

# 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.

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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 Exonerated 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

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### **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

## **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; Exonerate compensation is \$1M for actual innocence and \$175K for other successful post-conviction relief 51 OS 154.



# Rule 3.8: Special Responsibilities of a Prosecutor

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## *Advocate*

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
  - (1) the information sought is not protected from disclosure by any applicable privilege;
  - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
  - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making

extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

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