. Penal Code 1473](#), [Cal. Penal Code 1473.5](#)

A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. [Cal. Penal Code 1509](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction for performance of forensic deoxyribonucleic acid (DNA) testing. An indigent convicted person may request appointment of counsel in order to prepare a motion. [Cal. Penal Code 1405](#)

## **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [Cal. Penal Code 859.7](#)

Recording of Interrogations [Cal. Penal Code 859.5](#)

Evidence Preservation [Cal. Penal Code 1417.9](#)

Exoneree Compensation [Cal. Penal Code 3007.05](#)

In-custody Informants

New Non-DNA Evidence and Changes in Science [Cal. Penal Code 1473](#)

## Notes

California does not have a post-conviction relief petition. A writ of habeas corpus is the principal post-conviction remedy.

## Colorado

### Relevant Statutes or Rules

[Colorado Rules of Criminal Procedure, Rule 35 Postconviction Remedies](#)  
[Colo.Rev.Stat. Ann. Title 16, Article 12, Pt. 2 Unitary Review in Death Penalty Cases](#)  
[Colo. Rev.Stat. Ann. 18-1-412. Procedure for application for DNA testing](#)

### Time Required for Court to Rule on PCR Petition/Motion

Yes, time requirement to rule on a PCR petition.

If the motion and the files and record of the case show to the satisfaction of the court that the defendant is not entitled to relief, the court shall enter written findings of fact and conclusions of law in denying the motion. The court shall complete its review within 63 days (9 weeks) of filing or set a new date for completing its review and notify the parties of that date. [Rule 35](#)

If there is a hearing, the court shall take whatever evidence is necessary for the disposition of the motion. The court shall enter written or oral findings either granting or denying relief within 63 days (9 weeks) of the conclusion of the hearing or provide the parties a notice of the date by which the ruling will be issued. [Rule 35](#)

### Findings of Fact and Conclusions of Law Required?

Yes, findings of fact and conclusions of law required. [Rule 35](#)

### Hearing Required?

If the motion and the files and record of the case show to the satisfaction of the court that the defendant is not entitled to relief, the court shall enter written findings of fact and conclusions of law in denying the motion . . . Thereafter, the court shall grant a prompt hearing on the motion unless, based on the pleadings, the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusions of law. [Rule 35](#)

### Standard of Review on Appeal

On appeal from a trial court's ruling on a motion for postconviction relief, the Court of Appeals defers to the trial court's findings of fact if they have record support, but reviews any legal conclusions de novo. *People v. Sharp*, App.2019, 2019 WL 4063571

The denial of a post-conviction relief motion is reviewed for abuse of discretion. *People v. Firth*, App.2008, 205 P.3d 445

## **Counsel Provided?**

Yes, the court will appoint counsel if the petitioner requests counsel and is indigent. [Rule 35](#)

Yes, the court will provide counsel in death penalty post-conviction proceedings if the petitioner is indigent. [C.R.S.A.16-12-205](#)

## **Issues Allowed to be Raised**

(1) Conviction was obtained or sentence imposed in violation of the Constitution/laws of the United States or the constitution/laws of this state; (2) Applicant was convicted under a statute that is in violation of the Constitution of the United States or the constitution of this state, or that the conduct for which the applicant was prosecuted is constitutionally protected; (3) Court rendering judgment was without jurisdiction over the person of the applicant or the subject matter; (4) Exists evidence of material facts, not theretofore presented and heard which requires vacation of the conviction or sentence in the interest of justice; (5) Any grounds otherwise properly the basis for collateral attack; (6) That the sentence imposed has been fully served or that there has been unlawful revocation of parole, probation, or conditional release. [Rule 35](#)

The issues that can may be raised for a post-conviction review petition in a death penalty case are the same as above, with the exception that the issue of ineffective assistance may also be raised. [C.R.S.A.16-12-206](#)

## **Can DNA Issues be Raised?**

An incarcerated person may apply to the district court in the district where the conviction was secured for DNA testing concerning the conviction and sentence the person is currently serving. [C.R.S.A.18-1-412](#)

## **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [C.R.S.A.16-1-109](#)

Recording of Interrogations [C.R.S.A.16-3-601](#)

Evidence Preservation [C.R.S.A.18-1-414](#)

Exoneree Compensation [C.R.S.A.13-65-103](#)

## **Connecticut**

### **Relevant Statutes or Rules**

[Conn.Gen.Stat. Ann. 51-296. Designation of public defender for indigent defendant, codefendant](#)

[Conn.Gen.Stat. Ann. Title 52, Chapter 915 Habeas Corpus](#)

[Conn.Gen.Stat. Ann. 54-102kk. DNA testing of biological evidence](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on a writ of habeas corpus.

### **Findings of Fact and Conclusions of Law Required?**

Not mentioned.

### **Hearing Required?**

Not mentioned.

### **Standard of Review on Appeal**

Not mentioned.

### **Counsel Provided?**

Yes, counsel will be appointed if the petitioner is indigent. [C.G.S.A. 51-296](#)

### **Issues Allowed to be Raised**

Not mentioned.

### **Can DNA Issues be Raised?**

DNA issues can be raised under 54-102kk. Person who was convicted and incarcerated may at any time file a petition with the sentencing court requesting DNA testing of evidence -- court shall order DNA testing with certain findings and may order with certain findings; petitioner has right to be represented by counsel, and indigent persons get appointed counsel. [C.G.S.A. 54-102kk](#)

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [C.S.G.A. 54-1p](#)

Recording of Interrogations

Evidence Preservation

Exoneree Compensation [C.S.G.A.54-102uu](#)

In-custody Informants

New Non-DNA Evidence and Changes in Science

### **Notes**

Connecticut does not have a post-conviction relief petition. A writ of habeas corpus is the principal post-conviction remedy. The statutes and rules concerning writs of habeas corpus in Connecticut are not very detailed.

## **Delaware**

### **Relevant Statutes or Rules**

[Delaware Superior Court Rules of Criminal Procedure, Rule 61 Postconviction Remedy](#)

[Del.Code Ann., Title 11, 4504 Postconviction Remedy](#)



### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on a regular PCR petition.

Yes, time requirement to rule on a death penalty PCR petition.

In capital cases the court shall enter an order setting the schedule of the postconviction proceeding within the following time limits. The motion for postconviction relief shall be filed within 60 days of the date of the scheduling order and shall be submitted for decision within 270 days of the date of the scheduling order. The court for compelling cause may grant an enlargement of not more than an additional 60 days for filing or submission or both, provided that a request for enlargement is made before the expiration of the prescribed time period. If enlargement is granted, the court shall state its finding of compelling cause with specificity. The court shall enter a final order within 60 days of the date of submission. [Rule 61](#)

### **Findings of Fact and Conclusions of Law Required?**

Not mentioned.

### **Hearing Required?**

After considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable. [Rule 61](#)

### **Standard of Review on Appeal**

Note mentioned.

### **Counsel Provided?**

Yes, the court will appoint counsel if the petitioner requests counsel and is indigent.

Request for appointment of counsel shall be filed contemporaneously with the movant's postconviction motion. Failure to file a contemporaneous request for appointment of counsel with the movant's postconviction motion may be deemed a waiver of counsel. [Rule 61](#)

In the case of capital cases, counsel who represented the defendant at trial or on appeal may not represent the defendant in the postconviction proceeding unless the defendant and counsel request continued representation. If the defendant requests the appointment of new counsel, the court shall promptly rule on that request. [Rule 61](#)

### **Issues Allowed to be Raised**

(1) Court lacked jurisdiction; (2) Any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction or a capital sentence. [Rule 61](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised. A person convicted of a crime may file in the court that entered the judgment of conviction a motion requesting the performance of forensic DNA testing to demonstrate the person's actual innocence. [11 Del.C. 4504](#)

## **Conviction Integrity Mechanisms**

Eyewitness Identification Reform

Recording of Interrogations

## **Notes**

In the case of capital cases, counsel who represented the defendant at trial or on appeal may not represent the defendant in the postconviction proceeding unless the defendant and counsel request continued representation. If the defendant requests the appointment of new counsel, the court shall promptly rule on that request. [Rule 61](#)

Also, failure to file a request for appointment of counsel the postconviction motion may be deemed a waiver of counsel. [Rule 61](#)

## **Florida**

### **Relevant Statutes or Rules**

[Florida Rules of Criminal Procedure, Postconviction Relief, 3.850-3.853](#)

[Fl.Stat. Ann. 925.11 Postsentencing DNA Testing](#)

[Fl.Stat. Ann. 925.12 DNA Testing, Defendants Entering Pleas](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on a regular PCR petition.

Yes, time requirement to rule on death penalty PCR petition.

There are time limits in postconviction procedures for capital cases. From the time of assignment, the judge must issue case management orders for every step of the capital postconviction process, including at the conclusion of all hearings and conferences. The assigned judge shall conduct a status conference not later than 90 days after the judicial assignment, and shall hold status conferences at least every 90 days thereafter until the evidentiary hearing has been completed or the motion has been ruled on without a hearing. If the court does not permit written closing arguments, the court shall render its order within 30 days of the filing of the transcript of the hearing. Immediately following an evidentiary hearing, the trial court shall order a transcript of the hearing, which shall be filed within 10 days if real-time transcription was utilized, or within 45 days if real-time transcription was not utilized. If the trial court permits the parties to submit written closing arguments, the arguments shall be filed by both parties within 30 days of the filing of the transcript of the hearing. If the court permits written closing arguments, the court shall render its order within 30 days of the filing of the last written closing argument and no later than 60 days from the filing of the transcript of the hearing. [Rule 3.851](#)

## **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [Rule 3.850](#), [Rule 3.851](#)

## **Hearing Required?**

If an evidentiary hearing is required, the court shall grant a prompt hearing and shall cause notice to be served on the state attorney and the defendant or defendant's counsel, and shall determine the issues, and make findings of fact and conclusions of law with respect thereto. [Rule 3.850](#)

The answer shall use the same claim numbering system contained in the defendant's motion. The answer shall specifically respond to each claim in the motion and state the reason(s) that an evidentiary hearing is or is not required. [Rule 3.851](#)

## **Standard of Review on Appeal**

The Court of Appeals' standard of review of claims for postconviction relief that have been summarily denied is de novo. *McGhee v. State*, App. 5 Dist., 2020 WL 739884 (2020)

The standard of review of the denial of a motion for postconviction relief following an evidentiary hearing requires deference to the trial court's factual findings. *Hunter v. State*, App. 1 Dist., 87 So.3d 1273 (2012)

## **Counsel Provided?**

Yes, the court will appoint counsel under certain circumstances.

The court may appoint counsel to represent the defendant . . . The factors to be considered by the court in making this determination include: the adversary nature of the proceeding, the complexity of the proceeding, the complexity of the claims presented, the defendant's apparent level of intelligence and education, the need for an evidentiary hearing, and the need for substantial legal research. [Rule 3.850](#)

Upon the issuance of the mandate affirming a judgment and sentence of death on direct appeal, the Supreme Court of Florida shall at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel or directing the trial court to immediately appoint counsel from the Registry of Attorneys maintained by the Justice Administrative Commission. [Rule 3.851](#)

## **Issues Allowed to be Raised**

(1) Judgment was entered or sentence was imposed in violation of the Constitution/laws of the United States or the State of Florida; (2) Court did not have jurisdiction to enter the judgment; (3) Court did not have jurisdiction to impose the sentence; (4) Sentence exceeded the maximum authorized by law; (5) Plea was involuntary; (6) Judgment or sentence is otherwise subject to collateral attack. [Rule 3.850](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

You can petition the court to order the examination of physical evidence collected at the time of the investigation of the crime for which he or she has been sentenced that may contain DNA (deoxyribonucleic acid) and that would exonerate that person or mitigate the sentence that person received. [F.S.A. 925.11](#), [F.S.A. 925.12](#), [Rule 3.853](#)

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform

Evidence Preservation

Exoneree Compensation [Fl.Stat.Ann. Title 47, Chapter 961](#)

In-custody Informants

### **Notes**

The time guidance concerning death penalty post-conviction proceedings is interesting. Florida is the only state I looked at that required the judge to hold status conferences.

## **Georgia**

### **Relevant Statutes or Rules**

[Ga.Code.Ann. 5-5-23. Newly-discovered evidence](#)

[Ga.Code.Ann. 5-5-41. Motion made after time expires; extraordinary motion for new trial; DNA tests](#)

[Ga.Code.Ann., Title 9, Chapter 14 Habeas Corpus, Article 2 Procedure for Persons Under Sentence of State Court of Record](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on writ of habeas corpus.

Within ten days of the filing of a petition challenging for the first-time state court proceedings resulting in a death sentence, the superior court clerk of the county where the petition is filed shall give written notice to The Council of Superior Court Judges of Georgia. Within 30 days the president of the council shall assign the case to a judge of a circuit other than the circuit in which the conviction and sentence were imposed. [Ga.Code.Ann. 9-14-47.1](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [Ga.Code.Ann. 9-14-49](#)

### **Hearing Required?**

The habeas court's obligation to schedule a hearing on a habeas petition is mandatory unless the court is able to determine from the face of the petition that it is without merit. [Ga.Code.Ann. 19-14-47](#); 12 Ga. Proc. Criminal Procedure § 35:43

### **Standard of Review on Appeal**

Not mentioned.

### **Counsel Provided?**

No, counsel is not usually provided in a habeas corpus case, because habeas corpus is a civil remedy. Although the court has the discretion to appoint counsel for an indigent defendant due to the complexity or merits of the case. 12 Ga. Proc. Criminal Procedure § 35:29

### **Issues Allowed to be Raised**

(1) In the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of this state. [Ga.Code.Ann. 9-14-43](#)

### **Can DNA Issues be Raised?**

A motion for a new trial can be made under 5-5-23 or 5-5-41 on the basis of new evidence, including DNA evidence. [Ga.Code.Ann. 5-5-23](#), [Ga.Code.Ann. 5-5-41](#)

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [Ga.Code.Ann., Title 17, Chapter 20](#)  
Evidence Preservation [Ga.Code.Ann. 17-5-56](#)

### **Notes**

Georgia does not have a post-conviction relief petition. A writ of habeas corpus is the principal post-conviction remedy.

## **Hawaii**

### **Relevant Statutes or Rules**

[Hawaii Rules of Penal Procedure, Rule 40 Post-Conviction Proceeding](#)  
[Hawaii Rev.Stat., Title 38, Chapter 844D, Part XI Post-Conviction DNA Testing](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement mentioned.

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [Rule 40](#)

### **Hearing Required?**

If a petition alleges facts that if proven would entitle the petitioner to relief, the court shall grant a hearing which may extend only to the issues raised in the petition or answer. However, the court may deny a hearing if the petitioner's claim is patently frivolous and is without trace of support either in the record or from other evidence submitted by the petitioner. The court may also deny a hearing on a specific question of fact when a full and fair evidentiary hearing upon that question was held during the course of the

proceedings which led to the judgment or custody which is the subject of the petition or at any later proceeding. The petitioner shall have a full and fair evidentiary hearing on the petition. [Rule 40](#)

### **Standard of Review on Appeal**

Not mentioned.

### **Counsel Provided?**

Yes, counsel will be provided if the petition alleges that the petitioner is unable to afford counsel. [Rule 40](#)

### **Issues Allowed to be Raised**

(1) Judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawaii; (2) Court which rendered the judgment was without jurisdiction over the person or the subject matter; (3) Sentence is illegal; (4) Newly discovered evidence; (5) Any ground which is a basis for collateral attack on the judgment. [Rule 40](#)

### **Can DNA Issues be Raised?**

A person who was convicted of and sentenced for a crime, or acquitted of a crime on the ground of physical or mental disease, disorder, or defect excluding responsibility, may file a motion, at any time, for DNA analysis of any evidence. [H.R.S. 844D-121](#)

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform

Evidence Preservation [H.R.S. 844D-126](#)

Exoneree Compensation [H.R.S. 661B-1](#)

## **Idaho**

### **Relevant Statutes or Rules**

[Idaho Code Ann., Title 19, Chapter 49 Uniform Post-Conviction Procedure Act](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

Within 30 days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion. [I.C. 19-4906](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [I.C. 19-4907](#)

## **Hearing Required?**

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. [I.C. 19-4906](#)

If a petition for postconviction relief presents a genuine issue of material fact, an evidentiary hearing must be conducted to resolve the factual issues.

## **Standard of Review on Appeal**

Not mentioned.

## **Counsel Provided?**

Yes, the court can provide counsel if the petitioner is indigent.

The statute specifies that a "If the applicant is unable to pay court costs and expenses of representation . . . court-appointed attorney may be made available to the applicant in the preparation of the application, in the trial court, and on appeal, and paid, on order of the district court, by the county in which the application is filed" [I.C. 19-4904](#)

## **Issues Allowed to be Raised**

(1) Conviction or the sentence was in violation of the constitution of the United States or the constitution/laws of this state; (2) Court was without jurisdiction to impose sentence; (3) Sentence exceeds the maximum authorized by law; (4) Exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; (5) Sentence has expired, probation or conditional release was unlawfully revoked, or that he is otherwise unlawfully held; (6) Subject to the provisions of section 19-4902(b) through (g), Idaho Code, that the petitioner is innocent of the offense; (7) That the conviction or sentence is otherwise subject to collateral attack. [I.C. 19-4901](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

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. [I.C. 19-4902](#)

## **Conviction Integrity Mechanisms**

None

## **Notes**

Idaho specifically mentions providing counsel to help petitioners prepare post-conviction relief applications. In most other states counsel was not assigned until after a petition was filed or only if an evidentiary hearing was required. [I.C. 19-4904](#)

## **Illinois**

### **Relevant Statutes or Rules**

[Ill.Comp.Stat.Ann., Chapter 725, Act 5, Title VI, Article 116 Post-Trial Motions](#)

[Ill.Comp.Stat.Ann., Chapter 725, Act 5, Title VI, Article 122 Post-Conviction Hearing](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement mentioned to rule on PCR petition.

Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section. If the petition is not dismissed pursuant to this Section, the court shall order the petition to be docketed for further consideration. If the petitioner is under sentence of death, the court shall order the petition to be docketed for further consideration and hearing within one year of the filing of the petition. [725 I.L.C.S. 5/122-2.1](#)

Within 30 days after the making of an order pursuant to subsection (b) of Section 122-2.1, or within such further time as the court may set, the State shall answer or move to dismiss. In the event that a motion to dismiss is filed and denied, the State must file an answer within 20 days after such denial. [725 I.L.C.S. 5/122-5](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [725 I.L.C.S. 5/122-2.1](#)

### **Hearing Required?**

The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. [725 I.L.C.S. 5/122-6](#)

### **Standard of Review on Appeal**

Appellate Court reviews the summary dismissal of a postconviction petition de novo. *People v. Williams*, App. 1 Dist.2009, 333 Ill.Dec. 222, 394 Ill.App.3d 236, 914 N.E.2d 641

Appellate court will disturb circuit court's ruling in postconviction proceeding only if it is manifestly erroneous, i.e., if it contains error that is clearly evident, plain, and indisputable. *People v. Hawkins*, 1998, 228 Ill.Dec. 924, 181 Ill.2d 41, 690 N.E.2d 999

Decision to dismiss postconviction petition will not be disturbed absent showing of abuse of discretion. *People v. Hayes*, App. 2 Dist.1996, 216 Ill.Dec. 359, 279 Ill.App.3d 575, 665 N.E.2d 419



## **Counsel Provided?**

Yes, the court will provide counsel if the petitioner is indigent.

If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, and the petition is not dismissed pursuant to Section 122-2.1, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel. [725 I.L.C.S. 5/122-4](#)

If the petitioner is under sentence of death and is without counsel and alleges that he is without means to procure counsel, the court shall appoint counsel. [725 I.L.C.S. 5/122-2.1](#)

## **Issues Allowed to be Raised**

(1) In proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both; (2) Death penalty was imposed and there is newly discovered evidence not available to the person at the time of the proceeding that resulted in his or her conviction that establishes a substantial basis to believe that the defendant is actually innocent by clear and convincing evidence. [725 I.L.C.S. 5/122-1](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A defendant may make a motion for the performance of fingerprint, Integrated Ballistic Identification System, or forensic DNA testing on evidence that was secured in relation to the trial or guilty plea which resulted in his or her conviction. [725. I.L.C.S. 5/116-3](#)

## **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [725 I.L.C.S. 5/107A](#)

Recording of Interrogations [5/103-2.1](#)

Evidence Preservation [5/116-4](#)

Exoneree Compensation

In-custody Informant [5/115-21](#)

## **Notes**

Illinois has a statute concerning post-conviction relief and intellectual disability, it states that "In cases where no determination of an intellectual disability was made and a defendant has been convicted of first-degree murder, sentenced to death, and is in custody pending execution of the sentence of death . . . a defendant may seek relief from the death sentence through a petition for post-conviction relief under this Article alleging that the defendant was a person with an intellectual disability as defined in Section 114-15 at the time the offense was alleged to have been committed." [725 I.L.C.S. 5/122-2.2](#)

## **Indiana**

### **Relevant Statutes or Rules**

[Ind.Code.Ann., Title 35, Article 38, Ch. 7 Post Conviction DNA Tests and Analysis](#)

[Ind.Code.Ann., Title 35 Appendix Court Rules \(Criminal\), Rules of Post Conviction Remedies](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

Within thirty (30) days after the filing of the petition, or within any further reasonable time the court may fix, the state, by the Attorney General in capital cases, or by the prosecuting attorney in non-capital cases, shall respond by answer stating the reasons, if any, why the relief prayed for should not be granted. The court may make appropriate orders for amendment of the petition or answer, for filing further pleadings or motions, or for extending the time of the filing of any pleading. [PC.1](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

The court shall make specific findings of fact, and conclusions of law on all issues presented, whether or not a hearing is held. [PC.1](#)

### **Hearing Required?**

A post-conviction relief hearing is required when the determination hinges, in whole or in part, upon unresolved fact questions. When the petition for post-conviction relief conclusively demonstrates that the petitioner is entitled to no relief, a hearing on the matter is unnecessary and the petition may be denied without further proceedings.(8A Ind. Law Encyc. Criminal Law § 590) [PC.1](#)

### **Standard of Review on Appeal**

Where the post-conviction court makes findings of fact and conclusions of law in accordance with post-conviction rule governing remedy and relief, the Court of Appeals will reverse only upon a showing of clear error that leaves the court with a definite and firm conviction that a mistake has been made. Laboa v. State, App.2019, 131 N.E.3d 660

The appellate court will not defer to the post-conviction court's legal conclusions. Pierce v. State, App.2019, 135 N.E.3d 993

### **Counsel Provided?**

Yes, counsel will be provided if the petitioner is indigent and counsel is requested.

If petitioner is indigent, it shall allow petitioner to proceed in forma pauperis. If the court finds the indigent petitioner is incarcerated in the Indiana Department of Correction, and has requested representation, a copy of the petition is sent to the Public Defender's office. [PC. 1](#)

## **Issues Allowed to be Raised**

(1) Conviction or the sentence was in violation of the Constitution of the United States or the constitution/laws of this state; (2) Court was without jurisdiction to impose sentence; (3) Sentence exceeds the maximum authorized by law, or is otherwise erroneous; (4) Exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; (5) Sentence has expired, probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held; (6) that the conviction or sentence is otherwise subject to collateral attack. [PC. 1](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

Persons convicted of and sentenced for murder or a class 1-5 felony may apply at any time for post-conviction DNA testing with the court that determined the sentence. [I.C. 35-38-7-5](#)

## **Conviction Integrity Mechanisms**

Recording of Interrogations [617](#)

Evidence preservation [I.C. 35-38-7-14](#)

Exoneree compensation [I.C. 5-2-23](#)

## **Notes**

Indiana is a state worth looking into further. Its statutes and rules concerning post-conviction relief are robust and well organized.

## **Iowa**

### **Relevant Statutes or Rules**

[Iowa Code Ann., Title 16, Ch. 822 Postconviction Procedure](#)

[Iowa Code Ann., Title 3, 81.10 Application requirements for DNA profiling after conviction](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition mentioned.

Within thirty days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion [I.C.A.822.6](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. [I.C.A. 822.7](#)

## **Hearing Required?**

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.

The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. [I.C.A. 822.7](#)

## **Standard of Review on Appeal**

Ordinarily, Court of Appeals' review of postconviction relief proceedings is for errors of law. *Johnson v. State*, App.1995, 542 N.W.2d 1

Postconviction proceedings are reviewed for errors of law, while issues of constitutional dimension are reviewed de novo. *Rhiner v. State*, 2005, 703 N.W.2d 174

Supreme Court reviews claim for postconviction relief de novo in light of totality of circumstances. *Love v. State*, 1996, 551 N.W.2d 66

## **Counsel Provided?**

Yes, counsel can be provided.

Unless the applicant is confined in a state institution and is seeking relief under section 822.2, subsection 1, paragraphs “e” and “f”, the costs and expenses of legal representation shall also be made available to the applicant in the preparation of the application, in the trial court, and on review if the applicant is unable to pay. [I.C.A.822.5](#)

## **Issues Allowed to be Raised**

(1) Conviction or sentence was in violation of the Constitution of the United States or the Constitution/laws of this state; (2) Court was without jurisdiction to impose sentence; (3) Sentence exceeds the maximum authorized by law; (4) Exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; (5) Person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held; (6) Person's reduction of sentence has been unlawfully forfeited; (7) The conviction or sentence is otherwise subject to collateral attack; (8) The results of DNA profiling ordered pursuant to an application filed under section 81.10 would have changed the outcome of the trial or voided the factual basis of a guilty plea had the profiling been conducted prior to the conviction. [I.C.A. 822.2](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A defendant who has been convicted of a felony or aggravated misdemeanor may make an application to the court for an order to require that DNA profiling be performed on a forensic sample collected in the case for which the person stands convicted. [I.C.A. 81.10](#)

### **Conviction Integrity Mechanisms**

Recording of Interrogations 724 N.W.2d 449

Evidence Preservation [I.C.A. 81.10](#)

Exoneree Compensation [I.C.A. Title 15, Chapter 663A](#)

### **Notes**

Iowa specifically mentions providing counsel to help petitioners prepare post-conviction relief applications. In most states counsel was not assigned until after a petition filed or only if an evidentiary hearing was required. [I.C.A. 822.5](#)

The underlying trial court record containing the conviction for which an applicant seeks postconviction relief, as well as the court file containing any previous application filed by the applicant relating to the same conviction, shall automatically become part of the record in a claim for postconviction relief under this chapter. [I.C.A. 822.6A](#)

## **Kansas**

### **Relevant Statutes or Rules**

[Kansas Stat. Ann. 21-2512. Forensic DNA testing; limits thereof](#)

[Kansas Stat. Ann. 22-4506. Persons in custody after felony conviction; habeas corpus or 60-1507 motions](#)

[Kansas Stat. Ann., Chapter 60, Article 15 Habeas Corpus](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [K.S.A. 60-507](#)

### **Hearing Required?**

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. The court may entertain and determine such motion without requiring the production of the prisoner at the hearing. [K.S.A. 60-507](#)

## **Standard of Review on Appeal**

An appellate court will review a trial court's summary dismissal of a defendant's motion for postconviction relief to determine if the court abused its discretion. K.S.A. 60-1507. Tomlin v. State, 2006, 130 P.3d 1229, 35 Kan.App.2d 398

When the district court summarily denies a postconviction motion to vacate a sentence without a hearing, the Court of Appeals will review that decision under an abuse of discretion standard. K.S.A. 60-1507. Woodberry v. State, 2004, 101 P.3d 727, 33 Kan.App.2d 171

## **Counsel Provided?**

Yes, the court can appoint counsel if the petitioner is indigent.

When a person who is in custody under a sentence of imprisonment upon conviction of a felony files a petition for writ of habeas corpus or a motion attacking sentence under K.S.A. 60-1507 and files with the petition or motion an affidavit stating that such person is financially unable to pay the costs of the action and to employ counsel the court determine if the petition or motion presents substantial questions of law or triable issues of fact. If it does, and the petitioner is indigent the court shall appoint counsel. [K.S.A. 22-4506](#)

## **Issues Allowed to be Raised**

(1) Sentence was imposed in violation of the constitution/laws of the United States, or the constitution/laws of the state of Kansas; (2) Court was without jurisdiction to impose such sentence; (3) Sentence was in excess of the maximum authorized by law; (4) Sentence is otherwise subject to collateral attack. [K.S.A. 60-1507](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised under K.S.A. 21-2512.

The statute states that "Notwithstanding any other provision of law, a person in state custody, at any time after conviction for murder in the first degree as defined by K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto, or for rape as defined by K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, may petition the court that entered the judgment for forensic DNA testing (deoxyribonucleic acid testing) of any biological material that: (1) Is related to the investigation or prosecution that resulted in the conviction; (2) is in the actual or constructive possession of the state; and (3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results." [K.S.A. 21-2512](#)

Raising DNA issues under this statute is its own post-conviction mechanism, if DNA results are favorable to the petitioner or inconclusive the court can order a hearing.

## **Conviction Integrity Mechanisms**

Recording of Interrogations [K.S.A. 22-4620](#)

Evidence Preservation [K.S.A.21-2512](#)  
Exoneree Compensation [K.S.A. 60-5004](#)

## **Kentucky**

### **Relevant Statutes or Rules**

[Kentucky Rules of Criminal Procedure, Rule 11.42 Motion to vacate, set aside, or correct sentence](#)  
[Kentucky Rules of Civil Procedure, Rule 60.02 Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc](#)  
[Ky.Stat.Ann. 422.285 Person convicted of certain offenses may request DNA testing](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

The clerk of the court shall notify the attorney general and the Commonwealth's attorney in writing that such motion (whether it be styled a motion, petition or otherwise) has been filed, and the Commonwealth's attorney shall have 20 days after the date of mailing of notice by the clerk to the Commonwealth's attorney in which to serve an answer on the movant. [Rule 11.42](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [Rule 11.42](#)

### **Hearing Required?**

If the answer raises a material issue of fact that cannot be determined on the face of the record the court shall grant a prompt hearing. [Rule 11.42](#)

Standard of review in proceedings to vacate, set aside, or correct sentence, when the trial court conducts an evidentiary hearing, requires that the reviewing court must defer to the determinations of fact and witness credibility made by the trial judge. Com. v. Robertson (Ky.App. 2013) 431 S.W.3d 430

### **Standard of Review on Appeal**

Trial court's denial of a motion to vacate sentence is reviewed on appeal for an abuse of discretion. Teague v. Com. (Ky.App. 2014) 428 S.W.3d 630

The standard for reviewing an allegation of ineffective assistance of counsel requires a finding of an error in performance by the counsel and a finding of prejudice resulting from that error that had an adverse effect on the judgment. Hopewell v. Com. (Ky.App. 1985) 687 S.W.2d 153

### **Counsel Provided?**

Yes, the court will appoint counsel if the petitioner is indigent and requests counsel.

If the movant is without counsel and is financially unable to employ counsel, the court shall appoint counsel to represent the movant in the proceeding, including appeal, upon specific written request by the movant. [Rule 11.42](#)

### **Issues Allowed to be Raised**

A prisoner in custody under sentence or a defendant on probation, parole or conditional discharge who claims a right to be released on the ground that the sentence is subject to collateral attack may at any time proceed directly by motion in the court that imposed the sentence to vacate, set aside or correct it. [Rule 11.42](#)

(1) Mistake, inadvertence, surprise or excusable neglect; (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (3) perjury or falsified evidence; (4) Fraud affecting the proceedings, other than perjury or falsified evidence; (5) Judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; (6) any other reason of an extraordinary nature justifying relief. [Rule 60.02](#)

### **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person who was convicted of a capital offense, a Class A felony, a Class B felony, or any offense designated a violent offense and who meets the requirements of this section may at any time request the forensic deoxyribonucleic acid (DNA) testing and analysis of any evidence that is in the possession or control of the court or Commonwealth, that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence. [K.R.S. 422.285](#)

It is not clear whether DNA issues can be raised under Rule 11.42, but DNA issues raised under K.R.S. 422.85 are their own post-conviction mechanism - counsel is appointed, there is a hearing, etc.

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform

Evidence Preservation [K.R.S. 524.140](#)

## **Louisiana**

### **Relevant Statutes or Rules**

[Louisiana Code of Criminal Procedure, Title. XXXI-a Post Conviction Relief](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement mentioned to rule on PCR petition.

### **Findings of Fact and Conclusions of Law Required?**

Not mentioned.



## **Hearing Required?**

If the court determines that the factual and legal issues can be resolved based upon the application and answer, and supporting documents, including relevant transcripts, depositions, and other reliable documents submitted by either party or available to the court, the court may grant or deny relief without further proceedings. [CCRP 929](#)

An evidentiary hearing for the taking of testimony or other evidence shall be ordered whenever there are questions of fact which cannot properly be resolved pursuant to Articles 928 and 929. [CCRP 930](#)

## **Standard of Review on Appeal**

Not mentioned.

## **Counsel Provided?**

Yes, the court may appoint counsel if the petitioner is indigent and alleges a claim which, if established, would entitle him to relief, the court may appoint counsel.

The court may appoint counsel for an indigent petitioner when it orders an evidentiary hearing, authorizes the taking of depositions, or authorizes requests for admissions of fact or genuineness of documents, when such evidence is necessary for the disposition of procedural objections raised by the respondent. [CCRP 930.7](#)

## **Issues Allowed to be Raised**

(1) Conviction was obtained in violation of the constitution of the United States or the state of Louisiana; (2) exceeded its jurisdiction; (3) Conviction or sentence subjected him to double jeopardy; (4) Limitations on the institution of prosecution had expired; (5) Statute creating the offense for which he was convicted and sentenced is unconstitutional; (6) Conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana; (7) Results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted. [CCRP 930.3](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person convicted of a felony may file an application for post-conviction relief requesting DNA testing of an unknown sample secured in relation to the offense for which he was convicted. [CCRP 926.1](#)

## **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [CCRP 253](#)

Evidence Preservation [CCRP 926.1](#)

Exoneree Compensation [CCRP 572.8](#)

## **Maine**

### **Relevant Statutes or Rules**

[Maine Rev.Stat.Ann., Title 15, Pt. 4, Ch. 305-a Post-Conviction Review](#)

[Maine Rev.Stat.Ann., Title 15, Pt. 4, Chapter 305-B. Post-Judgment Conviction Motion for DNA Analysis](#)

[Rules of Unified Criminal Procedure, X. Proceedings for Post-Conviction Review](#)

[Rules of Unified Criminal Procedure, XII. Post-Conviction Motion for DNA Analysis](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition mentioned.

### **Findings of Fact and Conclusions of Law Required?**

Not mentioned.

### **Hearing Required?**

Court shall, after a review of the pleadings and any other material of record, determine whether an evidentiary hearing is required. [Rule 73](#)

### **Standard of Review on Appeal**

Supreme Judicial Court will not set aside findings and conclusions of postconviction court unless they are clearly erroneous and not supported by any competent evidence in the record. *Whitmore v. State* (1996) Me., 670 A.2d 394, 80 A.L.R.5th 691

Supreme Judicial Court examines postconviction review justice's findings to determine whether they are clearly erroneous. *State v. Toussaint* (1983) Me., 464 A.2d 177

### **Counsel Provided?**

Yes, the court will provide counsel if the petitioner is indigent and the petitioner requests counsel.

If the petitioner desires to have counsel appointed, he shall file an affidavit of indigency in the form prescribed by the Supreme Judicial Court. The failure to include an affidavit of indigency with the petition does not bar the court from appointing counsel upon a subsequent filing of an affidavit of indigency. [M.R.S.A. 2129](#)

### **Issues Allowed to be Raised**

Criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing proceeding is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126, section 2128 unless section 2128-A applies, or section 2128-B. [M.R.S.A. 2125](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person who has been convicted of and sentenced for a crime under the laws of this State that carries the potential punishment of imprisonment of at least one year may file a written post judgment of conviction motion in the underlying criminal proceeding moving the court to order DNA analysis of evidence in the control or possession of the State that is related to the underlying investigation or prosecution that led to the person's conviction and a new trial based on the results of that analysis. [M.R.S.A. 2137](#)

## **Conviction Integrity Mechanisms**

Recording of Interrogations [M.R.S.A. 2803-B](#)

Evidence Preservation [M.R.S.A. 2138](#)

Exoneree Compensation [M.R.S.A. Title 14, Chapter 747](#)

## **Maryland**

### **Relevant Statutes or Rules**

[Maryland Code Criminal Procedure, Title 7 Uniform Postconviction Procedure Act](#)

[Maryland Code Criminal Procedure, Title 8 Other Postconviction Review](#)

[Maryland Court Rules, Title 4. Criminal Causes, Chapter 400 Post Conviction Procedure](#)

[Maryland Court Rules, Title 4. Criminal Causes, Chapter 700 Post Conviction DNA Testing](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

The State's Attorney shall file a response to the petition within 15 days after notice of its filing, or within such further time as the court may order. [Rule 4-404](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [Rule 4-407](#)

### **Hearing Required?**

A hearing shall be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief. The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner. [Rule 4-406](#)

Except as provided in subsection (b) of this section, a person is entitled to assistance of counsel and a hearing on a petition filed under this title. [MD Code, Criminal Procedure, 7-108](#)

The rule requiring a hearing on petition for post-conviction relief to be held in court in which petition is properly filed requires a hearing upon any first application for post-conviction relief, and trial court is not

empowered to exercise discretion as to whether or not such hearing should be held. Maryland Rules, Rule BK44; Acts 1962, c. 36, § 1; Code Supp. art. 27, § 645H. O'Connor v. Director, Patuxent Inst., 1965, 207 A.2d 615, 238 Md. 1

### **Standard of Review on Appeal**

The Court of Special Appeals and the Court of Appeals review a trial court's order on a motion to reopen postconviction proceedings for an abuse of discretion. State v. Adams-Bey, 2016, 144 A.3d 1200, 449 Md. 690.

### **Counsel Provided?**

Petitioner is entitled to assistance of counsel. [MD Code, Criminal Procedure, 7-108](#)

### **Issues Allowed to be Raised**

(1) Sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution/laws of the State; (2) Court lacked jurisdiction to impose the sentence; (3) Sentence exceeds the maximum allowed by law; (4) Sentence is otherwise subject to collateral attack on a ground of alleged error that would otherwise be available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy. [MD Code, Criminal Procedure, 7-102](#)

### **Can DNA Issues be Raised?**

Yes, DNA issues can be raised. Person convicted of a crime of violence may petition for DNA testing. [8-201](#) The rules concerning post-conviction DNA testing can be found in [Maryland Rules, Title 4. Criminal Causes, Chapter 700 Post Conviction DNA Testing](#)

### **Conviction Integrity Mechanisms**

Eyewitness Identification Reform [MD Code, 3-506](#)

Recording of Interrogations [MD Code, 2-402](#)

Evidence Preservation [MD Code, 8-201](#)

Exoneree Compensation [MD Code, 10-501](#)

In-custody Informants [MD Code, 10-924](#)

### **Notes**

[Rule 4-406](#), concerning hearings, states: “The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner.”

## **Massachusetts**

### **Relevant Statutes or Rules**

[Massachusetts Rules of Criminal Procedure Rule 30 Postconviction Relief](#)

[Massachusetts Rules of the Superior Court, Rule 61a Motions for Post-Conviction Relief](#)

[Mass. General Laws Ann. 278A-2 Conditions for filing motion for forensic or scientific analysis](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition mentioned.

Unless otherwise ordered by the court, the Commonwealth shall file a response within thirty days, or in the case of a motion for a new trial for a defendant who has been convicted of first degree murder, within ninety days, of the Clerk's forwarding the motion to the Commonwealth. [Rule 61a](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, finding of fact and conclusion of law required. [Rule 30](#)

### **Hearing Required?**

The judge may rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing if no substantial issue is raised by the motion or affidavits. [Rule 30](#)

### **Standard of Review on Appeal**

Court of Appeals reviews sufficiency of evidence challenges de novo. United States v. Bray, C.A.1 (Mass.) 2017, 853 F.3d 18

Appeals court reviews the denial of a motion for new trial only to determine whether there has been a significant error of law or other abuse of discretion. Com. v. Indrisano (2015) 35 N.E.3d 722, 87 Mass.App.Ct. 709.

Denial of a defendant's motion for posttrial discovery under postconviction relief rule, is reviewed for abuse of discretion. Com. v. Camacho (2015) 36 N.E.3d 533, 472 Mass. 587

### **Counsel Provided?**

Yes, the court may appoint counsel.

The judge in the exercise of discretion may assign or appoint counsel in accordance with the provisions of these rules to represent a defendant in the preparation and presentation of motions filed under subdivisions (a) and (b) of this rule. [Rule 30](#)

### **Issues Allowed to be Raised**

Person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts.

The trial judge upon motion in writing may grant a new trial at any time if it appears that justice may not have been done. [Rule 30](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person may file a motion for forensic or scientific analysis under this chapter if that person: (1) has been convicted of a criminal offense in a court of the commonwealth; (2) is incarcerated in a state prison, house of correction, is on parole or probation or whose liberty has been otherwise restrained as the result of a conviction; and (3) asserts factual innocence of the crime for which the person has been convicted.

[M.G.L.A. 278A-2](#)

## **Conviction Integrity Mechanisms**

[Eyewitness Identification reform](#)

Recording of Interrogations, 442 Mass. 423, 813 N.E.2d 516

Evidence Preservation [M.G.L.A. 278A-16](#)

Exoneree Compensation, [M.G.L.A. Chapter 258D](#)

## **Michigan**

### **Relevant Statutes or Rules**

[Michigan Court Rules of 1985, Criminal Procedure, Subchapter 6.500 Postappeal Relief](#)

[Mich.Comp.Laws.Ann. 770.16 Petition for DNA testing; conditions and limitations; procedure](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

The trial court shall allow the prosecutor a minimum of 56 days to respond. [Rule 6.506](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

The court, either orally or in writing, shall set forth in the record its findings of fact and its conclusions of law, and enter an appropriate order disposing of the motion. [Rule 6.508](#)

### **Hearing Required?**

After reviewing the motion and response, the record, and the expanded record, if any, the court shall determine whether an evidentiary hearing is required. If the court decides that an evidentiary hearing is not required, it may rule on the motion or, in its discretion, afford the parties an opportunity for oral argument. [Rule 6.508](#)

### **Standard of Review on Appeal**

No standard of review mentioned.

## **Counsel Provided?**

Yes, If the defendant has requested appointment of counsel, and the court has determined that the defendant is indigent the court may appoint counsel.

Counsel must be appointed if the court directs that oral argument or an evidentiary hearing be held. [Rule 6.505](#)

## **Issues Allowed to be Raised**

Motion for Relief for Judgment, allows the defendant a chance to raise issues that had not been raised and argued on appeal. [Rule 6.502](#)

Court rules prohibits repetitive motions for relief from judgment there are two exceptions to the rule. A defendant may file a subsequent motion for relief from judgment based on the following: (1) Newly discovered evidence; (2) Retroactive change in the law - a law that can be applied to actions in the past, that is, changes the legal consequences of actions that were committed before the enactment of the law. [Rule 6.502](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

May petition the circuit court to order DNA testing of biological material identified during the investigation leading to conviction, and for a new trial based on the results of that testing. [M.C.L.A. 770.16](#)

## **Conviction Integrity Mechanisms**

[Eyewitness Identification Reform](#)

Recording of Interrogations [M.C.L.A. 763.8](#)

Evidence Preservation [M.C.L.A. 770.16](#)

Exoneree Compensation [M.C.L.A. Ch. 691](#)

## **Minnesota**

### **Relevant Statutes or Rules**

[Minn.Stat.Ann., Chapter 590 Postconviction Relief](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

Within 20 days after the filing of the petition or within such time as the judge to whom the matter has been assigned may fix, the county attorney, or the attorney general, on behalf of the state, shall respond to the petition by answer or motion. [M.S.A. 590.03](#)

## **Findings of Fact and Conclusions of Law Required?**

Yes, finding of facts and conclusion of law required. [M.S.A. 590.04](#)

## **Hearing Required**

In the discretion of the court, it may receive evidence in the form of affidavit, deposition, or oral testimony. The court may inquire into and decide any grounds for relief, even though not raised by the petitioner.

A full evidentiary hearing on a petition for post-conviction relief is required “whenever material facts are in dispute which have not been resolved in the proceedings resulting in conviction and which must be resolved in order to determine the issues raised on the merits.” In other cases, a hearing may be held at the discretion of the trial court. A hearing must be held unless the petition and files and records of the proceeding “conclusively show that the petitioner is entitled to no relief.” (9 MNPRAC § 39:4) [M.S.A. 590.04](#)

## **Standard of Review on Appeal**

Scope of review of postconviction proceeding is limited to determining whether there is sufficient evidence to sustain postconviction court's findings, and postconviction court's decision will not be disturbed absent abuse of discretion. *Black v. State*, 1997, 560 N.W.2d 83.

Postconviction rulings are reviewed under abuse of discretion standard, with inquiry limited to determining whether there is sufficient evidence to sustain postconviction court's findings; in absence of abuse of discretion, reviewing court will not disturb postconviction court's decision. *McMaster v. State*, 1996, 551 N.W.2d 218

## **Counsel Provided?**

Yes, a person financially unable to obtain counsel who desires to pursue the remedy provided in section 590.01 may apply for representation by the state public defender. [M.S.A. 590.05](#)

## **Issues Allowed to be Raised**

(1) Conviction or the sentence violates the Constitution/laws of the United States or of the state; (2) Scientific evidence not available at trial establishes the petitioner's actual innocence; (3) A person who has been convicted and sentenced for a crime committed before May 1, 1980, may apply for relief under this chapter upon the ground that a significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively, including resentencing under subsequently enacted law. [M.S.A. 590.01](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person convicted of a crime may make a motion for the performance of fingerprint or forensic DNA testing to demonstrate the person's actual innocence. [M.S.A. 590.01](#)



## **Conviction Integrity Mechanisms**

Recording of Interrogations, *State v. Scales*, 518 N.W.2d 587 (Minn. 1994)

Evidence Preservation [M.S.A. 590.10](#)

Exoneree Compensation [M.S.A. 590.11](#), [M.S.A. 611.362](#)

## **Mississippi**

### **Relevant Statutes or Rules**

[Miss. Code Ann., Title 99, Chapter 39 Post-conviction proceedings](#)

[Mississippi Rules of Appellate Procedure, Rule 22 Application for post-conviction collateral relief in criminal cases](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition.

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required. [Miss. Code. Ann. 99-39-23](#)

### **Hearing Required?**

If the motion is not dismissed at a previous stage of the proceeding, the judge, after the answer is filed and discovery, if any, is completed, shall, upon a review of the record, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice shall require.

The court may grant a motion by either party for summary judgment when it appears from the record that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. [Miss. Code Ann. 99-39-19](#)

### **Standard of Review on Appeal**

When reviewing a trial court's denial of a petition for postconviction relief filed pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act (MUPCCRA), the Court of Appeals will not disturb the trial court's decision to deny postconviction relief unless the trial court's decision proves to be clearly erroneous. *Conlee v. State*, 2009, 23 So.3d 535

Trial court's ruling on postconviction relief question can only be reversed if it is against overwhelming weight of evidence or abuse of discretion. *Billiot v. State* (Miss.1995) 655 So.2d 1

### **Counsel Provided?**

Yes, if an evidentiary hearing is required, the judge may appoint counsel.

In cases resulting in a sentence of death and upon a determination of indigence, appointment of post-conviction counsel shall be made by the Office of Capital Post-Conviction Counsel upon order entered by the Supreme Court promptly upon announcement of the decision on direct appeal affirming the sentence of death. The order shall direct the trial court to immediately determine indigence and whether the inmate will accept counsel. [Miss. Code. Ann. 99-39-23](#)

### **Issues Allowed to be Raised**

(1) Conviction or sentence violates the Constitution of the United States or the Constitution/laws of Mississippi; (2) Trial court was without jurisdiction to impose sentence; (3) Statute under which the conviction and/or sentence was obtained is unconstitutional; (4) Sentence exceeds the maximum authorized by law; (5) Exists evidence of material facts, not previously presented and heard; (5) Exists biological evidence that in testing would demonstrate that the petitioner would not have been convicted or would have received a lesser sentence; (6) Plea was made involuntarily; (7) Sentence has expired, or probation, parole or conditional release unlawfully revoked; (8) Entitled to an out-of-time appeal; (9) Conviction or sentence is otherwise subject to collateral attack. [Miss. Code Ann. 99-39-5](#)

### **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

If the motion is not dismissed due to plain appearance from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge shall order the state to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate and, in cases in which the petitioner's claim rests on the results of DNA testing of biological evidence, order the testing of the biological evidence. [Miss. Code Ann. 99-39-11](#)

### **Conviction Integrity Mechanisms**

Evidence Preservation, [Miss. Code Ann. 9-49-1](#)

Exoneree Compensation [Miss. Code Ann. 11-44-7](#)

### **Notes**

Mississippi has an Office of Capital Post-Conviction Counsel which provides representation to indigent parties under sentences of death in post-conviction proceedings, and performs such other duties as set forth by law. [Miss Code. Ann. 99-39-103](#), [Miss. Code Ann. 99-39-105](#)

The post-conviction relief process in this state requires that when a prisoner's conviction and sentence have been appealed to the Supreme Court, and the appeal is either affirmed or dismissed, the prisoner is to seek leave from that Court before filing a motion for post-conviction collateral relief in the trial court. [Miss. Code Ann. 99-39-7](#)

## **Missouri**

### **Relevant Statutes or Rules**

[Vernon's Ann. Missouri Stat. 547.035 Post-conviction motion for DNA testing; procedure](#)

[Vernon's Ann. Missouri Stat. 547.360 Post-conviction relief](#)

[Vernon's Ann. Missouri Stat. 547. 370 Post-conviction relief, death penalty](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirement to rule on PCR petition mentioned.

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings of fact and conclusions of law required.

The court shall issue findings of fact and conclusions of law on all issues presented, whether or not a hearing is held. [V.A.M.S.547.360](#)

### **Hearing Required?**

If the court shall determine the motion and the files and records of the case conclusively show that the movant is entitled to no relief, a hearing shall not be held. . . . At any hearing ordered by the court the movant need not be present. The court may order that testimony of the movant shall be received by deposition. The hearing shall be on the record and shall be confined to the claims contained in the last timely filed motion. The court may continue the hearing upon a showing of good cause. The movant has the burden of proving the movant's claims for relief by a preponderance of the evidence. The court shall issue findings of fact and conclusions of law on all issues presented, whether or not a hearing is held. [V.A.M.S.547.360](#)

### **Standard of Review on Appeal**

Review of the motion court's denial of a motion for postconviction relief is not de novo, but rather is limited to a determination of whether the motion court's findings of fact and conclusions of law are clearly erroneous. *Breeden v. State* (App. W.D. 1999) 987 S.W.2d 15.

Motion court's findings and conclusions on a motion for postconviction relief are deemed clearly erroneous when, after reviewing the entire record, the appellate court is left with the definite and firm impression that the motion court has made a mistake. *Breeden v. State* (App. W.D. 1999) 987 S.W.2d

### **Counsel Provided?**

Yes, the court will appoint counsel if the petitioner is indigent. [V.A.M.S.547.360](#)

If it is a case involving the death penalty and the petitioner is indigent, the court shall appoint two counsel to represent the petitioner. [V.A.M.S.547.370](#)

## **Issues Allowed to be Raised**

(1) Conviction or sentence imposed violates the constitution/laws of the state or the constitution of the United States; (2) Ineffective assistance of trial and appellate counsel; (3) Court imposing the sentence was without jurisdiction to do so; (4) Sentence imposed was in excess of the maximum sentence authorized by law. [V.A.M.S.547.360](#)

## **Can DNA Issues be Raised?**

Yes, DNA issues can be raised.

A person in the custody of the department of corrections claiming that forensic DNA testing will demonstrate the person's innocence of the crime for which the person is in custody may file a postconviction motion in the sentencing court seeking such testing. [V.A.M.S. 547.035](#)

## **Conviction Integrity Mechanisms**

Recording of Interrogations [V.A.M.S. 590.700](#)

Evidence Preservation [V.A.M.S. 650.056](#)

Exoneree Compensation [V.A.M.S. 650.58](#)

## **Notes**

Missouri will appoint two attorneys in cases involving the death penalty. [V.A.M.S. 547.370](#)

## **Montana**

### **Relevant Statutes or Rules**

[Mont.Code Ann., Title 46, Chapter 21](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

For death sentence cases, the court must issue a decision 90 days after hearing or filing of briefs if no hearing was held; otherwise, no time requirements were found. [MCA 46-21-201](#)

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings and conclusions are required in the record of proceedings. [MCA 46-21-202](#)

### **Hearing Required?**

No evidentiary hearing is required if the petition is without merits. [MCA 46-21-201](#); *State v. Cobell*, 86 P.3d 20, 320 Mont. 122 (2004). Burden of proof is preponderance of the evidence.

### **Standard of Review on Appeal**

Appellate review is for abuse of discretion. *Lacey v. State*, 389 P.3d 233, 386 Mont. 204 (2017).

### **Counsel Provided?**

Yes, counsel is provided if the petitioner is indigent for death sentence cases; Yes, counsel provided if a hearing is required and petitioner is indigent or in interest of justice for non-death sentence cases. [MCA 46-21-201](#)

### **Issues Allowed to be Raised**

(1) Violation of rights under state or U.S. Constitution; (2) court lacked jurisdiction to impose sentence; (3) suspended/deferred sentence improperly revoked; (4) sentence in excess of maximum; (5) collateral attack under writs of habeas corpus or coram nobis; or other common law or statutory remedy. [MCA 46-21-101](#).

### **Can DNA Issues be Raised?**

Yes. [MCA 46-21-110](#)

### **Conviction Integrity Mechanisms**

Preservation of biological evidence [MCA 46-21-111](#); Recording of interrogations [MCA 46-4-401 et seq.](#); Pre-trial suppression of confession or admission [MCA 46-13-301](#).

## **Nebraska**

### **Relevant Statutes or Rules**

[Neb.Rev.Stat., Chapter 29, Article 30](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Disposition appears to be between 180 days and one year. See Supreme Court [Rule 6-101](#).

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings and conclusions are required [NRS 29-3001](#).

### **Hearing Required?**

A hearing is required "unless the motion and the files and records of the case show to the satisfaction of the court that the prisoner is entitled to no relief." [NRS 29-3001](#). "A district court need not conduct an evidentiary hearing in postconviction proceedings in the following circumstances: (1) When the prisoner alleges only conclusions of law or facts and (2) when the files and records of the case affirmatively show that the prisoner is entitled to no relief. *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008)." Burden of proof is "claimed error is prejudicial." *State v. Harris*, 2004, 677 N.W.2d 147, 267 Neb. 771.

### **Standard of Review on Appeal**

Appellate standard of review is abuse of discretion. *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008).

## **Counsel Provided?**

“The district court may appoint not to exceed two attorneys to represent the prisoners in all proceedings under sections 29-3001 to 29-3004.” [NRS 29-3004](#). (Indigency is not necessarily the test for assignment of counsel.) “District court abused its discretion in failing to appoint counsel, where postconviction record showed a justiciable issue of law or fact was presented by the indigent defendant”. *State v. Wiley*, 228 Neb. 608, 423 N.W.2d 477 (1988).” Yes, counsel provided for post-conviction DNA testing if the petitioner is indigent. [NRS 29-4122](#).

## **Issues Allowed to be Raised**

(1) Violation of rights under state or U.S. Constitution. [NRS 29-3001](#). Statute is very broad. Case law shows petitions for ineffective counsel, and limited habeas corpus.

## **Can DNA Issues be Raised?**

Yes, under a separate Act. [NRS Chapter 29, Article 41 et seq.](#) The DNA issue appears to be heard through motion for new trial. [NRS 29-2101](#)

## **Conviction Integrity Mechanisms**

Recorded custodial interrogations with jury instructions upon failure to record, [NRS 29-4503](#) et seq.; Eyewitness identification, NRS 81-1455; Preservation of biological evidence, [NRS 29-4125](#); Exonerated compensation, [NRS 29-4601](#) et seq.

## **Notes**

The statute for providing counsel appears to be a bit more generous than many other states. Indigency is not mentioned as a requirement in the statute, and up to two attorneys may be assigned. Overall, however, Nebraska’s PCR statute is broad and vague.

## **Nevada**

### **Relevant Statutes or Rules**

Nev.Rev.Stat. [34.720](#) et seq.; Nev.Rev.Stat. [34.900](#) et seq.

### **Time Required for Court to Rule on PCR Petition/Motion**

For habeas corpus, if the petitioner has been sentenced to death, the court has 60 days from submission of matter for decision. [NRS 34.820](#). For petition for factual innocence, DA or AG has 120 days to respond, the petitioner then has 30 days to reply. If a hearing is granted, the court must hold the hearing and issue a final order 150 days after expiration of the petitioner's reply period. [NRS 34.970](#).

### **Findings of Fact and Conclusions of Law Required?**

Yes, findings and conclusions are required for habeas corpus. [NRS 34.830](#). For factual innocence, only a "written explanation" required. [NRS 34.970](#).

## **Hearing Required?**

An evidentiary hearing granted by judicial determination for habeas corpus. NRS [34.770](#). For factual innocence, a hearing is not required. Burden on the petitioner is clear and convincing evidence. NRS [34.970](#).

## **Standard of Review on Appeal**

For habeas corpus, the appellate court reviews application of the law *de novo*. *State v. Huebler*, 128 Nev. 192.

## **Counsel Provided?**

For post-conviction habeas corpus, “A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.

NRS [34.750](#). If petitioner has been sentenced to death, counsel is provided. [NRS 34.820](#). For factual innocence, indigent provided counsel if a hearing is granted. NRS [34-980](#).

## **Issues Allowed to be Raised**

(1) Habeas corpus; (2) factual innocence; [NRS Chapter 34](#).

## **Can DNA Issues be Raised?**

Yes. NRS [176.0918](#); [34.960](#).

## **Conviction Integrity Mechanisms**

Preservation of biological evidence [NRS 176.0912](#); Recorded interrogations for homicide and sexual assault suspects. [NRS 171.1239](#); Eyewitness identification/line-up policies required. [NRS 171.1237](#). Exoneree Compensation.

## **Notes**

In the summary at the top of this document, Nevada was considered a state that did not have a PCR petition statute.

## **New Hampshire**

### **Relevant Statutes or Rules**

N.H.Rev.Stat., Chapters [534](#) and [651-D](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

For habeas corpus: "Whenever any person is brought before a court or any justice thereof as aforesaid the court or justice shall, within three days thereafter, examine the causes of detention." NHRS [534:21](#).

### **Findings of Fact and Conclusions of Law Required?**

Not found in statute or rules.

### **Hearing Required?**

This issue is not addressed in the statutes or court rules. Case law seems to indicate that a hearing is not required. *Diamontopoulos v. State*, 140 N.H. 182.

### **Standard of Review on Appeal**

"In an appeal from a denial of a petition for a writ of habeas corpus, we accept the trial court's factual findings unless they lack support in the record or are clearly erroneous, but review the trial court's legal conclusions de novo." *State v. Santamaria*, 169 N.H. 722.

### **Counsel Provided?**

Not found in statute or rules.

### **Issues Allowed to be Raised**

Habeas corpus. NHRS Ch. [534](#).

### **Can DNA Issues be Raised?**

Yes. NHRS [651-D:2](#)

### **Conviction Integrity Mechanisms**

Eyewitness identification NHRS [595-C](#); Preservation of biological evidence [NHRS 651-D:3](#); Exoneree compensation NHRS [541-B-14](#).

### **Notes**

In the summary at the top of this document, New Hampshire was considered a state that did not have a PCR petition statute.

## **New Jersey**

### **Relevant Statutes or Rules**

N.J. Rule Governing Criminal Practice [3:22](#)



### **Time Required for Court to Rule on PCR Petition/Motion**

60 days after hearing, or if no hearing, 60 days from filing of the last amended petition or answer. Discretion to extend another 30 days. Rule [3:22-11](#).

### **Findings of Fact and Conclusions of Law Required?**

Yes. Rule 3:22-11.

### **Hearing Required?**

Hearing required only if a prima facie case is established or material issues of disputed fact that cannot be resolved by the record. Rule 3:22-10. Petitioner's burden of proof is preponderance of evidence. *State v. Preciose*, 129 N.J. 451, 462, 609 A.2d 1280 (1992).

### **Standard of Review on Appeal**

Upon appellate review, if no evidentiary hearing, standard is *de novo*. *State v. Jackson* 454 N.J.Super. 284.

### **Counsel Provided?**

Yes, public defender for first post-conviction petition if petitioner is indigent and petition is cognizable. For second petition if good cause shown. Rule [3:22-6](#). Yes, if the defendant is indigent, for post-conviction DNA. [N.J.S.A. 2A:84A-32a \(2\(c\)\)](#).

### **Issues Allowed to be Raised**

(1) "Substantial denial" of rights under state or U.S. Constitution; (2) lack of jurisdiction of the court to impose the judgment; (3) sentence imposed exceeds sentencing law in combination with other grounds; (4) collateral attack via habeas corpus or other common law remedy; (5) ineffective assistance of counsel in failing to file direct appeal. Rule [3:22-2](#).

### **Can DNA Issues be Raised?**

Yes, the defendant can file a motion requesting forensic DNA testing. A favorable result would lead to a motion for a new trial. [N.J.S.A. 2A:84A-32a](#).

### **Conviction Integrity Mechanisms**

Statewide conviction review unit operated out of AG office; [Public Defender's](#) office also considers direct requests for representation through their conviction integrity unit; AG [Guidelines](#) for eyewitness identification; Recording of custodial interrogations, [R. 3-17](#); Preservation of biological evidence [N.J.S.A. 2A:84A-32g](#). Exoneree compensation, NJSA [52:4C-1](#).

### **Notes**

New Jersey has PCR court rules rather than statutes. The PCR rules are specific and seemingly comprehensive.

## New Mexico

### **Relevant Statutes or Rules**

[N.M.Stat.Ann. 1978, 31-11-6](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

There are no time limitations for a prisoner to file a motion for PCR. The State has 120 days to respond. Court may schedule a dispositional hearing and/or an evidentiary hearing. Only mention in statute for the court to rule is to grant a "prompt hearing." There is no mention of time required to issue a decision in statute or in R. Crim. P. Dist. Ct. [5-803](#).

### **Findings of Fact and Conclusions of Law Required?**

Yes. NMSA 31-11-6.

### **Hearing Required?**

"To be entitled to postconviction hearing, defendant's claims must raise issues which cannot be conclusively determined from files and records and those claims must be such, that if true, provide legal basis for relief sought." *State v. Kenney*, 1970, 81 N.M. 368, 467 P.2d 34.

### **Standard of Review on Appeal**

Standard of review is abuse of discretion. *State v. Torres*, 2017 WL 3484104.

### **Counsel Provided?**

Yes, if the defendant is indigent. NMSA 31-11-6.

### **Issues Allowed to be Raised**

(1) Sentence was imposed in violation of the constitution of the United States, or of the constitution or laws of New Mexico; (2) Court was without jurisdiction to impose such sentence; (3) Sentence was in excess of the maximum authorized by law; (4) Otherwise subject to collateral attack. Subsequent motions for PCR are not required to be heard. NMSA [31-11-6](#). Court rules govern petitions for writs of habeas corpus. Crim. Proc. for Dist. Ct. R. [5-802](#).

### **Can DNA Issues be Raised?**

Yes. "If the results of the DNA testing are exculpatory, the district court may set aside the petitioner's judgment and sentence, may dismiss the charges against the petitioner with prejudice, may grant the petitioner a new trial or may order other appropriate relief." State shall preserve evidence for the duration of incarceration and probation. NMSA 1978, § [31-1A-2](#)

## **Conviction Integrity Mechanisms**

Electronic recordings of custodial interrogations, NMSA [29-1-16](#); Accurate Eyewitness Identification Act requires agencies to have lineup procedures, NMSA 1978, § [29-3B-1 et seq.](#)

Preservation of Evidence, NMSA 1978, § [31-1A-2](#),

## **New York**

### **Relevant Statutes or Rules**

[N.Y. Criminal Procedure Law, Article 440.](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirements for the court to rule on the PCR motion were found.

### **Findings of Fact and Conclusions of Law Required?**

Yes, regardless if a hearing is held. [CPL 440.30.](#)

### **Hearing Required?**

Hearing required unless circumstances require denial of the motion, the motion is conceded by the people or contains unquestionable documentary proof to grant the motion without hearing, or a number of other factors explained by the statute. Burden is preponderance of the evidence. CPL [440.30.](#)

### **Standard of Review on Appeal**

Standard of review is abuse of discretion. *State v. Jones*, 24 N.Y.3d 623.

### **Counsel Provided?**

Not addressed by statute, even for indigency. Case law suggests that appointment of counsel is at court's discretion and especially for the indigent at his request if the case shows possible merit, and also if hearing is scheduled. *People ex rel. Williams v. LaVallee*, 19 N.Y.2d 238, 241, 279 N.Y.S.2d 1, 225 N.E.2d 735 (1967).

### **Issues Allowed to be Raised**

(1) Court had no jurisdiction; (2) judgment procured by duress, misrepresentation, or fraud on behalf of prosecutorial team, material evidence at trial was known to be false by prosecutor; (3) material evidence at trial was procured in violation of constitutional rights; (4) Defendant had mental disease/defect and was incapable of understanding; (5) improper and prejudicial conduct did not appear on record and would have reversed judgement on appeal; (6) new evidence, forensic DNA; (7) defendant's constitutional rights violated; (8) defendant was victim of sex trafficking for certain convictions. CPL [440.10.](#)

### **Can DNA Issues be Raised?**

Yes. CPL 440.10; 440.30.

## **Conviction Integrity Mechanisms**

Attorney General has a [Conviction Review Bureau](#); Eyewitness identification rule [CPL 60.25](#); Recording of custodial interrogations [CPL 60.45](#); Wrongly convicted person can sue state for damages. Claims for Unjust Conviction and Imprisonment Court of Claims Act 8-b.

## **Notes**

Some grounds for PCR in New York are unique from other states.

## **North Carolina**

### **Relevant Statutes or Rules**

N.C.Gen.Stat. [15A-1411](#) et seq.; N.C.Gen.Stat., Chapter 15A, [Article 92](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

No time requirements for the court to rule on the motion were found, though a few procedural time requirements were found in [Article 92](#).

### **Findings of Fact and Conclusions of Law Required?**

"When the motion is based upon an asserted violation of the rights of the defendant under the Constitution or laws or treaties of the United States, the court must make and enter conclusions of law and a statement of the reasons for its determination to the extent required, when taken with other records and transcripts in the case, to indicate whether the defendant has had a full and fair hearing on the merits of the grounds so asserted." NCGS [15A-1420](#).

### **Hearing Required?**

"Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit." "An evidentiary hearing is not required when the motion is made in the trial court pursuant to G.S. [15A-1414](#), but the court may hold an evidentiary hearing if it is appropriate to resolve questions of fact." "If an evidentiary hearing is held, the moving party has the burden of proving by a preponderance of the evidence every fact essential to support the motion." NCGS 15A-1420.

### **Standard of Review on Appeal**

The standard of review for findings of fact is abuse of discretion; the lower court's conclusions of law are reviewed de novo." 8 N.C. Index 4th Criminal Law § 1019.

### **Counsel Provided?**

Yes, for the indigent. NCGS 15A-1420 and 15A-1421.

## Issues Allowed to be Raised

A generalized "motion for appropriate relief" may be filed. "The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief." Multiple grounds enumerated in [15A-1415](#). NCGS Title 15A, Article 89; Courts, agencies, or counsel can refer claims of factual innocence to the statutorily-created Innocence Inquiry Commission to screen, investigate, and report to the trial court its findings and recommendations. NCGS Title 15A, Article 92.

Grounds from 15A-1415:

(1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law. (2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter. (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina. (4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina. (5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina. (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 719, s. 1, effective June 21, 1996. (7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required. (8) The sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge. (9) The defendant is in confinement and is entitled to release because his sentence has been fully served. (10) The defendant was convicted of a nonviolent offense as defined in G.S. 15A-145.9; the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

## Can DNA Issues be Raised?

Yes. NCGS [15A-1471](#); NCGS [15A-269](#).

## Conviction Integrity Mechanisms

Innocence Inquiry Commission established in statute. NCGS Title 15A, [Article 92](#); Eyewitness Identification Reform Act NCGS 14A; Electronic recordings of interrogations NCGS 15A-211; Preservation of evidence and DNA testing. NCGS [15A-1471](#); Exoneratee compensation, NCGS 148-82 to 148-84.

## Notes

North Carolina is unique in that it has a special statutory commission charged with screening, investigating, and reporting findings for factual innocence claims. See [N.C. Innocence Inquiry Commission's First Decade: Impressive Successes and Lessons Learned](#), 94 NCLR 1725.

## **North Dakota**

### **Relevant Statutes or Rules**

[N.D. Century Code Chapter 29-32.1.](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

State has 30 days to answer once the application is docketed. NDCC 29-32.1-06 Otherwise, no time requirements found for the court to rule.

### **Findings of Fact and Conclusions of Law Required?**

Yes. NDCC [29-32.1-11](#).

### **Hearing Required?**

Evidentiary hearing held at court's discretion. NDCC 29-32.1-09. No burden of proof mentioned.

### **Standard of Review on Appeal**

"Clearly erroneous" is the standard of review. *Clark v. State*, 758 N.W.2d 900.

### **Counsel Provided?**

"If an applicant requests counsel and the court is satisfied that the applicant is indigent, counsel shall be provided at public expense to represent the applicant." NDCC [29-32.1-05](#).

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) court did not have jurisdiction; (3) sentence not authorized by law; (4) new evidence; (5) significant change in law should be applied retroactively, (6) sentence expired or parole unlawfully revoked; (7) collateral attack under any common law, statutory or other writ, motion, proceeding, or remedy. NDCC 29-32.1-01. Ineffective assistance of postconviction counsel is specifically NOT allowed under this chapter. NDCC [29-32.1-09](#).

### **Can DNA Issues be Raised?**

Yes. NDCC [29-32.1-15](#).

### **Conviction Integrity Mechanisms**

Beyond DNA testing, no conviction integrity mechanisms found.

## Ohio

### **Relevant Statutes or Rules**

R.C. [2953.21](#) et seq.; Crim.R. [35](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

Prosecutor has 10 days to respond by answer or motion once petition docketed. MSJ can be filed within 20 days of issue raised. Petitioner sentenced to death has 180 days to amend a petition without leave of court. No time requirement for court to rule on petition in statute, but Crim.R. 35 indicates the court has 180 days after petition filed. ORC [2953.21](#); Crim.R.[35](#).

### **Findings of Fact and Conclusions of Law Required?**

Yes. ORC 2953.21 (H).

### **Standard of Review on Appeal**

Standard of review is abuse of discretion. 53 Ohio Jur. 3d Habeas Corpus § 132. Baldwin's Oh. Prac. Crim. L. § 81:13 (3d ed.).

### **Hearing Required?**

Yes, unless the petition and the files and records of the case show the petitioner is not entitled to relief. RC 2953.21 (F). Burden for actual innocence is "clear and convincing evidence." RC 2953.21 (A)(1)(a).

### **Counsel Provided?**

Yes, for indigent death sentence petitioners. [ORC 2953.21 \(J\)](#). Supreme Court held that "an indigent defendant is entitled to representation by public defender in hearing on postconviction petition if public defender determines that issues raised by petitioner have arguable merit, and (2) public defender is entitled to notice from prosecution of any such evidentiary hearing." *State v. Crowder*, 60 Ohio St.3d 151.

### **Issues Allowed to be Raised**

(1) Rights denied under state or U.S. Constitution; (2) DNA/actual innocence. ORC [2953.21](#).

### **Can DNA Issues be Raised?**

Yes ORC 2953.21; 2953.71 et seq.

### **Conviction Integrity Mechanisms**

Eyewitness Identification/Lineup requirements, ORC [2933.83](#) and 2933.831;Recording of custodial interrogations, ORC [2933.81](#); Biological evidence preservation and taskforce, ORC [2933.82](#); Wrongful

imprisonment action, ORC [2743.48](#); Ohio Public Defender Wrongful Conviction Project; Univ. of Cincinnati Ohio Innocence Project; Cuyahoga and Summit County Conviction Integrity Units.

## **Oklahoma**

### **Relevant Statutes or Rules**

[22 Okla.Stat.1080 et seq.](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

State has 30 days to answer once the application is docketed, unless the claim is for ineffective assistance of counsel, then the state has 90 days to respond. Time requirement for the court to rule was not found.

### **Findings of Fact and Conclusions of Law Required?**

Yes. [22 OS 1084](#).

### **Hearing Required?**

"If the application cannot be disposed of on the pleadings and record, or there exists a material issue of fact, the court shall conduct an evidentiary hearing" [22 OS 1084](#).

### **Standard of Review on Appeal**

Standard of review not found.

### **Counsel Provided?**

Yes, if indigent and court deems necessary. [22 OS 1082](#).

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) court did not have jurisdiction; (3) sentence exceeds maximum; (4) new evidence/material facts; (5) sentence has expired; (6) collateral attack common law, statutory or other writ, motion, petition, proceeding or remedy. [22 OS 1080](#).

### **Can DNA Issues be Raised?**

Yes. [22 OS 1371](#) et seq.

### **Conviction Integrity Mechanisms**

Eyewitness identification, [22 OS 21](#); Electronic recording of custodial interrogations, [22 OS 22](#); Disclosure of evidence, [22 OS 2002](#); Biological evidence preservation [22 OS 1372](#); Jailhouse informant reform [12 OS 2510](#); Exoneree compensation is \$1M for actual innocence and \$175K for other successful post-conviction relief [51 OS 154](#).



## Oregon

### **Relevant Statutes or Rules**

Or.Rev.Stat. [138.510 et seq.](#); Or.UTCR, [Chapter 24](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Appointed counsel for the petitioner has 120 days to file an amended petition. Defendant has 30 days to respond by answer, demurrer, or motion. Petitioner has 30 days to respond to demurrer or motion. Trial scheduled no sooner than 90 days after answer filed or answer deadline. Time requirement for the court to rule was not found. UTCR [24.100](#)

### **Findings of Fact and Conclusions of Law Required?**

"The judgment must clearly state the grounds on which the cause was determined, and whether a state or federal question was presented and decided." ORS [138.640](#)

### **Hearing Required?**

Hearing required. Burden is preponderance of the evidence. ORS 138.620

### **Standard of Review on Appeal**

On appeal, court reviews "...post-conviction proceedings for errors of law, and we are bound by the factual findings of the post-conviction court if any evidence in the record supports those findings." *Angel v. Angelozzi*, 285 Or.App. 541.

### **Counsel Provided?**

Yes, for indigent petitioners. ORS [138.590](#).

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) court did not have jurisdiction; (3) sentence exceeds maximum; (4) statutes under which conviction was rendered is unconstitutional. ORS [138.530](#).

### **Can DNA Issues be Raised?**

Yes. ORS 138.690 et seq.

### **Conviction Integrity Mechanisms**

Eyewitness identification, [case law](#); recording of custodial interrogations, ORS 133.400; informant identity and biological evidence preservation, ORS [133.705](#) et seq.

### **Notes**

Oregon has one of the more detailed and petitioner-generous PCR statutes.

## **Pennsylvania**

### **Relevant Statutes or Rules**

42 Pa.Con.Stat. [9541](#) et seq.; Pa.Crim.R., [Chapter 9](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Time requirement for the court to rule was not found.

### **Findings of Fact and Conclusions of Law Required?**

Not addressed in Rule or Statute. Case law suggests the answer is no. *Com. v. Travaglia*, 661 A.2d 352, 541 Pa. 108.

### **Hearing Required?**

Yes, when Commonwealth files motion to dismiss or when there are issues of material fact. Pa.R.Crim.P. Rule 908. See also Rule 907.

### **Standard of Review on Appeal**

“On appeal, the standard of review of an order denying post-conviction relief is limited to whether the trial court's determination is supported by evidence of record and whether it is free of legal error.” 16C West's Pa. Prac., Criminal Practice § 34:45

### **Counsel Provided?**

Yes, for indigent petitioners. Pa. R. Crim. P. Rule 904.

### **Issues Allowed to be Raised**

(1) Violation of Commonwealth or U.S. Constitution; (2) Ineffective assistance of counsel; (3) Plea of guilty unlawfully induced; (4) Government obstruction of petitioner's right of appeal; (5) New evidence; (6) Sentence exceeds maximum; (7) Trial court did not have jurisdiction; (8) Habeas corpus; coram nobis, all collateral common law and statutory relief; 42 Pa.C.S.A. § 9542 and 9543.

### **Can DNA Issues be Raised?**

Yes. 42 Pa.C.S.A. § 9543.1

### **Conviction Integrity Mechanisms**

Biological evidence preservation. 42 Pa.C.S.A. § 9543.1. Pennsylvania [Innocence Project](#) (non-profit).

### **Notes**

Petition is assigned to the judge who handled the criminal trial, unless the judge determines, “in the interests of justice, that he or she should be disqualified.” Pa.R.Crim.P. Rule 903.

## **Rhode Island**

### **Relevant Statutes or Rules**

R.I.Gen.Laws [10-9.1-1](#) et seq.

### **Time Required for Court to Rule on PCR Petition/Motion**

AG has 20 days to respond once application has been docketed. Otherwise, no time requirement for the court to rule was found. RI Gen Laws 10-9.1-7.

### **Findings of Fact and Conclusions of Law Required?**

Yes. RI Gen Laws 10-9.1-7.

### **Hearing Required?**

Hearing held if there is genuine issue of material fact. RI Gen Laws 10-9.1-6. Civil Rules of Proc. apply. Burden of proof is preponderance of the evidence. *Lipscomb v. State*, 144 A.3d 299 (2016).

### **Standard of Review on Appeal**

Not found.

### **Counsel Provided?**

Yes, for indigent petitioners. RI Gen. Laws 10-9.1-5.

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) court did not have jurisdiction;(3) sentence exceeds maximum; (4) new evidence/material facts; (5) sentence has expired; (5) collateral attack common law, statutory or other writ, motion, petition, proceeding or remedy. RI Gen. Laws 10-9.1-1.

### **Can DNA Issues be Raised?**

Yes. RI Gen Laws 10-9.1-12.

### **Conviction Integrity Mechanisms**

Eyewitness identification model [policy](#); Recording of interrogations task force recommendations; Biological evidence preservation, RI Gen Laws 10-9.1-11.

## **South Carolina**

### **Relevant Statutes or Rules**

[SC Code 17-27-10](#) et seq.

### **Time Required for Court to Rule on PCR Petition/Motion**

For capital cases, the court has 30 days from receipt of transcript or post-trial briefs to issue ruling. SC Code [17-27-160](#).

### **Findings of Fact and Conclusions of Law Required?**

Yes. SC Code 17-27-80.

### **Hearing Required?**

Hearing is held if there is an issue of material fact. SC Code 17-27-70

### **Standard of Review on Appeal**

Standard of review is abuse of discretion. *Love v. State* (S.C. 2019) 2019 WL 4854764.

### **Counsel Provided?**

Yes, for indigent applicants. SC Code 17-27-60.

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) court did not have jurisdiction; (3) sentence exceeds maximum; (4) new evidence/material facts; (5) sentence has expired; (5) collateral attack common law, statutory or other writ, motion, petition, proceeding or remedy. SC Code 17-27-20.

### **Can DNA Issues be Raised?**

Yes. SC Code 17-28-10 et seq.

### **Conviction Integrity Mechanisms**

Biological evidence preservation SC Code 17-28-300 et seq.

## **South Dakota**

### **Relevant Statutes or Rules**

S.D.Cod.Laws, Chapters [21-27](#), [23A-31](#), and [23-5B](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Post-Conviction Proceedings chapter was repealed in 1983. SDCL 23A-34. For habeas corpus, "Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding thirty days thereafter, unless for good cause additional or less time is allowed." SDCL [21-27-12](#). Some time requirements for habeas appeal found in SDCL [21-27-18](#).1.

### **Findings of Fact and Conclusions of Law Required?**

Not mentioned in statute, but some case law indicates appellate courts should review findings of fact/conclusions of law. *Stark v. Weber*, 879 N.W.2d 103, 2016 S.D. 38.

### **Hearing Required?**

Matter not addressed in statute, but rather in case law. When determining merits of application for habeas corpus, granting of hearing is not mandatory. *Sweeney v. Leapley*, 1992, 487 N.W.2d 617

### **Standard of Review on Appeal**

The Supreme Court reviews a habeas court's factual findings under the clearly erroneous standard, and legal conclusions under the de novo standard. *Wright v. Young*, 927 N.W.2d 116, 2019 S.D. 22.

### **Counsel Provided?**

Yes, upon satisfaction of indigency for habeas corpus petitioners, SDCL [21-27-4](#).

### **Issues Allowed to be Raised**

(1) Habeas Corpus, SDCL [21-27](#); (2) Correction of proceedings, SDCL [23A-31](#); (3) Motion for relief from judgment, SDCL [23A-27-4.1](#).

### **Can DNA Issues be Raised?**

Yes. SDCL [23-5b](#).

### **Conviction Integrity Mechanisms**

Evidence preservation SDCL 23-5B-5.

### **Notes**

In the summary at the top of this document, South Dakota was considered a state that did not have a PCR petition statute.

## **Tennessee**

### **Relevant Statutes or Rules**

Tenn. Code Ann. § [40-30-101, et seq.](#); [Sup.Ct.R. 28](#), Rules of Post-Conviction Procedure

### **Time Required for Court to Rule on PCR Petition/Motion**

Dismissal order within 30 days of state's response. If no dismissal, evidentiary hearing shall be scheduled within 4 months of the court's order to hold a hearing. TCA [40-30-109](#). For final order, "The court shall rule within sixty (60) days of conclusion of the proof," with a possible 30-day extension. "Final disposition of a capital case must be made within one (1) year of the filing of the petition." [TCA 40-30-](#)

[111](#). Upon appeal, the appellate court has 9 months to issue opinion from oral argument or from submission of case if no oral argument. TCA [40-30-116](#).

### **Findings of Fact and Conclusions of Law Required?**

Order of dismissal requires conclusions of law, TCA [40-30-109](#); Final order requires findings of fact and conclusions of law, TCA [40-30-111](#).

### **Hearing Required?**

Evidentiary hearing required if petition is not dismissed by court. TCA [40-30-109](#); Petitioner has burden of clear and convincing evidence, TCA [40-30-110](#).

### **Standard of Review on Appeal**

Abuse of discretion appears to be the standard of review. [Rule 28 \(10\)](#).

### **Counsel Provided?**

Yes, upon determination of indigency. TCA [40-30-115](#).

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution, TCA [40-30-103](#).

### **Can DNA Issues be Raised?**

Yes. TCA [40-30-301 et seq.](#)

### **Conviction Integrity Mechanisms**

Office of Post-Conviction Defender, Tenn. Code Ann. § [40-30-201](#) et seq.; Evidence preservation TCA 40-30-309; Exonoree compensation up to \$1M, TCA 9-8-108. [Tennessee Innocence Project](#).

### **Notes**

Tennessee's PCR statute is well-organized and fairly specific.

## **Texas**

### **Relevant Statutes or Rules**

TX Code of Criminal Procedure, Chapters [11](#) and [64](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

The State answers within 15 days. Within 20 days of the answer deadline, the convicting court must determine if there are unresolved material facts. TX CCP Art. [11.07](#). "The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant." TX CCP [Article 11.11](#); If supported, writ "shall be granted without delay by the judge or court receiving the petition." TX CCP Art. [11.15](#). Case law has ruled that 120 days was too long for hearing. *Ex parte Werne*, 118 S.W.3d 833, 836.

## **Findings of Fact and Conclusions of Law Required?**

Findings of fact required. Art. 11.07

## **Hearing Required?**

When a trial court is presented with an application for writ of habeas corpus, it may hold hearing on limited questions of whether to issue writ or simply deny application; after such hearing, no appeal lies from refusal to issue writ. *Ex parte Brown* (App. 7 Dist. 1996) 925 S.W.2d 111. Burden is preponderance of the evidence. Art. 11.07. On appeal, de novo review if no testimony taken at lower level. *Ex parte Mallonee*, 2003 WL 1735241, 2 (Tex. App.—Dallas 2003. Otherwise, "Trial court's ruling in habeas corpus proceeding should not be overturned absent clear abuse of discretion." *Ramirez v. State* (App. 1 Dist. 1995) 916 S.W.2d 32.

## **Standard of Review on Appeal**

On appeal, de novo review if no testimony taken at lower level. *Ex parte Mallonee*, 2003 WL 1735241, 2 (Tex. App.—Dallas 2003. Otherwise, "Trial court's ruling in habeas corpus proceeding should not be overturned absent clear abuse of discretion." *Ramirez v. State* (App. 1 Dist. 1995) 916 S.W.2d 32.

## **Counsel Provided?**

Yes, for certain indigent petitioners TX CCP Article 11.074.

## **Issues Allowed to be Raised**

(1) Habeas corpus, TX CCP Art. 11.01 et seq.; see also under the habeas umbrella the "Junk Science" writ (PROCEDURE RELATED TO CERTAIN SCIENTIFIC EVIDENCE) TX CCP Art. [11.073](#).

## **Can DNA Issues be Raised?**

Yes. TX CCP [Chapter 64](#)

## **Conviction Integrity Mechanisms**

In-Custody Informants, CCP Art. 2.024; Recording of custodial interrogation, CCP Art. 2.32; Eyewitness identification CCP Art. 2.1386; Biological evidence preservation CCP Art. 38.43; Exoneree compensation, Civil Prac. and Remedies Code [Chapter 103](#). [Innocence Project of Texas](#)

## **Notes**

In the summary at the top of this document, Texas was considered a state that did not have a PCR petition statute. However, the procedures related to certain scientific evidence, TX CCP Art. 11.073 and 11.0731, are worth evaluation.

## **Utah**

### **Relevant Statutes or Rules**

Utah Code, [Title 78B, Chapter 9](#); UT Rules Civ. Proc., [Rule 65C](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Respondent has 30 days to respond; Petitioner has 30 days to respond to motions to dismiss or MSJ. "After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case." Time required for the court to issue an order not mentioned. UT Rules Civ. Proc., Rule [65C](#).

### **Findings of Fact and Conclusions of Law Required?**

"The order of dismissal need not recite findings of fact or conclusions of law." "If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order." UT Rules Civ. Proc., Rule [65C](#).

### **Hearing Required?**

"After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition." [Rule 65C \(I\)](#).

Burden of proof is preponderance of the evidence or clear and convincing evidence if ground is force/fraud/coercion of certain offenses. UCA [78B-9-105](#).

### **Standard of Review on Appeal**

"Supreme Court reviews the denial of a motion to appoint counsel under the Post-Conviction Remedies Act (PCRA) for an abuse of discretion." *Ross v. State*, 2012, 293 P.3d 345, 724 Utah Adv. Rep. 57, 2012 UT 93.

### **Counsel Provided?**

Yes, upon request for indigent petitioners with petitions that will require evidentiary hearing and that have complicated issues of law/fact. UCA [78B-9-109](#). Yes, for capital sentence cases upon request and with satisfaction that petitioner is indigent. UCA [78B-9-202](#).

### **Issues Allowed to be Raised**

(1) Petitioner's rights or the statute under which convicted violated state or U.S. Constitution; (2) Sentence/revocation of probation violated statute; (3) Ineffective assistance of counsel; (4) New evidence; (5) New US/Utah Supreme Court or Court of Appeals rule announced after conviction; (6) Certain offenses committed under force, fraud, or coercion. UCA [78B-9-104](#). (7) Factual Innocence UCA 78B-9-402.

### **Can DNA Issues be Raised?**

Yes. UCA [78B-9-300](#).



## **Conviction Integrity Mechanisms**

Statutory conviction integrity units UCA [78B-9-503](#); Eyewitness identification, Utah Rules of Evidence, Rule 617; Evidence preservation UCA [78B-9-301](#); Exoneree Compensation, UCA [78B-9-405](#); Jury instructions must notify jury of in-custody informants, *State v. Charles*, 2011 UT App 291, 263 P.3d 469.

## **Notes**

Utah's statute is nicely organized, with all relevant parts fit into one chapter.

## **Vermont**

### **Relevant Statutes or Rules**

VS Title 13, Chapter [182](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Not mentioned in the Innocence Protection chapter.

### **Findings of Fact and Conclusions of Law Required?**

Not mentioned in the Innocence Protection chapter.

### **Hearing Required?**

Not found.

### **Standard of Review on Appeal**

Not found.

### **Counsel Provided?**

Yes, for indigent petitioners, [13 VS 5562](#).

### **Issues Allowed to be Raised**

(1) Post-conviction DNA testing, [13 VS 5561](#) et seq.; (2) Separate title /chapter governs habeas corpus, [12 VS 3952](#) et seq.

### **Can DNA Issues be Raised?**

Yes. 13 V.S.A. § 5561 et seq.

## **Conviction Integrity Mechanisms**

Eyewitness identification 13 V.S.A. § 5581; Recording of custodial interrogations 13 V.S.A. § 5585; Exoneree compensation 13 V.S.A. § 5572 et seq.;

## Notes

In the summary at the top of this document, Utah was considered a state that did not have a PCR petition statute.

## Virginia

### Relevant Statutes or Rules

Code of VA, Title [19.2](#), Chapters [19.1](#) through [19.3](#) and [Title 8.01, Chapter 25, Article 3](#).

### Time Required for Court to Rule on PCR Petition/Motion

30 days after hearing held, circuit court to file records and certified findings of fact with Supreme Court/Court of Appeals. VAC [19.2-327.4](#) and [19.2-327.12](#).

### Findings of Fact and Conclusions of Law Required?

Findings of fact required. VAC [19.2-327.4](#) and [19.2-327.12](#).

### Hearing Required?

Evidentiary hearing is discretionary, VAC [19.2-327.13](#). However, hearing required under VAC [19.2-327-1](#).

### Standard of Review on Appeal

Standard of review for Supreme Court is de novo for conclusions of law or mixed questions of law and fact. *Haas v. Commonwealth*, 2012, 721 S.E.2d 479, 283 Va. 284.

### Counsel Provided?

Yes, for indigent. VAC [19.2-157](#).

### Issues Allowed to be Raised

(1) Scientific analysis of newly discovered or previously untested scientific evidence, VAC [19.2-327.1](#); (2) Writ of Actual Innocence, Based on Biological Evidence, VAC [19.2-327.2](#) et seq.; (3) Writ of Actual Innocence Based on Non-Biological Evidence, VAC [19.2-327.10](#); (4) Habeas corpus, VAC [8.01-654](#).

### Can DNA Issues be Raised?

Yes. VAC [19.2-327.1](#) and [19.2-327.2](#) et seq.

### Conviction Integrity Mechanisms

Eyewitness identification VAC [9.1-102](#); Recording of custodial interrogations, VAC [19.2-390.04](#); Biological evidence preservation, VAC [19.2-270.4:1](#); Exonerate compensation, VAC [8.01-195.10](#) et seq.

## Washington

### Relevant Statutes or Rules

Rules of Appellate Procedure Rules [16.3 through 16.15](#); RCW Chapter [10.73](#)

### Time Required for Court to Rule on PCR Petition/Motion

Not found in statute or rules.

### Findings of Fact and Conclusions of Law Required?

Yes, if the Court of Appeals transfers to Superior court for hearing for Personal Restraint Petitions. RAP [16.12](#);

### Hearing Required?

Whether or not a hearing is required was not found. Burden of proof is preponderance of the evidence. *Matter of Colbert* (2016) 186 Wash.2d 614, 380 P.3d 504.

### Standard of Review on Appeal

“Appellate court reviews a trial court's ruling on a motion for relief from judgment for abuse of discretion.” *State v. Martinez-Leon* (2013) 174 Wash.App. 753, 300 P.3d 481

### Counsel Provided?

Yes, for certain indigent petitioners. RCW 10.73.150.

### Issues Allowed to be Raised

Issue of (1) "'collateral attack' includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment." RCW [10.73.090](#). Issues which have a different statute of limitations under this chapter are:(2) Newly discovered evidence; (3) statute of conviction found unconstitutional; (4) conviction barred by double jeopardy; (5) not-guilty plea and conviction on insufficient evidence; (6) sentence in excess of statute; (7)significant change in the law material to conviction. RCW [10.73.100](#)

### Can DNA Issues be Raised?

Yes. RCW [10.73.170](#).

### Conviction Integrity Mechanisms

Model [policy](#) for Eyewitness Identification; Biological evidence preservation, RCW [10.73.170](#); Exoneree compensation RCW Title 4, Chapter [100](#); ;

## **West Virginia**

### **Relevant Statutes or Rules**

West Virginia Code, Chapter 53, [Article 4A. Rules Governing Post-Conviction Habeas Corpus Proceedings.](#)

### **Time Required for Court to Rule on PCR Petition/Motion**

Not found in statute or rules.

### **Findings of Fact and Conclusions of Law Required?**

Yes. WVC [53-4A-7. Rule 9.](#)

### **Hearing Required?**

If "there is probable cause to believe that the petitioner may be entitled to some relief and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall promptly hold a hearing and/or take evidence..." [WVC 53-4A-7.](#) Evidentiary hearing at court's discretion, Rules Governing Post-Conviction Habeas Corpus, [Rule 9.](#)

### **Standard of Review on Appeal**

In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, the appellate court reviews the final order and the ultimate disposition under an abuse of discretion standard and the underlying factual findings under a clearly erroneous standard, and questions of law are subject to a de novo review. *Watts v. Ballard*, 2017, 798 S.E.2d 856, 238 W.Va. 730.

### **Counsel Provided?**

Yes, upon request if indigent, petition filed in good faith and was not frivolous. [WVC 53-4A-4.](#) See also Rule 6.

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) Court did not have jurisdiction; (3) Sentence exceeds maximum; (4) Collateral attack under common law or statute; WVC [53-4A-1.](#)

### **Can DNA Issues be Raised?**

Yes. WVC [15-2B-14.](#)

## **Conviction Integrity Mechanisms**

Eyewitness identification, [WVC 62-IE-1](#). Exoneree compensation, WBC [14-2-13A](#). WVU's [Innocence Project](#).

## **Wisconsin**

### **Relevant Statutes or Rules**

Wis.Stat., [Chapter 974](#).

### **Time Required for Court to Rule on PCR Petition/Motion**

Time requirements were not found in statute or court rules.

### **Findings of Fact and Conclusions of Law Required?**

Yes. WS [974.06](#).

### **Hearing Required?**

"Unless the motion and the files and records of the action conclusively show that the person is entitled to no relief, the court shall...grant a prompt hearing." [WS 974.06](#). Burden of proof is clear and convincing evidence. *State v. Flores* (App. 1990) 462 N.W.2d 899, 158 Wis.2d 636.

### **Standard of Review on Appeal**

"On motion for postconviction relief, findings of fact by trial court will not be upset on appeal unless they are clearly erroneous and against great weight and clear preponderance of evidence." *State v. Rohl* (App. 1981) 310 N.W.2d 631, 104 Wis.2d 77.

### **Counsel Provided?**

"If it appears that counsel is necessary and if the defendant claims or appears to be indigent, refer the person to the state public defender for an indigency determination and appointment of counsel under ch. 977." WS 974.06.

### **Issues Allowed to be Raised**

(1) Violation of state or U.S. Constitution; (2) Court did not have Jurisdiction; (3) Sentence exceeds maximum; (4) Collateral attack under common law or statute; WS [974.06](#).

### **Can DNA Issues be Raised?**

Yes. WS [974.07](#).

## **Conviction Integrity Mechanisms**

Eyewitness identification, WS [175.50](#); recording of custodial interrogation, WS [972.115](#); Biological evidence preservation, WS 757.54; 968.205; 978.08; Exoneree compensation, WS [775.05](#). University of Wisconsin-Madison Innocence Project.

## **Wyoming**

### **Relevant Statutes or Rules**

Wyo.Stat. [7-12-302](#) et seq., New Trial; Motion for Post-Conviction Testing of DNA; Motion Contents; Sufficiency of Allegations, Consent to DNA Sample; Definitions [7-14-101 et seq.](#), Remedy for Violation of Constitutional Rights and 7-19-401 et seq. DNA Identification Record System

### **Time Required for Court to Rule on PCR Petition/Motion**

For factual innocence petitions under 7-12-302, D.A. has 60 days to answer or respond. “If the court determines that a motion is filed in compliance with the requirements of W.S. 7-12-303(c) and the state has had opportunity to respond to the motion, the court shall set a hearing for not more than ninety (90) days after the date the motion was filed. If the court finds that the motion does not comply with the requirements of W.S. 7-12-303(c), the court may deny the motion without hearing.” 7-12-305.

### **Findings of Fact and Conclusions of Law Required?**

"The final judgment or order on a petition under this act shall state the basis for the court's decision and may contain findings of fact and conclusions of law." (For violation of Constitutional rights) [WS 7-14-106](#).

### **Hearing Required?**

For Factual Innocence: "...the court shall consider the petition and any response and enter an order either denying the petition or granting a hearing on the petition. The court may not grant a hearing during the period in which criminal proceedings in the matter are pending before any trial or appellate court, unless stipulated to by the parties." WS 7-12-404.

### **Standard of Review on Appeal**

“The Supreme Court conducts a de novo review of a district court’s summary adjudication of a petition for postconviction determination of factual innocence.” *Parkhurst v. State*, 2019, 443 P.3d 834.

### **Counsel Provided?**

For factual innocence: “Upon request of the person, the court shall appoint counsel for the convicted person if the court determines that the person is needy and the person wishes to submit a motion under W.S. 7-12-303(c). Counsel shall be appointed as provided in W.S. 7-6-104(c)(vii).” 7-12-308

### **Issues Allowed to be Raised**

1) Violation of rights under state or U.S. Constitution, WS 7-14-101; (2) Under a separate chapter, Factual Innocence, including a new forensic science provision. WS [7-12-401](#) et seq.

### **Can DNA Issues be Raised?**

Yes. WS 7-19-401 et seq.

### **Conviction Integrity Mechanisms**

New Non-DNA Evidence & Changes in Science (found in [7-12-402](#))

Notes

See WS [7-12-402](#) (C) for a provision similar to Texas's "junk science" provision.