



# Report and Recommendations

*The Task Force on  
Conviction Integrity and  
Postconviction Review*

JULY 2022





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# Report and Recommendations of the Task Force on Conviction Integrity and Postconviction Review

July 2022

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# Letter from the Chair

The concept of innocent until proven guilty is a foundational cornerstone of our American judicial system. From this concept flows the various protections our system of justice promises, with the goal that should someone accused be convicted, there is certainty the conviction is reliable.

But what of those individuals who were convicted of crimes for whom it can be demonstrated did not, in fact, commit the crime? This Task Force was created to look at wrongful convictions in Ohio, analyze current practices in postconviction proceedings, and make recommendations to improve the system's ability to achieve justice in this area.

The work of the Task Force was wide-ranging. It included (1) reviewing national data on the causes of wrongful convictions, (2) analyzing current Ohio postconviction statutes and criminal rules with an eye toward how they impact the way wrongful convictions cases are handled, (3) hearing from national experts in this field so as to educate the Task Force on how other jurisdictions address wrongful convictions, and (4) examining the models that courts and states have adopted to address the handling of requests for redress after a wrongful conviction.

Our report contains recommendations for changes to the Ohio Revised Code and the Rules of Criminal Procedure and Professional Conduct, as well as recommendations on training and education of practitioners to reduce the likelihood of wrongful convictions. The Task Force is also recommending the adoption of a statewide model for wrongful-conviction practice to supplement the postconviction practice in Ohio. The recommendations submitted in this report follow a lengthy and robust discussion from the excellent Task Force members assembled. The broad section of interests found in the criminal-justice system were well represented, contributing to professional and energizing debate. All meetings were conducted by Zoom, and with the exception of the original meeting, have been recorded and archived. The Task Force conducted vigorous discussion and debate on many proposals and ideas, which resulted in specific proposals being voted on by the Task Force as reflected in this report.

I fervently believe the Task Force report and recommendation provides our state with a patchwork of improvements that, if fully realized, would reduce the possibility of wrongful convictions and create procedural safeguards for the prompt adjudication of wrongful-conviction claims, thereby improving the manner in which justice is dispensed in Ohio.

I wish to publicly express my thanks and gratitude to Chief Justice Maureen O'Connor, whose vision and drive to improve the manner and method of Ohio court functions resulted in the creation of this Task Force. I am incredibly humbled by the Chief Justice's request to me to serve and chair this Task Force.

I am equally honored to have had the pleasure and opportunity to work with an incredibly talented group of individuals with a diverse array of interests, all of whom demonstrated their experience, dedicated professionalism, and willingness to explore innovative approaches. A special thanks to Justice Michael P. Donnelly, as ex officio member, who attended meetings of the Task Force and provided invaluable insight and comments on the issues and recommendations that were discussed and vetted.

I would likewise be remiss if did not also publicly acknowledge and thank the staff of the Ohio Supreme Court, who assisted the Task Force by providing guidance, resources, and support for the Task Force and its work. These professionals kept the Task Force “on task” by helping frame where we were, where we are, and where we are going. Quite frankly, the Task Force could not have completed its work without such vital assistance. I thank you, again!

Finally, I must publicly recognize three members whose commitment and competence assisted me and the Task Force above and beyond expectations. Thank you to Justin Kudela, Esq. the initial Staff Liaison; Kathryn Patterson, former Assistant Staff Liaison; and Bryan Smeenck, Esq., the current Staff Liaison. Though Justin and Kathryn have each moved on to bigger and better career opportunities, their early guidance helped establish the framework for the Task Force, shaped how we proceeded, and proved to be the right mix for productive, though-provoking meetings, which led to the recommendations found in this report. As for Bryan, who came on board midstream, he proved you can change a horse in midstream – though I would not recommend it – and he picked up the reins seamlessly, so as not to delay the productive work of the Task Force, culminating in this report and recommendation. All three worked tirelessly on the Task Force in addition to fulfilling their regular duties as staff members of the Ohio Supreme Court, always prepared to help and offer suggestions. Many thanks to Justin, Kathryn, and Bryan!

Sincerely,

Judge Gene Zmuda



TASK FORCE ON CONVICTION INTEGRITY  
AND POSTCONVICTION REVIEW

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## Introduction

In February 2020, Chief Justice O'Connor issued guidelines for convening a new Ohio Supreme Court Task Force on wrongful convictions that would “analyze current practices and recommend improvements to further our standards of justice.” The Task Force on Conviction Integrity and Postconviction Review was to comprise a diverse group of members, each with experience or interest in the integrity of convictions and postconviction review.

The Chief Justice charged the Task Force with the following:

- Analyzing the postconviction-review processes in Ohio and other states.
- Analyzing the work of innocence commissions and conviction-integrity or conviction-review units in other states.
- Offering recommendations about DNA testing and scientific advances.
- Recommending revisions to laws and Supreme Court of Ohio rules.
- Offering recommendations regarding education for judges, prosecutors, and defense attorneys about conviction issues.
- Offering “any other recommendations the task force deems appropriate to further public trust and confidence” in the postconviction-review process.

The Task Force has consulted experts and analyzed these issues. This report contains the Task Force’s recommendations on each issue. Accordingly, this Report and Recommendation is presented to the Supreme Court of Ohio for its review. If approved, the Task Force proposes submitting the relevant recommendations to the Commission on the Rules of Practice & Procedure, the Ohio General Assembly, or other appropriate entities.

## Recommendations Summary

The Task Force recommends six changes to Ohio’s criminal-justice system to improve conviction integrity and the postconviction-review process. It bears emphasizing that these recommendations are just that: recommendations. The Task Force itself has no authority or power to implement any of its recommendations. Instead, implementing the recommendations requires the input and agreement of entities like the Supreme Court and the General Assembly.

The six recommendations fall within three specific categories: (1) Changes to Rules and Statutes, (2) Education and Training, and (3) Models for Conviction Review.

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## Changes to Rules and Statutes

### **Adopt Crim.R. 33.1**

- To allow for a new trial based on evidence not proffered at trial or in any pretrial proceedings.
- To specify there is no time limit to file such a motion.
- To provide for the procedural requirements of such a motion, including discovery and hearing-related requirements.
- To identify types of evidence that may satisfy the requirements for a new trial.
- To require rulings to include written findings of fact and conclusions of law.
- To provide that rulings on such motions are final, appealable orders.

### **Amend R.C. 2953.21 and 2953.23 (Postconviction-Relief Petitions)**

- To extend the possibility of obtaining discovery to non-death-sentenced defendants.
- To import federal habeas corpus principles for second and successive petitions.
  - Specifically, the amended statute would incorporate cause-and-prejudice and manifest-injustice exceptions.
- To confirm that review of petitions for postconviction relief are viewed in the light most favorable to the petitioner.
- To expand the time in which a petitioner may amend the petition.
- To establish an *ex parte* process in which a non-death-sentenced petitioner may obtain appointed counsel.

### **Amend R.C. 181.25 (Data Collection)**

- To request that the Ohio Criminal Sentencing Commission collect more detailed data on felony criminal appeals under R.C. 2953.08 and post-conviction-relief proceedings.
- To remove the requirement for collecting data on the cost of criminal appeals.

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**Amend Ohio Admin.Code 120-1-10 (Appointment Systems and Attorney Qualifications)**

- To require appointed attorneys doing postconviction-relief work to complete four hours of CLE related to postconviction practice, investigation, or contributing factors to wrongful convictions.
- To apply to both juvenile and adult postconviction-relief appointments.

**Amend Prof.Cond.R. 3.8 (Special Responsibilities of a Criminal Prosecutor)**

- Probable cause and a good-faith belief in a defendant's guilt would be required to continue a prosecution.
- Would require prosecutors to take specific actions when they learn of previously undisclosed, credible, and material evidence that creates a reasonable likelihood that the defendant is not guilty.
- Would require a prosecutor who knows of clear and convincing evidence of innocence to seek to remedy the conviction.

**Create a Statewide Independent Innocence Inquiry Commission**

- The General Assembly should create an Innocence Inquiry Commission similar to North Carolina's.
- The commission should be independent, neutral, investigatory in nature, and properly funded.
- The commission should have broad investigatory powers, including subpoena power to compel the production of evidence and testimony.
- The commission should have the power to possess, examine, and test physical evidence.
- Commissioners should be drawn from a cross-section of the criminal-justice system and community.
- Commission staff should be independent, nonpartisan professionals who are insulated from political pressure.
- The commission's proceedings should be confidential until a hearing is called or inculpatory or exculpatory evidence is discovered.
- Matters should be heard and decided by three-judge panels composed of sitting appellate-court judges from outside the appellate district in which the case was prosecuted.

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## Work of the Task Force

### Participants

Initially, the Task Force roster included multiple county prosecutors and the head of a county's conviction-integrity unit. At the outset, the Task Force sought to be inclusive, but nearly all county prosecutors declined to participate in any meetings, discussions, or recommendations<sup>1</sup>. On behalf of Ohio prosecutors, the Executive Director of the Ohio Prosecuting Attorneys Association (OPAA) issued a news release in August 2020, indicating the Association's participation would be limited to its submission of adopted "best practices for conviction review" and a "propose[d] change to Rule 3.8 of the Ohio Rules of Professional Conduct regarding the special responsibilities of a prosecutor." (Appendix A.)

Despite requests to the Association to reconsider its position (Appendix B), and individual invitations to each county's prosecutor, neither the Association nor a majority of county prosecutors participated as part of the Task Force, with the exception of prosecutors from Franklin and Stark Counties.

### Timeline and Methodology

Initially, the Task Force was set to issue a report of its findings and recommendations to the chief justice and the justices of the Supreme Court by Dec. 31, 2020. Due to the COVID-19 pandemic, the Task Force did not hold its first meeting until Sept. 17, 2020. All Task Force meetings were held over Zoom, and the deadline for submission of its recommendations was extended. Thus, the Task Force began its work.

The Task Force adopted the following methodology for evaluating Ohio's postconviction processes and recommending changes to improve those processes:

1. Take inventory of the postconviction law in Ohio and the work being done to address wrongful convictions.
2. Compare Ohio's practices to those in other states.
3. Evaluate and recommend potential improvements to Ohio's conviction-integrity processes, e.g., legislation, rule changes.

### Issues the Task Force Considered Addressing

The Task Force then brainstormed topics that they wished to address, after

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<sup>1</sup> There are two exceptions: David Ingram, Chief Counsel of Special Units for Franklin County Prosecutor Gary Tyack attended multiple meetings, and Stark County Prosecutor Kyle Stone attended the October 1, 2021 Task Force meeting.

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thorough consideration and discussion of potential issues. These topics were organized and addressed within broad subject “models” as follows:

## **Wrongful-Conviction-Review Models**

### *General (CIU, Statewide CIU, Innocence Commission)*

- Identify the key facets of an effective Conviction Integrity Unit (CIU) in terms of promoting justice, transparency, and public trust.
- Examine and define the necessary components of an “effective” CIU (instead of creating one just to say “we have one”).
- Address the fact that legitimate claims of innocence are disregarded because they are not raised in a timely fashion and consider having an independent board review these types of cases.
- Include representatives from the victim/survivor community and people with expertise in forensic science.
- Evaluate and address the impact of faulty science in wrongful-conviction cases.
- Create a vetting process for postconviction motions for a new trial that identifies and prioritizes claims of actual innocence and further identify those motions that clearly and logically warrant a full hearing to determine their merits.
- Evaluate the potential benefit of an independent, freestanding innocence commission similar to the commission enacted in North Carolina.
- Expand postconviction access to evidence for testing.
- Establish independent conviction-review units (CRU) with the involvement of experienced prosecutors and investigators who were not involved with an offender’s case at the trial level or on appeal
- Clearly define the purpose of a conviction-review process. Define what qualifies as a wrongful conviction. Define the review process. Set standards of review for applications that are accepted for investigation.
- Establish multijurisdictional agreements between established conviction-review units and jurisdictions where the creation of an independent unit is not feasible.
- Improve retention of good public defenders and prosecutors.

### *Misconduct*

- Address official misconduct, primarily by prosecutors and police, which accounts for 54% of wrongful convictions.

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## **Modifications of Statutes and Rules**

### *General*

- Contemplate whether statutory revision is necessary for data and information collection, evaluation, and fiscal-impact assessment.
- Amend current evidentiary rules, which often allow junk science to continue to be used in courtrooms and incentivize decision making that falls short of achieving justice.
- End cash bail to reduce the risk of people pleading guilty to crimes they did not commit and to prevent incarceration due only to inability to pay. Bail being improperly used as a means to effectuate a safety hold prevents individuals who are factually innocent from being able to effectively assist in their own defense.
- Consider whether a motion alleging witness recantation should cause a hearing to be mandated with de novo review applied by the court to determine if the new testimony is both credible and outcome determinative.
- Create ethical rules to prohibit “dark pleas” – when the state offers the defendant the opportunity for freedom in exchange for dropping the motion for a new trial before a court hearing is held or ruling is released.
- Assess potential statutory change to allow claimants to raise new arguments to address advancements in scientific forensic evidence that would undermine the state’s theory of guilt that was used to convict the defendant prior to the acceptance of such scientific developments.
- Evaluate whether the proposed rule changes provided by the OPAA are in compliance with the current Model ABA Rules governing a prosecutor’s ethical obligations and identify any states that have adopted stronger measures.
- Examine the process of how crimes are investigated by law enforcement, reviewed by county prosecutors, presented to grand juries, prosecuted postindictment, and defended through the trial process.
- Examine the plea process under Crim.R. 11 to ensure that guilty or no contest pleas are not contributing to wrongful convictions. Does Marsy’s Law impede plea bargaining?
- Determine if, in multidefendant cases, present joinder and severance provisions are adequate (Crim.R. 8, 14). Is Evid.R. 404(B) contributing to wrongful convictions? Is Evid.R. 807 (child-abuse hearsay exception) contributing to wrongful convictions?
- Amend the Ohio Supreme Court Rules of Practice so that raising an issue on appeal to the Supreme Court of Ohio will no longer be a requirement



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for exhaustion in state court prior to initiating federal habeas corpus litigation.

- Create a right to discovery at the postconviction level and ban local rules precluding contacting jurors after a verdict.
- Revise the postconviction-relief statutes, e.g., R.C. 2953.21, to expand relief. Time for filing? Bases for relief (e.g., new Supreme Court of Ohio decision)? Actual innocence as an independent basis for relief? Eliminate ban on successor petitions?
- Create specific statutory relief for actual-innocence cases and/or recognition of a writ of coram nobis at the trial-court level. Should statutory provisions regarding immunity for law-enforcement officers and/or prosecutors be amended?
- Address major obstacles posed by Crim.R. 33 for counsel representing clients asserting innocence and wrongful-conviction claims during postconviction proceedings.
- Consider proposing a change to Crim.R. 33(B) to make clear that there is no time limit in which to file a motion for new trial.
- Consider whether counsel for people raising innocence claims would be served better by a clear deadline of two years from the date on which the convicted person discovered new evidence, without need to explain the delay. For claims outside of the two-year window, there should be a balancing test in which the state can object based on prima facie showing of prejudice, at which point the convicted person must establish that the delay was unavoidable and the need for the delay outweighs the prejudice to the state.
- Include language in Crim.R. 33(A)(6) that expressly provides for shifting-science claims to be brought in a motion for a new trial.
- Evaluate a motion for a new trial in a criminal case in Ohio under the “reasonable probability” standard, rather than “strong probability.”
- Expand postconviction access to evidence for testing.

#### *Postconviction-Relief Petitions*

- Consider whether the postconviction process would be aided by the use of magistrates.
- Address the fact that legitimate claims of innocence are disregarded because they are not raised in a timely fashion and consider having an independent board review these types of cases.
- Establish a stand-alone actual-innocence claim, through which a person may obtain relief based on their innocence (and not tied to either newly discovered evidence or a violation of their constitutional rights).

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- Create a vetting process for postconviction motions for a new trial that identify and prioritize claims of actual innocence and further identify those motions that clearly and logically warrant a full hearing to determine the motion's merits.

#### *Right to Counsel*

- Create a right to counsel in nonfrivolous postconviction cases.
- Create a program for junior lawyers to take on postconviction cases pro bono, with training provided by the Ohio Public Defender (OPD), Ohio Innocence Project (OIP), or a more senior lawyer.
- Increase defense representation at both trial and postconviction stages.
- Increase funding for defense investigators and experts.
- Create a schedule of compensation for wrongfully convicted individuals without artificial distinctions regarding the reason or procedural step causing the wrongful conviction.
- Create a schedule of attorney fees allowable in the Ohio Court of Claims to assist in bringing these claims on behalf of the wrongfully convicted.

#### *Misconduct*

- Consider requiring all interrogations to be videotaped and creating increased protections regarding interrogations of juvenile suspects.
- Consider establishing stronger discovery sanctions for failure to turn over exculpatory evidence prior to trial.
- Address official misconduct, primarily by prosecutors and police, which accounts for 54% of wrongful convictions.
- Adopt ABA Model Rules of Professional Conduct 3.8(g) and (h), requiring the prosecution to disclose exculpatory evidence discovered after conviction and requiring the prosecutor to remedy a conviction where there is clear and convincing evidence the defendant is innocent.
- Prohibit the trial prosecutor from litigating postconviction petitions, motions for new trial, and other posttrial motions where it has been alleged they violated Brady or engaged in other prosecutorial misconduct.
- Eliminate use of the Reid technique (and similar interrogation techniques).
- Require the presence of an attorney before a juvenile may be interviewed or interrogated.

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## Training and Education Initiatives and Data Collection

### *General*

- Create program for junior lawyers to take on postconviction cases pro bono, with training provided by OPD, OIP, or a more senior lawyer.
- Create process for data collection and subsequent evaluation to achieve, at minimum, the statutory obligations in R.C. 181.25(A)(2)(c) and R.C. 181.25(A)(5).
- Include representatives from the victim/survivor community and people with expertise in forensic sciences.
- Address and eradicate the prevalent myth that “everyone” who is convicted in the criminal-justice system eventually claims that they are actually innocent.
- Examine the process of how crimes are investigated by law enforcement, reviewed by county prosecutors, presented to grand juries, prosecuted postindictment, and defended through the trial process.
- Require training for law-enforcement officers on the importance of preserving and memorializing evidence that appears nonconsequential.
- Increase training for law-enforcement officers and prosecutors on investigatory bias, cultural bias, including eyewitnesses and investigators, confirmation bias.
- Consider whether training is needed with respect to patient interviewing to ensure reliability with respect to descriptions of persons and places (as opposed to the reporting of medical symptoms).
- Evaluate to what extent social agencies and law-enforcement agencies investigating the same matter be allowed to share information. Are social workers adequately trained with respect to bias? To what extent should social agencies have to comply with a defendant’s privilege against self-incrimination and right to counsel?
- Increase training on the meaning of exculpatory evidence for prosecutors and their support staff.
- Evaluate whether juries receive adequate training on bias. Are courts employing informal procedures for excusing potential jurors in advance and affecting jury demographics?
- Consider creation of a specific continuing-legal-education prerequisite to be on a court-appointed list. Should there be more emphasis on *Brady* training? Should there be a mentoring system as prerequisite to appointments? Do the experience requirements for appointments need to be changed?

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- Mandate forensic-evidence training (*e.g.*, eyewitness identification, pattern evidence, ballistics, gunshot residue, fire investigation, etc.).
  - Mandate implicit-bias training, including discussion of how implicit bias impacts the legal system and the overrepresentation of people of color among those who have been wrongfully convicted.
  - Mandate confirmation-bias training with an emphasis on techniques to reduce or eliminate tunnel vision and confirmation bias.
  - Improve retention of good public defenders and prosecutors.
  - Mandate training on the prevalence of false confessions, risk factors, and appropriate interrogation techniques.

### *Misconduct*

- Mandate *Brady* training to ensure prosecutors and police officers understand their duty to disclose exculpatory or impeachment evidence. Training should include discussion of official misconduct as a cause of wrongful convictions.
- Mandate *Brady* lists (lists of law-enforcement officers, lab examiners, and other agents of the State with credibility, honesty, or misconduct issues)

To fully address these issues and begin to improve the postconviction-relief system, the Task Force members knew that they must first fully understand it. Consistent with the second step of the methodology the Task Force adopted, the participants examined practices across the country. To that end, the Task Force reviewed a summary of wrongful-conviction task forces that exist nationwide following a presentation by then-staff liaison Justin Kudela. (Appendix C.)

Justice Michael Donnelly tasked interns Elliot Nash and Jordan Rowland with preparing and distributing to the members a memorandum providing background and analysis of Ohio's postconviction-review process. Additionally, Supreme Court Law Library research librarians, Michelle Graff and Rachel Dilley, researched and drafted a 50-state survey of the nation's postconviction-review processes. (Appendix D.) Task Force members examined these processes and organizations before delving into the improvement phase.

To begin the improvement phase of its work, the Task Force sought preliminary postconviction-review best practices from nationwide experts.

### Presentations

#### **John Hollway, Criminal-Justice Root Cause Analysis Expert (Oct. 22, 2020)**

The first such expert was John Hollway, Associate Dean and Executive Director of the Quattrone Center for the Fair Administration of Justice at the University

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of Pennsylvania Carey Law School. Mr. Hollway is a national leader in the use of Root Cause Analysis (RCA) to evaluate the criminal-justice system. He frequently consults with criminal-justice agencies and corporations to improve the quality of their systems.

RCA focuses on the how and why an error occurred, rather than on who is at fault. Once the causes are identified, they can be addressed directly to prevent similar errors in the future – as opposed to merely correcting symptoms, like individual improper convictions. Mr. Hollway emphasizes that many errors occur in the criminal-justice system, but there are not nearly enough bad actors to account for them. So instead of rooting out individual fault, he recommends the quality-driven approach that other complex systems use to prevent error: review and address *every* potential cause. This is how the National Transportation Safety Board addresses plane crashes and how hospitals address “never events,” such as leaving a sponge in a patient or operating on the wrong limb.

Unlike the NTSB and the healthcare system, the criminal-justice system does not typically research and analyze its errors from a root-cause perspective. Instead, when errors are discovered (within the relevant time constraints), they are fixed individually through the appellate process. There are few mechanisms in place to prevent future errors. Yet society has a vested interest in avoiding wrongful convictions – such a conviction not only wrongfully incarcerates an innocent person but also leaves a guilty person unaccountable and possibly free.

Mr. Hollway illustrated the likelihood of these errors in Ohio. The National Registry of Exonerations had 2,768 exonerations on record – 84 of them in Ohio. Of the total, 85% were in cases that went to trial and 15% were in cases that involved a plea bargain. Statistical analysis of exonerations suggests that 4% of all capital cases involve wrongful convictions. Measured against Ohio’s conviction numbers, it is likely that five Ohio defendants currently sentenced to death are wrongfully convicted. From a conviction-review perspective, Mr. Hollway had some misgivings about terms like *conviction integrity*, preferring instead for prosecutors to establish *conviction-review* units. But he acknowledged that he’s losing this battle. He informed the Task Force that conviction-review units are established within prosecutor’s offices to evaluate claims of actual innocence. Most states’ postconviction procedures typically do not provide for litigating actual-innocence claims. He observed that there is something of a national trend in creating conviction-review units. They are typically, however, found in urban jurisdictions, since urban jurisdictions usually have higher caseloads and more prosecuting attorneys who can staff the units (Mr. Hollway reported that 75% of prosecutors’ offices across the country have three or fewer attorneys). He also discussed the unique model that North Carolina has established – an innocence inquiry commission with subpoena power to investigate actual-innocence claims.

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In terms of best practices for establishing a conviction-review unit, Mr. Hollway emphasized several points:

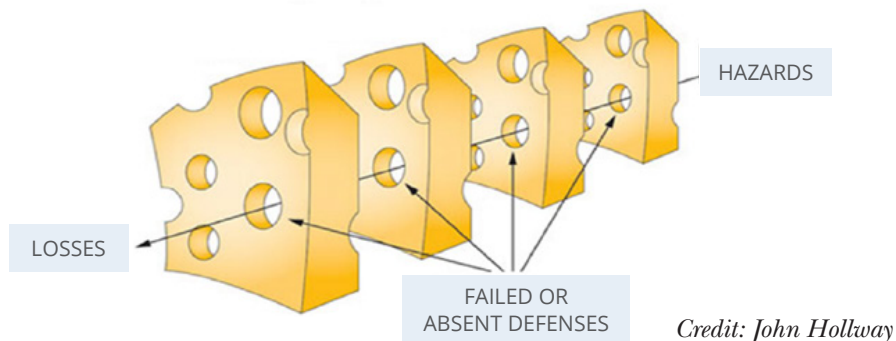
- structural independence.
- procedural flexibility.
- procedural transparency.

An independent conviction-review unit should report only to the elected prosecutor/district attorney to avoid procedural, bureaucratic, or internal political barriers. It must be run by respected prosecutors. And it needs external-stakeholder participation to avoid the perception of the fox guarding the henhouse.

Procedural flexibility should allow the unit to accept cases from multiple sources, focus on plausible claims of innocence (but not bar claims involving guilty pleas or raise other procedural barriers), and should focus on actual facts rather than procedural issues.

From a procedural-transparency standpoint, he recommended that units work with the petitioner and petitioner’s counsel during investigations, that units not address *Brady* claims and the like to avoid unnecessary intraoffice friction, and that the unit not be involved in independent disciplinary review of potential *Brady* violations. Separately, he recommended that appellate units not be involved due to their daily emphasis on and bias toward preserving convictions.

The Task Force’s discussion after Mr. Hollway’s presentation ranged across several issues, but it also stuck on a point that came to define the Task Force’s approach to its recommendations. Like errors in other complex systems, wrongful convictions have multiple contributing factors. Using Swiss cheese slices as a metaphor, Mr. Hollway discussed how each step has some defenses, *e.g.*, solid cheese, and some failed or absent defenses, *e.g.*, the holes in the cheese.



When those holes line up, the defenses fail and a wrongful conviction occurs.

The Task Force would later recommend improvements to the criminal-justice system that would minimize the holes, particularly in the postconviction-review process.

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**Larry Krasner, Philadelphia District Attorney and Patricia Cummings,  
Philadelphia District Attorney's Conviction-Integrity-Unit Leader  
(Nov. 19, 2020)**

The next outside experts to address the Task Force were Philadelphia District Attorney Larry Krasner and Assistant District Attorney Patricia Cummings, leader of the Philadelphia District Attorney's Conviction-Integrity Unit. Before joining the Philadelphia DA's office, she led the Dallas County, Texas District Attorney's Conviction-Integrity Unit.

District Attorney Krasner began by highlighting the changing politics of prosecution, noting that 24 progressive prosecutors were elected across the country in the most recent election cycle. Voters are seeking modern approaches to prosecution, including conviction-integrity units. Yet he found himself at odds with, and withdrew his office from, the Pennsylvania District Attorneys Association due to conflicts with the Association's political and policy lobbying.

Next, DA Krasner shared his view on prosecutorial duties, stating that conviction integrity should be important to all prosecutors. Preferring finality over accuracy is at odds with a prosecutor's oath to uphold justice when there are wrongful convictions – which, as a corollary, are also unsolved crimes.

ADA Cummings noted that, per the National Registry of Exonerations, Ohio has had 85 exonerations since 1989. Under the National Registry's definition, an exoneration occurs when newly discovered evidence of innocence has led to the vacatur, reversal, and ultimate dismissal of criminal charges against a convicted person. That is, it's not necessarily synonymous with actual innocence.

She also identified the leading causes of wrongful convictions (more than one is often present in an individual case):

- Official Misconduct: 54%
- Eyewitness Misidentification: 28%
- False Confessions: 12%
- False or Misleading Forensic Evidence: 25%
- Perjury or False Accusation: 59%

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Noting the prevalence of false confessions, ADA Cummings emphasized that conviction-review units should include cases involving pleas.

In addition to pleas, statutes and rules can impede remedying wrongful convictions. For instance, Ohio does not allow postconviction discovery except in death-penalty cases. In contrast, Texas allows the appointment of counsel in postconviction proceedings and New York gives prosecutors significant discretion to vacate and dismiss convictions in the interest of justice. Contrary to popular perception, Texas has enacted numerous other helpful statutes, such as those allowing relief based on scientific advances.

From an ethics standpoint, ADA Cummings recommends the adoption of American Bar Association Model Rule 3.8, which addresses prosecutors' special duties. She directly addressed the Ohio Prosecuting Attorneys Association and its suggestion that adopting ABA Model 3.8 is the only appropriate step, saying, "It's just one tool in the toolkit that you need to address the problem."

She advocates for Ohio to create a toolkit that extends beyond ethics, including extending *Brady* obligations through postconviction proceedings; increasing education and training; modifying rules and statutes, *e.g.*, open-file discovery, procedures for seeking new trials, postconviction statutes, actual-innocence writs, right to postconviction counsel, dismissal in the interest of justice; and allowing for the application of scientific advances to earlier convictions.

DA Krasner and ADA Cummings also have suggestions for structuring and operating a conviction-integrity unit. For starters, ADA Cummings is skeptical of the effectiveness of the North Carolina Innocence Inquiry Commission. This skepticism stems from the small number of exonerations – an average of one per year. She was somewhat less skeptical of conviction-integrity units operated by state attorneys general. She points out that they often have limited jurisdiction, require a county's permission to investigate a case, or require a referral from a county. Contrary to the practice of most conviction-integrity units and North Carolina's Commission, which examine only actual-innocence claims, she advocates for examining the widest possible funnel: actual innocence, other causes of wrongful convictions, and sentencing inequities. Also, DA Krasner and ADA Cummings think it important to maintain the conviction-integrity unit's independence, particularly from appellate prosecutors who specialize in preserving convictions. ADA Cummings also observed that there are multiple schools of thought on assigning blame during the conviction-review process. She acknowledged John Hollway's preference for avoiding blame, but she noted that other experts, like Barry Scheck, believe blame is necessary to hold responsible individuals accountable.



**Maurice Possley, Senior Researcher of the National Registry of Exonerations (Dec. 10, 2020)**

The next preliminary outside expert to address the Task Force was Maurice Possley, Senior Researcher at the National Registry of Exonerations and a Pulitzer Prize-winning journalist who spent 25 years with the Chicago Tribune. While at the Tribune, he investigated wrongful-conviction and wrongful-execution cases, along with other systemic problems in the criminal-justice system. Further, he has authored five nonfiction books. In 2009, he began working with the Northern California Innocence Project and coauthored a report on prosecutorial misconduct in California. Three years later, he joined the National Registry. There, he researches and writes about the exonerations added to the Registry.

The Registry was founded in 2012 in conjunction with the Center on Wrongful Convictions at Northwestern University School of Law. It is now a joint project of the Newkirk Center for Science & Society at the University of California, Irvine; the University of Michigan Law School; and Michigan State University College of Law. Its database began with 800 cases and as of May 26, 2022, had 3,133 exonerations, representing more than 27,080 years lost.

To qualify for the Registry, a defendant must be exonerated. That is, a government entity with the authority to make such a declaration must declare them factually innocent. This includes pardons, acquittals, and other legal processes, so long as they are based on new evidence. Mr. Possley shared the following comparison of national exoneration data versus Ohio data:

*National Cases vs. Ohio Cases*

	NATIONAL	OHIO
CASES	2,383	85
PLED GUILTY	544 (20%)	3 (4%)
NO CRIME CASES	994 (37%)	23 (27%)
CIU CASES	457 (17%)	6 (7%)
INNOCENCE PROJECT CASES	659 (24%)	24 (28%)

*National Cases vs. Ohio Cases*

*(Number of exoneration cases based on the crime for which they were originally convicted.)*

	NATIONAL	OHIO
MURDER/MANSLAUGHTER	1,093 (40%)	36 (42%)
DRUG POSSESSION/SALE	359 (13%)	4 (5%)
SEXUAL ASSAULT	339 (12%)	10 (12%)
CHILD SEXUAL ABUSE	293 (11%)	14 (16%)
ROBBERY	134 (5%)	7 (8%)
ATTEMPTED MURDER/ASSAULT	165 (6%)	3 (4%)

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*National Cases v. Ohio Cases (Demographics)*

	NATIONAL	OHIO
BLACK	1,336 (49%)	49 (58%)
WHITE	987 (37%)	35 (41%)
HISPANIC	312 (12%)	1 (1%)
MALE	2,460 (92%)	78 (92%)
FEMALE	239 (8%)	7 (8%)

*National Cases vs. Ohio Cases (Contributing Factors)*

	NATIONAL	OHIO
MISTAKEN WITNESS ID	767 (28%)	30 (35%)
FALSE CONFESSION	330 (12%)	2 (2%)
PERJURY/FALSE ACCUSATION	1,606 (60%)	43 (51%)
FALSE/MISLEADING FORENSICS	661 (25%)	20 (24%)
OFFICIAL MISCONDUCT	1,469 (55%)	46 (54%)
INADEQUATE LEGAL DEFENSE	740 (28%)	13 (15%)

Ohio also has two group exonerations in the Registry:

- In 2007, 19 convictions were vacated and the charges dismissed because of misconduct by a DEA agent and informant in Mansfield.
- In 2016, 43 convictions were vacated and the charges dismissed due to police misconduct in East Cleveland, Ohio.

Mr. Possley also shared that the Registry tracks conviction-integrity units nationwide and divides them into two categories: active units that have exonerated at least one defendant and active units that have no exonerations. The Registry is aware of 72 units; 33 had at least one exoneration, while 39 had no exonerations.

Finally, Mr. Possley believes Ohio prosecutors fight very hard to preserve convictions and file appeal after appeal. He thinks that they do this because there is very little in the way of consequences, even for misconduct. He gave the example of Carmen Marino, formerly a prosecutor in Cuyahoga County. A defendant spent multiple additional years on death row as Cuyahoga County fought to preserve his convictions. A codefendant relented and pleaded to lesser charges just to exit prison. A few years later, long after Marino had retired, several more defendants from the same case were exonerated after a trove of exculpatory evidence was discovered, which Marino had intentionally withheld. [According to the Supreme Court of Ohio's attorney directory, Marino has no disciplinary history to this day. (Accessed Dec. 7, 2021.)]

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**Niki Hotchkiss, Assistant Director, and Todd Ives, Researcher, Ohio Criminal Sentencing Commission (Aug. 13, 2021)**

The Ohio Criminal Sentencing Commission staff researchers, Niki Hotchkiss and Todd Ives, submitted a written report to the Task Force addressing current data-collection requirements and practices, along with suggestions for improvements. The appendix to that report is a memorandum recommending best practices for conviction-integrity units written by Lydia Shafik, a Spring 2021 intern with the Commission. Along with the report, Ms. Hotchkiss and Mr. Ives presented the Commission's current practices and enabling statutes. As part of this presentation, they recommended changes to R.C. 181.25(A)(5).

A brief history helps explain the Commission's recommendation. When the General Assembly passed S.B. 2 in 1997, creating a formal sentencing-appeals mechanism, the consensus was that an increase in criminal appellate filings would follow. The legislature tasked the Commission with tracking county expenses related to an expected correlated increase in appellate costs. But no sustained increase in those appeals followed. Instead, criminal-appeal numbers have remained steady, while civil-appeal numbers have fallen. As a result, criminal appeals now make up a larger percentage of overall appellate cases but not a larger absolute number.

Plus, the Commission has found that collecting accurate and meaningful data on the cost of appeals is unnecessarily difficult and of importance primarily to local interests, like county commissioners.

**Beth Tanner, Associate Director, North Carolina Innocence Inquiry Commission (Aug. 13, 2021)**

The final presenter, Beth Tanner, administers the North Carolina Innocence Inquiry Commission, which was created by North Carolina's legislature in 2006. It is the first and only statewide innocence commission in the nation. Ms. Tanner presented a comprehensive picture of the Commission, including its composition, structure, process, budget, and useful statistics.

At its inception, the Commission received several hundred applications. Now, it receives an average of 208 applications per year. Most of these applications come directly from prison inmates, but judges, district attorneys, defense attorneys, and others can refer cases. The Commission's screening process eliminates cases that don't qualify under the statutory criteria, and it exercises its discretion to prioritize older cases and incarcerated defendants.

Its current budget is \$620,697, though it has requested an additional \$700,000 for its upcoming budget, and it currently receives grants totaling over \$1 million.

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The Commission carries an average of 50 open cases. It has held 17 hearings since it began; about 1–3 hearings per year. Of those 17 hearings, 15 resulted in exonerations (less than 1% of the applications).

Ms. Tanner also emphasized that the Commission has several unique qualities: its independence; its confidential nature; its investigatory authority; and its focus on factual innocence. These unique aspects of the Commission were perhaps its most compelling features for the Task Force members.

Contrary to a standard conviction-integrity unit, which is run by a prosecutor's or district attorney's office, the Commission is independent. It has no prosecution-, defense-, political-, or policy-related affiliation. And while it is nominally housed in the judicial branch, the courts have no influence on it (beyond individual judicial appointees' participation). It is beholden to no one and nothing but the underlying truth.

The Commission's work – at least initially – is confidential. The ability to conduct confidential investigations incentivizes those with relevant information to participate without fear of retribution or ignominy. This confidentiality breaks only under a few circumstances: evidence of other crimes develops; evidence favorable to the claimant develops; the Commission moves forward with a hearing (hearings are public); or when a three-judge panel orders that the entire case file be turned over.

The entire case files are extensive, in part because of the Commission's broad investigatory powers. Those broad investigatory powers rival law enforcement's. The Commission can:

- Issue process to compel attendance of witnesses and production of evidence.
- Take depositions.
- Administer oaths.
- Serve subpoenas and other process.
- Access, inspect, examine, and take custody of physical evidence, including consumptive testing of biological materials like DNA – even at private labs.

Ms. Tanner reported that the Commission has authority to seek out lost and misplaced evidence. In the cases in which it discovered such evidence, Ms. Tanner identified a theme of insufficient evidence policies and procedures, such as failing to consistently catalogue and organize evidence or failing to maintain proper destruction records.

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The final and – to some Task Force participants – most compelling feature of the Commission is its strict focus on factual innocence. The Commission has no power to remedy, and thus no interest in, *Brady* violations, lesser-included offenses, etc. Consistent with the Commission’s independence, its staff and leadership are state employees, not elected or appointed officials. It has six state-funded and four grant-funded positions:

Executive Director	Administrative Secretary
Associate Director	Two Staff Attorneys (grant funded)
Two Staff Attorneys (state funded)	Legal Investigator (grant funded)
Case Coordinator	Victim-Services Coordinator (grant funded)

The Commission’s most recent budget request would add two state-funded positions and convert the Victim-Services Coordinator into a state-funded position.

The Commission itself comprises 16 members serving 8 distinct roles. Each Commissioner role has an alternate. The chief justice of the Supreme Court of North Carolina and the chief judge of the North Carolina Court of Appeals alternate in making appointments. The Commissioners serve three-year terms and are drawn from a broad cross-section of the criminal-justice system, including:

- Superior court judge/commission chair (analogous to common pleas court in Ohio)
- Prosecuting attorney
- Criminal-defense attorney
- Victim advocate
- Public member
- Sheriff
- (2) Discretionary members

The review process begins with an application. To qualify for Commission review, an applicant must be living, must have been convicted of a felony in a North Carolina state court, must claim complete factual innocence of any responsibility for the crime, must allege that there is new evidence that the jury did not hear or that was not reasonably available before a guilty plea.

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Commission review consists of eight potential steps:

1. Innocence claim initiated.
2. Staff screens and investigates claim.
3. Initial review.
4. Further review.
5. Investigation.
6. Formal inquiry – Reserved for cases likely to reach a hearing. At this point, statutes require victim notification and updates to the district attorney, defense counsel, and any codefendants.
7. Commission hearing – The Executive Director determines whether a case goes before the eight commissioners in a nonadversarial hearing. All such hearings are held in Raleigh. And the Executive Director presents all the evidence, while other staff serve as witnesses. The commissioners decide whether sufficient evidence exists to warrant a three-judge panel.
8. Three-judge panel – If warranted, a three-judge panel convenes in the county of conviction. The chief justice of the Supreme Court appoints three superior-court judges from other counties. Applicants are represented before the panel by defense counsel and the state is represented by the district attorney (or attorney general when a conflict exists). The Commission’s Executive Director and staff serve only as witnesses.

Exonerees are compensated by the state under the North Carolina Tort Claims Act.<sup>2</sup> Under the Act, exonerees’ claims are reviewed and paid by the North Carolina Industrial Commission. For each year of imprisonment, exonerees can receive \$50,000. The total payout, however, is limited to \$750,000 (equivalent to 15 years of wrongful imprisonment).

Finally, the Commission’s enabling statutes and practices take into account victims’ rights. As noted, the Commission has a victim-services-coordinator position.

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<sup>2</sup> Task Force discussions occasionally touched on financial issues – the most common being the amount of money that must be paid to a *wrongfully imprisoned individual* under R.C. 2743.48. This issue also arose early on, but it received the most discussion during the innocence-commission debates. For instance, Justice Donnelly shared an Excel spreadsheet of the compensation paid to wrongfully imprisoned individuals since 1976. (Appendix F.) This spreadsheet demonstrates the magnitude of Ohio’s wrongful-conviction problem. Under R.C. 2743.48(E)(2), a wrongfully imprisoned individual is, roughly speaking, entitled to \$43,330 per year of imprisonment, plus any wages or salary lost directly due to the person’s arrest, prosecution, conviction, and wrongful imprisonment. That adds up when a wrongful conviction languishes without remedy. To obtain the full compensation, the wrongfully imprisoned individual must file an action in the Court of Claims.

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Statutes require victim notification: when a case moves into the formal-inquiry stage; commission; and with all due diligence after the Commission concludes a hearing. The Commission's guiding principles for working with victims include trauma-informed practices, accessibility with clear and consistent communication, and respectfully keeping victims informed.

## RECOMMENDATIONS IN DETAIL

The Task Force recommends a number of changes to improve conviction integrity and postconviction review in Ohio. The recommendations fall within three specific categories: (1) Changes to Rules and Statutes, (2) Education and Training, and (3) Models for Conviction Review.

The Task Force's process for reviewing and voting on recommendations was uniform. A Task Force member or participant would draft a proposed recommendation; whether a rule, statute, or structure of a to-be-created entity, like an innocence commission. The Task Force members and participants would then discuss both policy- and law-related objectives, thoughts, and concerns. In many cases, the discussion would lead to redrafting and additional discussion. In some cases, the Chairperson created informal subcommittees of volunteers to hash out and vet the specifics of recommendation language. The informal-subcommittee process was reserved for the recommendations that started out as polarizing. Once each recommendation was fully drafted, it was voted on by a roll-call vote of the members present. Not all members were present for every vote, but a quorum was present for every vote. The Task Force would then move on to drafting and addressing the next potential recommendation. All roll-call votes are contained in the meeting minutes, which are available on the Task Force's webpage on the Supreme Court's website.

### Recommendations for Changes to Rules and Statutes

- Expand the grounds for a new trial by adopting Crim.R. 33.1 as a new rule under the Ohio Rules of Criminal Procedure.
- Amend R.C. 2953.21 and 2953.23 to expand access to discovery in noncapital postconviction proceedings, expand the time period in which a defendant may seek postconviction relief, and provide a mechanism for appointing counsel for certain noncapital defendants.
- Amend R.C. 181.25(A)(5) to facilitate the collection of detailed data related to felony appeals under R.C. 2953.08 and appeals of postconviction-relief proceedings.

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**Discussion:**

**Adoption of Crim.R. 33.1**

The Task Force's first recommendation to the Supreme Court is that Crim.R. 33.1 – titled New Trial Based on New Evidence that Produces a Reasonable Likelihood of Acquittal – be adopted in the Ohio Rules of Criminal Procedure.<sup>3</sup>

RULE 33.1  
New Trial Based on New Evidence that  
Produces a Reasonable Likelihood of Acquittal.

- A. Grounds. A new trial may be granted on motion of the defendant if the defendant produces relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the case, which, were it to be considered at a new trial, would result in a reasonable likelihood of acquittal.
- B. Timing. There is no time limit for a motion under this section, and it may be considered by the court at any time.
- C. Procedure.
  - 1. The motion shall set forth specific, nonconclusory facts: (a) identifying the specific new evidence; (b) explaining how that evidence demonstrates entitlement to relief under section (A); (c) explaining why the new evidence was not proffered at trial or any pretrial proceedings; and (d) attaching supporting materials.
  - 2. Unless, after reviewing the petition, the supporting materials, and all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript, the court determines that the defendant's motion is patently frivolous on its face (as defined in subsection (4) of this section), the court may appoint counsel for an indigent movant, and the parties shall be entitled to invoke the processes of discovery available under the Ohio Rules of Criminal Procedure.
  - 3. Once the briefing and any discovery is concluded, the court shall promptly set the matter for hearing.

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<sup>3</sup> As noted on page 1, the Task Force recommends that proposed rules and rule changes be submitted to the relevant Commissions.



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4. The court shall hold an evidentiary hearing on a motion under this section unless the defendant's motion is patently frivolous on its face. "Patently frivolous" is defined as offering no new evidence which, even if true, would satisfy the standard in section (A).
- D. Types of evidence to be considered under this Rule include, but are not limited to, scientific or expert evidence that discredits the evidence relied on by the State at trial or demonstrates a shift in a field of scientific or expert knowledge; recantation evidence; a witness who did not testify at trial; DNA evidence; or evidence that was not disclosed and whose disclosure would be required under *Brady v. Maryland*, 373 U.S. 83 (1963).
  - E. The court shall issue written findings of fact and conclusions of law in disposing all motions under this rule.
  - F. Appeal. An order entered on the motion is a final order for purposes of appeal.

Proposed Crim.R. 33.1 began as an effort to amend existing Crim.R. 33. It became a standalone proposal following the Task Force consensus on discarding any proposed amendments to the existing Crim.R. 33. This process spanned multiple meetings and engendered significant debate.

Initially, the Task Force considered adding a subdivision to Crim.R. 33 that would address the purpose of expanding the bases that would support a motion for a new trial and another subdivision identifying the additional bases for a motion for a new trial. Included in the debate over adding those subdivisions was the concern that the purpose-related language might inadvertently limit the bases for new trials exclusively to actual-innocence cases. Additionally, concerns were raised that procedural and time-related bars too often created roadblocks to those deserving of a new trial, and that it was difficult to reach consensus on how finality should be balanced with achieving justice by "getting it right" in the criminal-justice system. The difficulty in marrying the proposed changes with the existing rule led the Task Force to focus on creating Crim.R. 33.1 as a standalone rule.

But proposed Crim.R. 33.1 itself would require several versions and multiple tweaks before the Task Force adopted it. More than one Task Force participant expressed concern during the debate that this proposal strayed too far from an actual-innocence limit and that it overly valued the ability to challenge convictions relative to the important criminal-justice-system value of finality. Another concern was raised on whether the provisions were unconstitutional under the Modern Courts Amendment because the proposal interfered with the General Assembly's authority to create substantive law. The vote to adopt this proposed rule as a Task

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Force recommendation was not unanimous.

The proposed rule is comprehensive in substance and procedure, and the Task Force debated every provision. Subdivision (A) of the proposed rule sets forth the ground on which a new trial may be granted. It requires a defendant to produce relevant, admissible evidence that was not proffered at trial or in pretrial proceedings. Plus, that new evidence must be such that, if introduced in a new trial, it would produce a reasonable likelihood of acquittal.

To remove procedural bars that unreasonably limit the time in which a defendant can seek a new trial and that prevent courts from reaching the merits on motions for new trials, subdivision (B) specifically contains no time limit.

The procedure for pursuing motions for new trials under proposed Crim.R. 33.1 lie in subdivision (C). This includes requirements for motions' contents, provisions for addressing frivolous claims and appointing counsel for nonfrivolous ones, discovery requirements, and a requirement that the court promptly set nonfrivolous matters for hearing.

Subdivision (D) sets forth a nonexclusive set of evidence types that may be considered. It specifically contemplates advances in science, DNA, *Brady* failures, and recantation evidence. Subdivision (E) requires the trial court to issue written findings of fact and conclusions of law when ruling on motions made under the proposed rule, and subdivision (F) makes orders entered on these motions final, appealable orders.

The next recommendation addresses potential statutory amendments.

### **Changes to Ohio Revised Code 2953.21, 2953.23, and 181.25**

- Postconviction Petitions under R.C. 2953.21 and 2953.23

The Task Force's first recommendation for statutory changes consists of amendments to R.C. 2953.21, which addresses postconviction-relief petitions.

R.C. 2953.21

*[Existing language unaffected by the amendments is omitted to conserve space]*

- (e) At any time in conjunction with the filing of a petition for postconviction relief under division (A) of this section ~~by a person who has been sentenced to death~~, or with the litigation of a petition so filed, the court, for good cause shown, may authorize the petitioner in seeking the postconviction relief and the prosecuting attorney of the county served by the court in defending the proceeding, to take depositions and to issue subpoenas and subpoenas duces tecum in accordance with divisions (A)(1)(e), (A)(1)(f), and (C) of this section, and to any other form of discovery as in a civil action that the court in its discretion permits. The court may limit the extent of discovery under this division. Prior to requesting copies of discovery that was made available under Criminal Rule 16 at the time of trial, petitioner shall first make a good faith effort to obtain such discovery from prior counsel. In addition to discovery that is relevant to the claim and was available under Criminal Rule 16 through conclusion of the original criminal trial, the court, for good cause shown, may authorize the petitioner or prosecuting attorney to take depositions and issue subpoenas and subpoenas duces tecum in either of the following circumstances:

*[Existing language unaffected by the amendments is omitted to conserve space]*

- (f) If a person ~~who has been sentenced to death and~~ who files a petition for postconviction relief under division (A) of this section requests postconviction discovery as described in division (A)(1)(e) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, within ten days after the docketing of the request, or within any other time that the court sets for good cause shown, the prosecuting attorney shall respond by answer or motion to the petitioner's request or the petitioner shall respond by answer or motion to the prosecuting attorney's request, whichever is applicable.
- (g) If a person ~~who has been sentenced to death and~~ who files a petition for postconviction relief under division (A) of this section requests postconviction discovery as described in division (A)(1)(e) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, upon motion by the petitioner, the prosecuting attorney, or the

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person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from oppression or undue burden or expense, including but not limited to the orders described in divisions (A) (1) (h) (i) to (viii) of this section. The court also may make any such order if, in its discretion, it determines that the discovery sought would be irrelevant to the claims made in the petition; and if the court makes any such order on that basis, it shall explain in the order the reasons why the discovery would be irrelevant.

*[Existing language unaffected by the amendments is omitted to conserve space]*

(2) (a) ~~Except as otherwise provided in section 2953.23 of the Revised Code,~~ a petition under division (A) (1) (a) (i), (ii), or (iii) of this section shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal.

(b) ~~Except as otherwise provided in section 2953.23 of the Revised Code,~~ a petition under division (A) (1) (a) (iv) of this section shall be filed not later than three hundred sixty-five days after the effective date of this amendment.

(c) A court may consider a petition filed after the time period set forth in division (A) (2) (a) or (b) where one of the following apply:

(i) The petitioner has demonstrated cause for the untimely filing and prejudice from the violation of the petitioner's rights.

(ii) Consideration of the petition is necessary to avoid manifest injustice.

(iii) The United States Supreme Court or Ohio Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(iv) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former

section e of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death. As used in this division, "actual innocence" has the same meaning as in division (A)(1)(c)(1) of this section and "former section 2953.82 of the Revised Code" has the same meaning as in division (A)(1)(d) of this section.

*[Existing language unaffected by the amendments is omitted to conserve space]*

- (C) If a person ~~who has been sentenced to death and~~ who files a petition for postconviction relief under division (A)(1)(a)(i), (ii), (iii), or (iv) of this section requests a deposition or the prosecuting attorney in the case requests a deposition, and if the court grants the request under division (A)(1)(e) of this section, the court shall notify the petitioner or the petitioner's counsel and the prosecuting attorney. The deposition shall be conducted pursuant to divisions (B), (D), and (E) of Criminal Rule 15. Notwithstanding division (C) of Criminal Rule 15, the petitioner is not entitled to attend the deposition. The prosecuting attorney shall be permitted to attend and participate in any deposition.
- (D) The court shall consider a petition that is timely filed within the period specified in division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A)(1)(a)(i), (ii), (iii), or (iv) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect

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to such dismissal. ~~If the petition was filed by a person who has been sentenced to death, the~~ The findings of fact and conclusions of law shall state specifically the reasons for the dismissal of the petition and of each claim it contains.

*[Existing language unaffected by the amendments is omitted to conserve space]*

- (F) Unless the petition and the files and records of the case, viewed in the light most favorable to the petitioner, show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.

With respect to a petition filed under division (A)(1)(a)(iv) of this section, the procedures and rules regarding introduction of evidence and burden of proof at the pretrial hearing that are set forth in divisions (C), (D), and (F) of section 2929.025 of the Revised Code apply in considering the petition. With respect to such a petition, the grounds for granting relief are that the person has been diagnosed with one or more of the conditions set forth in division (A)(1)(a) of section 2929.025 of the Revised Code and that, at the time of the aggravated murder that was the basis of the sentence of death, the condition or conditions significantly impaired the person's capacity in a manner described in division (A)(1)(b) of that section.

- (G) A petitioner who files a petition under division (A)(1)(a)(i), (ii), (iii), or (iv) of this section may amend the petition as follows:

~~(1) If the petition was filed by a person who has been sentenced to death, at~~ At any time that is not later than one hundred eighty days after the petition is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings.

~~(2) If division (G)(1) of this section does not apply, at any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings.~~

~~(3)~~ The petitioner may amend the petition with leave of court at any time after the expiration of the applicable period specified in division (G)(1) or (2) of this section.

(3) If a petitioner amends the petition pursuant to division (G)(1) or (G)(2) after an answer or motion has been filed by the

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prosecuting attorney, the court shall permit the prosecuting attorney to, subsequent to the filing of the amended petition, file an amended answer or motion. The time for filing an amended answer or motion shall be as set forth in division (E) of this section.

- (H) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition. ~~If the petition was filed by a person who has been sentenced to death, the~~ The findings of fact and conclusions of law shall state specifically the reasons for the denial of relief on the petition and of each claim it contains. If no direct appeal of the case is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded to the court pursuant to a request made pursuant to division (F) of this section and the court finds grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter a judgment that vacates and sets aside the judgment in question, and, in the case of a petitioner who is a prisoner in custody, except as otherwise described in this division, shall discharge or resentence the petitioner or grant a new trial as the court determines appropriate. If the court finds grounds for relief in the case of a petitioner who filed a petition under division (A) (1) (a) (iv) of this section, the court shall render void the sentence of death and order the resentencing of the offender under division (A) of section 2929.06 of the Revised Code. If the petitioner has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the finding of grounds for granting the relief, with respect to each claim contained in the petition. The court also may make supplementary orders to the relief granted, concerning such matters as arraignment, retrial, custody, and bail. If the trial court's order granting the petition is reversed on appeal and if the direct appeal of the case has been remanded from an appellate court pursuant to a request under division (F) of this section, the appellate court reversing the order granting the petition shall notify the appellate court in which the direct appeal of the case was pending at the time of the remand of the reversal and remand of the trial court's order. Upon the reversal and remand of the trial court's order granting the petition, regardless of whether notice is sent or received, the direct appeal of the case that was remanded is reinstated.

*[Existing language unaffected by the amendments is omitted to conserve space]*

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(J) (1) If a person sentenced to death intends to file a petition under this section, the court shall appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

(2) The court shall not appoint as counsel under division (J) (1) of this section an attorney who represented the petitioner at trial in the case to which the petition relates unless the person and the attorney expressly request the appointment. The court shall appoint as counsel under division (J) (1) of this section only an attorney who is certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under this section does not constitute a separate grounds for relief in a proceeding under this section, in an appeal of any action under this section, or in an application to reopen a direct appeal but can be considered pursuant to division (A) (2) (c) (i).

(3) Division (J) of this section does not preclude attorneys who represent the state of Ohio from invoking the provisions of 28 U.S.C. 154 with respect to capital cases that were pending in federal habeas corpus proceedings prior to July 1, 1996, insofar as the petitioners in those cases were represented in proceedings under this section by one or more counsel appointed by the court under this section or section 120.06, 120.16, 120.26, or 120.33 of the Revised Code and those appointed counsel meet the requirements of division (J) (2) of this section.

(4) A court shall appoint counsel for an indigent person who has not been sentenced to death upon a motion by the petitioner or their counsel demonstrating that one or more postconviction claims have arguable merit.

(i) A motion made pursuant to division (J) (4) may be filed ex parte.



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(ii) As used in division (J) (4) of this section, there is no “arguable merit” if the claim(s) is so lacking in basis or fact that it would not undermine confidence in the verdict.

(iii) Notwithstanding division (J) (4), a court may, in its discretion, appoint counsel for an indigent person who has not been sentenced to death at any time and whether or not a motion requesting counsel has been made.

*[Existing language unaffected by the amendments is omitted to conserve space]*

#### R.C. 2953.23

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a ~~petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A) (1) or (2) of this section applies:~~

*[Existing language unaffected by the amendments is omitted to conserve space]*

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Like proposed Crim.R. 33.1, these amendments took shape over several meetings and involved significant discussion. Also like proposed Crim.R. 33.1, these proposed amendments were not unanimously recommended. The debate eventually whittled the proposed changes down to those discussed here.

The primary change to subdivision (A) extends the possibility of postconviction discovery to noncapital defendants. More broadly, the recommended changes as a whole delete most provisions limiting filings to death-sentenced defendants. But the petitioner must first make a good-faith effort to obtain Crim.R. 16-related discovery from prior counsel. This subdivision's revisions conform the time-for-filing requirements found in each subsection, which avoids the necessity of cross-referencing. The additions to R.C. 2953.21(A)(2) adopt procedures found in federal habeas corpus cases to address when petitioners may file second and successive petitions as well as petitioners who were prevented from discovering evidence suppressed by the prosecution or not discovered because of ineffective assistance of counsel. Specifically, the proposed changes borrow cause-and-prejudice and manifest-injustice exceptions from federal habeas corpus law.

One Task Force participant opposed extending discovery to all noncapital defendants. More than that, this participant opposed recommending statutory changes altogether, preferring instead for the Ohio Public Defender's Office and the Ohio Innocence Project to directly lobby the General Assembly. Another would have allowed discovery privileges to be extended only to those serving life sentences. A participant also strongly opposed noncapital discovery on the basis that it would create a lengthy process used to harass victims, witnesses, counsel, and judges. The answer in response was that discovery would only be granted if good cause is shown, and in such cases, the judge would likely appoint counsel. With appointed counsel, a previously pro se petitioner could not use discovery simply to harass others.

Though the discovery provision caused the most disagreement, participants registered concerns with other proposed revisions. For instance, a participant thought it duplicative to recommend codifying the existing right to file a petition based on the United States Supreme Court's or Supreme Court of Ohio's recognition of a new retroactive right. Another member thought it inefficient to introduce federal habeas corpus standards and procedures into state law. That person also expressed concern that this language eliminated meaningful timelines and raised res judicata issues. Among the potential inefficiencies was the lack of a proposed definition for *manifest injustice*, a term the participant thought too subjective.

In subdivision (F), the revision adds that the court must review the petition and related files and records "in the light most favorable to the petitioner" when determining whether relief is clearly inappropriate. And only when such relief is clearly inappropriate under that standard may the court deny a hearing on the

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issues. Conversely, when a petition is frivolous, relief is clearly inappropriate, and no hearing need be had. One participant contended that hearings are infrequent because frivolous petitions are common. For that reason, that person advocated against what they perceived as tipping the scale in the petitioner’s favor.

Changes in subdivision (G) expand the time in which a petitioner – particularly a non-death-sentenced defendant – may amend their petition without leave of court. The changes also grant the prosecutor a reciprocal opportunity to respond after the petitioner files any amendment.

During the discussion of the amended-petition-related provisions, one participant expressed concern about extending rights in capital cases to all defendants and wondered whether extending rights should turn on sentence length. Another participant responded that the Ohio Public Defender’s Office or other counsel would be unlikely to pursue a postconviction petition absent a lengthy sentence because of the time necessary to secure a remedy. But two other participants noted that irrespective of what counsel might do, plenty of pro se petitioners would still likely file.

Revisions to subdivision (J) would create an ex parte mechanism for appointing counsel for noncapital defendants whose postconviction petitions raise at least one claim with arguable merit or if the court otherwise exercises its discretion to appoint counsel. The ex parte nature of the request allows a defendant to obtain counsel to help develop their case without prematurely sharing that information with the prosecution. The proposal also provides courts with a guidepost for *arguable merit*. A claim lacks *arguable merit* if it “is so lacking in basis or fact that it would not undermine confidence in the verdict.”

The discussion of the subdivision did not center on opposition to its provisions but rather on concerns about how to appoint defense attorneys with the specialized knowledge and experience to effectively pursue postconviction claims. Ohio Public Defender Tim Young shared that additional postconviction-training requirements would be recommend to the Ohio Public Defender Commission, which has rulemaking authority. Indeed, the Task Force’s proposed revisions to Ohio Adm.Code 120-1-10 appear in Section (II)(A) below.

### **Data Collection by the Ohio Criminal Sentencing Commission under R.C. 181.25**

In light of the Ohio Criminal Sentencing Commission’s findings and experience that collecting accurate and meaningful data on the cost of appeals is unnecessarily difficult and of importance primarily to local interests, like county commissioners, it recommended instead that R.C. 181.25(A)(5) be amended to allow and direct the Commission to collect more detailed data related to felony appeals under R.C. 2953.08 and appeals of postconviction-relief proceedings.

### R.C. 181.25(A)(5)

Collect and maintain data ~~that pertains to the cost to counties~~ of the felony sentence appeal provisions set forth in section 2953.08 of the Revised Code, of the postconviction relief proceeding provisions set forth in division (A)(2) of section 2953.21 of the Revised Code, and of appeals from judgments entered in such postconviction relief proceedings. ~~The data so collected and maintained shall include, but shall not be limited to, the increase in expenses that counties experience as a result of those provisions and those appeals and the number of felony sentence appeals made, postconviction relief proceedings filed, and appeals of postconviction relief proceeding judgments made in each county under those provisions.~~ Data shall be collected by each appellate court and reported annually to the Sentencing Commission on January 15 of each year for the preceding year. Each court shall supply the data for the last full year prior to these amendments (e.g., if this is implemented in November of 2022, courts shall supply this information for 2021). If the last full year is 2020, please provide 2019 information as well.

Courts shall report the following information, per year, for each of the following types of appeals:

- All felony appeals, as set forth in section 2953.08 of the revised code
- Appeals of postconviction relief proceedings

Data points:

- Number of appeals filed
- Percent of total appeals filed
- Details about cases filed:
  - Number of convictions resulting from a trial
  - Number of convictions resulting from a plea
  - Convicted offenses (e.g., murder, robbery, assault, etc.)
  - Basis for postconviction relief
- Number of dispositions by disposition type:
  - Decision or opinion (one decision could contain more than one type)
    - Affirm conviction
    - Reversal of conviction

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- Remand for further proceedings (subset of reversal)
    - Dismissal
    - Stay
    - Other Terminations (specify): (e.g., not a final, appealable order)
  - Reasons for dismissing a postconviction relief appeal (e.g., the claim was procedural, no reliable evidence, application of the doctrine of res judicata, etc.)

Unlike the previous recommendations, this one received universal support and therefore minimal debate. On September 10, 2021, the then-present Task Force members voted unanimously to recommend the Ohio Sentencing Commission’s recommended statutory amendment.

## Recommendations on Training and Education

### **Recommendations:**

- Update education requirements for appointment of counsel in postconviction cases under Ohio Adm.Code 120-1-10
- Modify Ohio Rule of Professional Conduct 3.8

### **Discussion:**

#### **Changes to the Public Defender’s Administrative Code for Reimbursement**

In light of the Task Force’s recommendation that R.C. 2953.21 be amended to include a provision allowing for the appointment of counsel in postconviction cases, participants from the Ohio Public Defender’s Office suggested that the education requirements for appointment of counsel needed related updating. These requirements reside in Ohio Adm.Code 120-1-10, which governs appointment systems and attorney qualifications for reimbursement of county expenditures for appointed counsel.

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O.A.C. Rule 120-1-10 Appointment systems and attorney qualifications.

To qualify for reimbursement, attorneys and the systems used to appoint attorneys must meet the requirements of this rule.

*[Existing language unaffected by the amendments is omitted to conserve space]*

(J) Juvenile bindover cases. Where a case originated in juvenile court and was transferred to adult court, counsel must have:

(1) The requisite experience under this rule to be appointed to a juvenile case based upon the highest degree of the charge in the case; and either (2) The the requisite experience under this rule to be appointed to an adult case based upon the highest degree felony charged; or (3) Co-counsel co-counsel who meets the adult-case training and experience requirements must also be appointed.

(K) Juvenile cases.

*[Existing language unaffected by the amendments is omitted to conserve space]*

(6) Bindover and serious youthful offender cases. Where a petition to transfer to common pleas court or a motion for bindover proceeding has been filed, or where a serious youth offender proceeding has been initiated, counsel must have:

(a) The requisite experience under this rule to be appointed to a juvenile case based upon the highest degree of the charge in the case; and either (b) The the requisite experience under this rule to be appointed to an adult case based upon the highest degree felony charged; or (c) Co-counsel co-counsel who meets the adult-case training and experience requirements must also be appointed.

*[Existing language unaffected by the amendments is omitted to conserve space]*

(L) Adult appellate cases. For purposes of this rule, a case in which an Anders brief was filed may not be counted as prior experience.

*[Existing language unaffected by the amendments is omitted to conserve space]*

(6) Bindover and serious youthful offender cases. Where the case involves the appeal of a juvenile case transferred to common pleas

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court or a serious youthful offender proceeding, counsel must have:

(a) The requisite experience under this rule to handle the appeal of a juvenile case based upon the highest degree of the charge in the case; and either (b) The the requisite experience under this rule to handle the appeal of an adult case based upon the highest degree of felony charged;, or (c) ~~Co-counsel~~ co-counsel who meets the adult-case training and experience requirements must also be appointed.

(M) Juvenile appellate cases. For purposes of this rule, a case in which an Anders brief was filed may not be counted as prior experience.

*[Existing language unaffected by the amendments is omitted to conserve space]*

(3) Bindover and serious youthful offender cases. Where the matter involves the appeal of a case transferred to common pleas court or a serious youth offender proceeding, counsel must have:

(a) The requisite experience under this rule to handle the appeal of a juvenile case based upon the highest degree of the charge in the case; and either (b) The the requisite experience under this rule to handle the appeal of an adult case based upon the highest degree felony charged;, or (c) ~~Co-counsel~~ co-counsel who meets the adult-case training and experience requirements must also be appointed.

(N) Adult postconviction. Where the defendant has been convicted of an offense, and counsel is appointed to represent the defendant in any stage of a postconviction relief petition or on appeal of the denial of a postconviction relief petition, within two years prior to the appointment, counsel must have completed a minimum of four hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in postconviction practice, investigation, or contributing factors to wrongful conviction, as well as one of the following:

(1) The requisite experience and training under this rule to serve as trial counsel for the underlying offense; or

(2) The requisite experience and training under this rule to serve as appellate counsel for the underlying offense.

(O) Juvenile postconviction. Where the child has been adjudicated of an offense, and counsel is appointed to represent the child in any stage of a postconviction relief petition or on appeal of the denial

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of a postconviction relief petition, within two years prior to the appointment, counsel must have completed a minimum of four hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in postconviction practice, investigation, or contributing factors to wrongful conviction, as well as one of the following:

(1) The requisite experience and training under this rule to serve as trial counsel for the underlying offense; or

(2) The requisite experience and training under this rule to serve as appellate counsel for the underlying offense.

(P) Adult community control violation. Where the defendant is charged with a violation of community control, counsel must have:

(1) The requisite training and experience under this rule to serve as counsel for the underlying offense; or

(2) Within the last year served as co-counsel in at least three community control violation proceedings; and ~~(3) Within~~ within the last two years, completed a minimum of six hours of continuing legal education, certified by the ~~supreme court~~ Supreme Court of Ohio commission on continuing legal education, in criminal practice and procedure.

(Q) Juvenile community control and supervised release violation. Where the juvenile is charged with a violation of community control or supervised release, counsel must have:

(1) The requisite training and experience under this rule to serve as counsel for the underlying offense; or

(2) Within the last year served as co-counsel in at least three community control or supervised release violation proceedings; and ~~(3) Within~~ within the last two years, completed a minimum of six hours of continuing legal education, certified by the ~~supreme court~~ Supreme Court of Ohio commission on continuing legal education, in juvenile delinquency practice and procedure.



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The primary proposed amendments affect subdivisions (N) and (O), which address adult-postconviction and juvenile-postconviction qualifications, respectively. The essentially identical changes to each subdivision would require that “within two years prior to the appointment, counsel must have completed a minimum of four hours of continuing legal education, certified by the Supreme Court of Ohio Commission on Continuing Legal Education, in postconviction practice, investigation, or contributing factors to wrongful conviction” along with the previously required offense-related trial or appellate experience.

During the discussion of these changes, Task Force participants raised two questions. One, a participant asked how the requirements are enforced. Enforcement takes place locally – the court making the appointment is responsible for ensuring that counsel meets the requirements. But if the Ohio Public Defender’s Office were advised that an attorney is taking appointments outside of their qualifications, the Public Defender would investigate. Two, a participant asked how the Public Defender arrived at four hours of continuing legal education. The Public Defender attempted to strike a balance between providing sufficient education to pursue postconviction claims without becoming cumbersome, especially in light of how difficult it may be to find longer courses that specifically address postconviction relief.

On August 13, 2021, the then-present Task Force members unanimously voted to recommend the changes to Ohio Adm.Code 120-1-10.

### **Changes to Professional Conduct Rule 3.8**

Task Force participants discussed whether to consider that Ohio adopt the American Bar Association’s Model Rule of Professional Conduct 3.8 (Appendix E.) as a modification to Ohio Rule of Professional Conduct 3.8. Model Rule 3.8 governs the special duties of a prosecutor. Ultimately, the Task Force agreed to take up the issue, and it recommends significant revisions above and beyond the ABA’s Model Rule language.

First, the Task Force vetted ABA Model Rule of Professional Conduct 3.8. It received general support. For instance, one participant found the changes to Ohio’s current rule to be minor and to fall within current practices, even if those practices are not currently codified in the rule.

Next, the Task Force reviewed a draft that incorporated portions of Model Rule 3.8 along with significant additions drawn from a law-review article<sup>4</sup> suggesting modifications to Model Rule 3.8. This draft received criticism both for not going

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4 Green, *Prosecutorial Ethics As Usual*, University Of Illinois Law Review (2003) ([www.illinoislawreview.org/wp-content/ilr-content/articles/2003/5/Green.pdf](http://www.illinoislawreview.org/wp-content/ilr-content/articles/2003/5/Green.pdf)) (accessed Dec. 29, 2021).

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far enough and for going too far to protect defendants. To one participant's mind, it did not go far enough to protect a defendant when a prosecutor may have probable cause but not a good-faith belief in guilt. Other participants took issue with establishing a higher duty to disclose information about police-officer witnesses than other witnesses, the subjective standards they felt the rule would establish, and its attempt to forbid common prosecutorial practices like inducing a defendant to waive certain appellate rights as a condition of receiving a plea offer. There was, however, support for adding aspirational ethical considerations. So the Chairperson requested that a small working group craft an alternative draft.

After some initial turbulence, the working group was able to agree on a draft created by directly modifying existing Prof.Cond.R. 3.8. In line with the goal of minimizing the holes in the protections against wrongful convictions, several of these provisions aim at prospectively avoiding wrongful convictions rather than remedying them after the fact. The then-present Task Force members unanimously voted to recommend the draft.

### RULE 3.8: SPECIAL RESPONSIBILITIES OF A CRIMINAL PROSECUTOR

The prosecutor in a criminal case shall not do any of the following:

- (A) pursue or maintain the prosecution of a charge that the prosecutor *knows* is not supported by probable cause and by the prosecutor's good faith belief in the defendant's guilt for the offense charged.
- (B) [RESERVED]
- (C) [RESERVED]
- (D) fail to 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, fail to disclose to the defense all unprivileged mitigating information *known* to the prosecutor, except when the prosecutor is relieved of this responsibility by an order of the *tribunal*;
- (E) 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 all of the following apply:
  - (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;
  - (3) there is no other feasible alternative to obtain the information.

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- (F) fail to take the following steps when a prosecutor knows of previously undisclosed, credible, and material evidence creating a reasonable likelihood that a convicted defendant is not guilty of the crime for which the defendant was convicted:
- (1) if the conviction was obtained in the prosecutor's jurisdiction,
    - (a) promptly disclose that evidence to an appropriate court or authority, and
    - (b) promptly disclose that evidence to the defendant and defendant's attorney unless a court authorizes delay, and
    - (c) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant is innocent of the crime.
  - (2) if the conviction was obtained outside the prosecutor's jurisdiction, promptly notify the prosecutor's office in the jurisdiction that prosecuted the case, ensuring that the information is transmitted to a prosecuting attorney who is authorized to bring the matter to the attention of the court in that jurisdiction.
- (G) fail to seek to remedy a conviction, even if all authorized appeals have concluded, when a prosecutor knows of clear and convincing evidence establishing that a defendant is innocent of the crime for which defendant was prosecuted. If the conviction is not in the prosecutor's jurisdiction the prosecutor shall ensure that the matter is brought to the attention a prosecuting attorney who is authorized to bring the matter to the attention of the court in that jurisdiction.

### Comment

- [1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded justice and that guilt is decided upon the basis of sufficient evidence. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4. A prosecutor also is subject to other applicable rules such as Rules 3.3 (including the responsibility to refrain from false representations and to correct false testimony of a prosecution witness), 3.6, 4.2, 4.3, 5.1, 5.2 and 5.3.

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- [2] Oftentimes prosecutors, particularly in larger counties and municipalities, are subject to multiple layers of supervision. The provisions of Rules 5.1 and 5.2 regarding the respective responsibilities of supervisory and subordinate lawyers apply in these circumstances.
- [3] Division (A) recognizes a continuing obligation on prosecutors not to formally initiate nor prosecute criminal charges that are not supported by probable cause and by the prosecutor's good faith belief in the defendant's guilt for the offense charged. This does not preclude a prosecutor from participating in an investigation in an effort to determine if charges should be brought or maintained.
- [4] The exception in division (D) recognizes that a prosecutor may seek an appropriate order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.
- [5] Division (E) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.
- [6] [RESERVED]

### Comparison to former Ohio Code of Professional Responsibility

Rule 3.8(A) corresponds to DR 7-103(A) (no charges without probable cause), and Rule 3.8(d) corresponds to DR 7-103(B) (disclose evidence that exonerates defendant or mitigates degree of offense or punishment).

EC 7-13 recognizes the distinctive role of prosecutors:

The responsibility of a public prosecutor differs from that of the usual advocate; his [her] duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he [she] also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubt.

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## Comparison to ABA Model Rules of Professional Conduct

Rule 3.8 modifies Model Rule 3.8 as follows:

- The introductory phrase of the rule is reworded to state a prohibition, consistent with other rules;
- Division (a) is expanded to prohibit either the pursuit or prosecution of unsupported charges and, thus, would include grand jury proceedings;
- Division (b) is deleted because ensuring that the defendant is advised about the right to counsel is a police and judicial function and because Rule 4.3 sets forth the duties of all lawyers in dealing with unrepresented persons;
- Division (c) is deleted because of its breadth and potential adverse impact on defendants who seek continuances that would be beneficial to their case or who seek to participate in diversion programs;
- Division (d) is modified to comport with Ohio law;
- Division (f) is deleted because a prosecutor, like all lawyers, is subject to Rule 3.6. A new division (f) regarding a prosecutor's post-conviction responsibilities to disclose newly discovered exculpatory evidence has been included.
- Division (g) has been added regarding a prosecutor's post-conviction responsibilities to remedy a conviction of an innocent person.

The most salient changes warrant explanation.

The first such change affects subdivision (A). In addition to the requirement that a prosecutor have probable cause to seek a charge, the working group added that probable cause is required to *maintain* the charge and that the prosecutor must also have a good-faith belief in the defendant's guilt for that charge. These changes acknowledge that probable cause might exist even when a prosecutor does not believe in a defendant's guilt and that circumstances may change over time. A new comment emphasizes that nothing in the rule precludes a prosecutor from further investigating to determine whether charges should be brought or maintained.

Plus, the working group accounted for Prof.Cond.R. 5.1's and 5.2's provisions addressing the responsibilities of supervisory and subordinate lawyers. So while a subordinate attorney may not have a good-faith belief in a defendant's guilt, they may be compelled by a supervisor to the pursue the charge. If any disciplinary

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action follows, the supervising attorney is responsible. A new comment to the rule further emphasizes this point.

The working group also suggested changes to subdivisions (F) and (G). In particular, those changes require a prosecutor to take specific ameliorative actions when they know of “previously undisclosed, credible, and material evidence creating a reasonable likelihood that a convicted defendant is not guilty of the crime.” They would also require a prosecutor who knows of clear and convincing evidence that the defendant is innocent of the crime to seek to remedy the conviction – irrespective of whether all authorized appeals have concluded. These provisions were broadly uncontroversial, but a participant questioned a provision allowing a prosecutor to delay in turning over evidence if authorized by a court. The explanation given was that this language comes from Model Rule 3.8, and another participant added that courts sometimes authorize delay in disclosures to allow a prosecutor to investigate the credibility of the information.

A Task Force participant also researched professional-conduct rules in other jurisdictions. That research revealed that the added good-faith requirement in division (A) exists elsewhere, but not in a majority of jurisdictions. The postconviction *Brady* responsibilities exist in many states, and they are consistent with the ABA Model Rules. Most other states, however, do not differentiate between in-jurisdiction and out-of-jurisdiction responsibilities.

Ohio also uses its prosecutors in a manner not pervasive in the other states: prosecutors also handle a number of civil issues. Some Task Force participants thought it appropriate to address these prosecutors’ professional responsibilities separately, potentially with a parallel rule. The Task Force did not reach consensus on language for such a parallel rule. But recognizing its circumscribed task and composition, the Task Force largely agreed on a footnote addressing the perceived need for a civil-prosecutor-focused rule.<sup>5</sup> Support for the footnote was not quite unanimous – one then-present member voted against its inclusion in this Report.

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<sup>5</sup> The Task Force notes that Rule 3.8 as presently constituted focuses on the responsibilities of the prosecutor in criminal cases; recognizing that, our proposed changes to Rule 3.8 include amending the title of the section to reflect its more limited scope. The Task Force believes that the power and resources of all government attorneys is such that, even in civil matters, the government lawyer, as a representative of the sovereign, has ethical considerations unique to their office due to the responsibility not to use the position or the economic power of the government to harass parties or bring about unjust settlements or results. While the conduct of government in civil lawsuits involving allegations of wrongful convictions is relevant to the work of the Task Force, the Task Force believes that any disciplinary rules involving the role of the government attorney in the civil context is best left to the Supreme Court of Ohio and the Commission on Professionalism (whose membership is more representative of the relevant stakeholders in this regard than is that of this Task Force). Accordingly, we recommend that the Court, through the Commission, consider whether a rule parallel to 3.8 be promulgated for government attorneys in civil matters.

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## Recommendation for Creation of an Ohio Innocence Commission

### **Recommendation:**

Adopt a Statewide Commission Based on North Carolina Innocence Inquiry Commission

### **Discussion:**

During initial discussions, Task Force participants favorably viewed the innocence-commission model and were receptive to a similar recommendation for Ohio, assuming similar independence, political insulation, and funding. Thus, the Task Force recommends the creation of an Ohio Innocence Commission.

### **Recommendation for an Ohio Innocence Commission**

The Task Force recommends that the General Assembly create an innocence commission to investigate and adjudicate claims of innocence. An innocence commission would supplement, not replace, existing postconviction mechanisms for challenging a conviction.

The purpose of an innocence commission is to add to Ohio's justice system an independent body whose only allegiance is to ascertaining the truth. To that end, the commission must be able to independently investigate the facts of a case in an inquisitorial (as opposed to adversarial) setting and follow the evidence, guided by a commitment that neither the guilty should be exonerated nor the innocent remain convicted.

In conjunction with this recommendation, the General Assembly should consider the following issues:

#### *Ohio's Innocence Commission*

1. The commission should be an independent, neutral, fact-finding entity empowered to investigate claims of innocence arising out of felony convictions from any court of common pleas.
2. The commission should be composed of a variety of individuals with past or present professional involvement in the criminal-justice system, as well as members of the community.
3. The commission staff should be a professional staff insulated from political pressure aimed at overturning or validating criminal convictions.
4. The commission's authority to review claims should be limited to claims where the claimant has, with the benefit of counsel, waived their Fifth Amendment right and attorney-client privilege reasonably related to the claim of innocence.

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5. The commission should be empowered to issue subpoenas for documents, compel the attendance of witnesses, and utilize the methods of discovery available under the Rules of Criminal and Civil Procedure.
  6. The commission should have the power to inspect, examine, and temporarily take possession of physical evidence for forensic examination or testing.
  7. The commission's authority, policies, and practices must be consistent with Article I, Section 10a of the Ohio Constitution (Marsy's Law).
  8. The commission should be adequately funded to investigate claims of innocence and comply with the constitutional and statutory rights Ohio affords to crime victims.
  9. Subject to limited exceptions involving circumstances where exculpatory or inculpatory evidence is discovered during its investigation, as well as in cases where there is sufficient evidence to warrant a public hearing on the claim, the commission's work product should be confidential.
  10. In cases where the innocence commission believes a viable claim of innocence has been established, a specially authorized three-judge panel composed of sitting appellate-court judges from outside the appellate district where the case arises should consider the matter. Judicial proceedings should be public and should provide an opportunity for the defendant (through counsel if desired), the prosecutor and the victim to be heard. If a judicial panel finds the defendant to be innocent, the panel shall be authorized to take appropriate remedial measures to vacate the conviction.

During the Task Force discussion, one participant thought that such a model would help even the playing field by giving smaller rural counties equal access to conviction-review resources. That person also thought that an independent commission would foster public confidence in the criminal-justice system. That said, one participant expressed some concern about bridging the differences between North Carolina and Ohio law.

Participants also discussed potential financial benefits of such a commission including shortening prison terms for the wrongfully convicted, taking on what would otherwise be county-by-county conviction-integrity units, and likely reducing the number of postconviction petitions to trial courts.

The Task Force Chairperson put together a working group of volunteers to create a draft recommendation. The working group went through multiple drafts before reaching a final product for the full Task Force to vote on. And even the full Task Force discussion before the final vote revealed some deep divisions. Ultimately, the Task Force voted unanimously to recommend that the General Assembly create



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a commission resembling North Carolina's – but the Task Force identified three additional considerations it could not reach full consensus on.

Broadly, the Task Force agreed that any such commission should be independent, neutral, investigatory in nature, and properly funded. The investigatory powers should include things like subpoenas to compel the production of documents and attendance of witnesses and other discovery methods available in the Rules of Civil and Criminal Procedure, including taking possession of, examining, and testing physical evidence. Like North Carolina's Commission, Ohio's should draw commissioners from a cross-section of the criminal-justice system and the community. Consistent with independence, commission staff should be professionals insulated from political pressure. The Task Force also endorsed confidentiality until a hearing is called for or inculpatory or exculpatory evidence is discovered. In a tweak to North Carolina's three-judge panels, rather than endorsing panels comprising out-of-county common-pleas judges, the Task Force recommended three sitting appellate-court judges from outside the appellate district that gave rise to the case. That three-judge panel could take remedial action to vacate the conviction, if appropriate.

Despite the broad agreement on these provisions, divisions remained on several topics.

First, the Task Force participants could not agree on precisely what it means to *establish innocence*. Some members felt that because a conviction already required a jury verdict or guilty plea to establish guilt, *innocence* requires proof that the defendant was neither the perpetrator of the offense nor another offense related to the underlying facts. Others objected to the difficulty of proving a negative and thought *innocence* could be established when the three-judge panel concluded that no reasonable juror would be able to find the defendant guilty beyond a reasonable doubt of the offense of conviction.

The discussion noted that statute limits North Carolina's Commission to reviewing claims of factual innocence, i.e., a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief. But at least one Task Force participant reported that a closer examination of some of that Commission's exonerations suggests that the practical application of this standard is not so narrow as its plain language.

Second, the issue of who could refer cases to the proposed innocence commission engendered great – perhaps the most – disagreement. Some participants fought to

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limit the consideration of innocence claims to those referred to the commission by prosecutors and judges. Other participants, particularly those with significant postconviction defense-side experience, thought prosecutors and judges are frequently the largest roadblocks to overturning legitimately wrongful convictions. These participants thought that any defendant should be able to submit a claim. Other participants worried that limiting the referral process so starkly would lead to the uneven application of conviction review across the state.

North Carolina has addressed this issue by limiting claimant-submitted applications to certain serious felony convictions. Less serious convictions must be referred by a court, a state or local agency, or the claimant's counsel.

Finally, the Task Force participants failed to reach consensus on what circumstances would justify an inquiry by the commission. Specifically, they divided over what quantity and quality of evidence should be necessary to trigger review. The purpose of such review is not, of course, to simply second-guess a jury's verdict or judge's finding. Likewise, when new evidence arises posttrial that credibly establishes that the defendant could not be the perpetrator – like DNA evidence – participants broadly agreed that commission review was appropriate. But the participants could not bridge the broad gap between these scenarios. Three primary questions arose:

1. To what extent could the “new” evidence have been available at trial but not presented to the factfinder?
2. To what extent must the evidence of innocence be verifiable?
3. To what extent must the evidence of innocence be completely exculpatory as opposed to reducing the severity of the offense?

Further, the existence of these concerns and points of disagreement led at least one participant to suggest that the recommendation is too broad and vague to be of use to the General Assembly.

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## CONCLUSION

The Chief Justice of the Supreme Court of Ohio charged the Conviction Integrity and Postconviction Review Task Force with reviewing and analyzing current practices and recommending improvements to Ohio's criminal-justice system. That proved to be no small task. This report and these recommendations reflect the diligent and hard work performed by the Task Force and the informative and excellent presentations of invited guests. The resulting recommendations provide a first step toward meaningful progress and improvement for Ohio's postconviction process. The Task Force members' and participants' work resulted in recommended improvements to every aspect of conviction-integrity and postconviction review that they believe will provide meaningful progress in this area. The Task Force's recommendations benefited from extensive review and debate and impressive consensus building among its members.

The Task Force fully recognizes that significant work remains to be done to implement these recommendations. The Task Force submits this report and recommendations to the Court and requests that the proposals and recommendations be submitted to the Commission on the Rules of Practice & Procedure, the Ohio General Assembly, and any other entities as appropriate for further review and, hopefully, adoption. These recommendations, taken as a whole, provide concrete improvements, and therefore meaningful relief, to improve our system of justice by streamlining postconviction practice and, hopefully, reducing wrongful convictions in Ohio.



Appendix A

Press Release, Louis Tobin,  
Aug. 25, 2020



# Ohio Prosecuting Attorneys Association

\*\*\*\*\* PRESS RELEASE \*\*\*\*\*

For Immediate Release  
August 25, 2020

CONTACT  
Louis Tobin  
(614) 221-1266

## Ohio Prosecuting Attorneys Association Announces Conviction Review Best Practices, Proposes Change to Rules of Professional Conduct

The Executive Committee of the Ohio Prosecuting Attorneys Association voted last week to approve a set of best practices for conviction review and to propose a change to Rule 3.8 of the Ohio Rules of Professional Conduct regarding the special responsibilities of a prosecutor.

The best practices for conviction review are intended as guidance to prosecuting attorneys in Ohio who are asked to review claims of wrongful conviction. They provide guidance on the adoption of specific policies and procedures to govern application, acceptance, investigation, and documentation of claims of wrongful conviction. They were developed by career prosecutors with extensive experience, are based on what Ohio prosecutors have learned from their own conviction review experiences, and include many best practices that are recommended by organizations like the Innocence Project and Fair and Just Prosecution.

The proposed change to Rules of Professional Conduct are based on the American Bar Association's Model Rules of Professional Conduct regarding the special responsibilities of a prosecutor as a minister of justice. The proposal would make clear an ethical obligation that prosecutors already recognize and practices that they already undertake regarding new, credible, and material evidence of a convicted defendant's innocence.

"A lot of attention has been given to Chief Justice O'Connor's creation of the Task Force on Conviction Integrity and Post-Conviction Review. These are issues that Ohio prosecutors have been sensitive to and been studying for much longer" said Executive Director Louis Tobin. While the best practices discuss the creation of "Conviction Review Units," Tobin said that "they can also be used by smaller counties looking for guidance on critical issues to consider when reviewing individual case files."

"Prosecutors take their role as a minister of justice very seriously. These guidelines and recommendations further our recognition that our responsibilities extend to the defendant as well as the state and that we have an obligation to ensure that defendants are accorded justice" added OPAA President, Juergen Waldick.

The Ohio Prosecuting Attorneys Association was founded in 1937, as a private non-profit corporation, for the benefit of the 88 elected prosecutors in Ohio. The organization seeks to increase the efficiency of its members in the

pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted actions on policies which affect the office of Prosecuting Attorney, and to aid in the furtherance of justice. The association presents statewide continuing legal education programs regarding all aspects of the county prosecuting attorney's responsibilities.

Appendix B

Response from Chief Justice O'Connor,  
Sept. 15, 2020



# The Supreme Court of Ohio

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE  
MAUREEN O'CONNOR

CHIEF JUSTICE  
MAUREEN O'CONNOR

JUSTICES  
SHARON L. KENNEDY  
JUDITH L. FRENCH  
PATRICK F. FISCHER  
R. PATRICK DEWINE  
MICHAEL P. DONNELLY  
MELODY J. STEWART

TELEPHONE 614.387.9060  
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[www.supremecourt.ohio.gov](http://www.supremecourt.ohio.gov)

September 15, 2020

Mr. Lou Tobin, Esquire  
Executive Director  
Ohio Prosecuting Attorneys Association  
196 East State Street | Suite 200  
Columbus, Ohio 43215

Dear Mr. Tobin:

I understand that the Ohio Prosecuting Attorneys Association has elected not to participate in the Task Force on Conviction Integrity and Post-Conviction Review.

I find the decision unfortunate as the voice of the prosecuting attorneys of Ohio has always been welcome on task forces created by the Chief Justice.


I realize the OPAA has drafted their own proposal regarding the subject matter and made recommendations to Professional Rule 3.8. I appreciate that your members have a perspective as do the other members of the Task Force. Like many subjects that are sought to be examined and recommendations made, the inclusion of all points of view is essential for an intelligent, thorough, and respectful vetting of the subject at hand. Often listening to only one point of view can ignore vital considerations.

The legitimacy of the Task Force's inquiry into matters of criminal justice cannot seriously be questioned. I see no separation of powers issues regarding a Task Force studying the subject of conviction integrity and post-conviction review. Assuring that the processes by which a person is convicted, and post-conviction proceedings occur go to the very essence of the judiciary's duties.

I know that I speak for all members of the Task Force when I say that it is hoped that the OPAA reconsiders its position and joins in discussions that will be of benefit to not only

the Task Force members but to the people of Ohio.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen O'Connor". The signature is fluid and cursive, with a large initial "M" and "O".

Maureen O'Connor  
Chief Justice of Ohio

cc: Members of the Task Force on Conviction Integrity and Postconviction Review

## Appendix C

# Conviction Integrity and Exonerations Presentation

# **CONVICTION INTEGRITY AND EXONERATIONS: A REVIEW OF THE NATIONAL DISCOURSE**

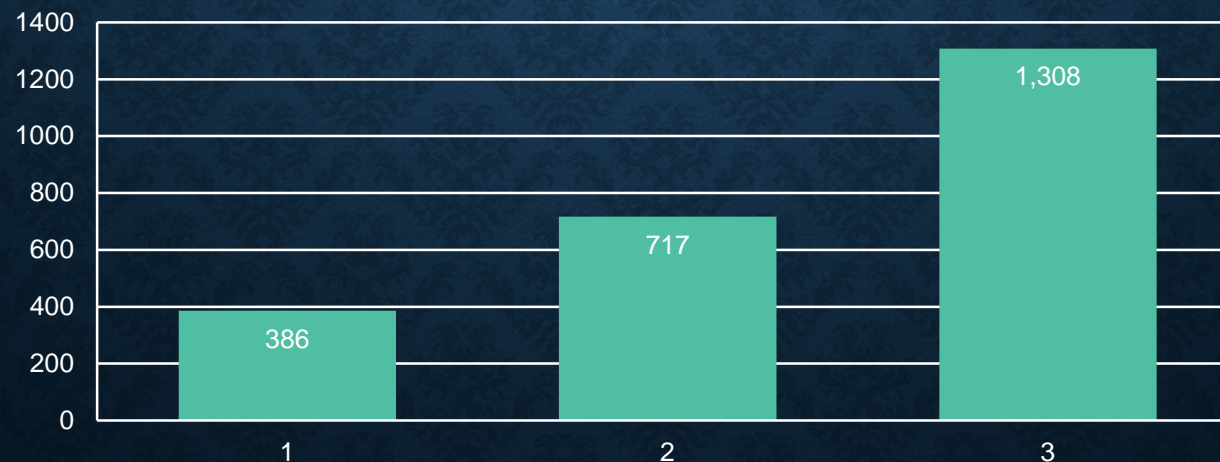
Prepared by Justin Kudela, Esq., Staff Liaison for the Ohio Task Force on Conviction  
Integrity and Postconviction Review

# NATIONAL EXONERATION STATISTICS

According to The National Registry of Exonerations:

- 2,666 exonerations nationally since 1989
- Average of 9 years of incarceration
- 1,018 of the exonerations were in murder cases

Exonerations 1989-2018



# OHIO EXONERATION STATISTICS

85 exonerations in Ohio since 1989

Factors that contributed to exonerations in Ohio:

- 43 of 85 exonerations involved Perjury/False Accusation
- 30 of 85 exonerations involved Mistaken Identification
- 15 of 85 exonerations involved DNA
- 2 of 85 exonerations involved a False Confession

# INNOCENCE ORGANIZATIONS

36 states have an Innocence Organization

Innocence organizations are responsible for 646 exonerations since 1989.

# CONVICTION INTEGRITY UNITS

21 states have at least one Conviction Integrity Unit

Michigan, New Jersey and Pennsylvania have statewide CIUs

65 Conviction Integrity Units as of 2020



# CONVICTION INTEGRITY UNIT EXONERATIONS

444 exonerations are attributed to only 31 CIUs

253 (57%) of the exonerations come from two units:

- Harris County (Houston) Texas: 144 (139 exonerations were in drug possession cases)
- Cook County (Chicago) Illinois: 109 (78 exonerations were in drug possession cases)

# IN OHIO

Cuyahoga County Conviction Integrity Unit

Summit County Conviction Review Unit

Ohio Innocence Project – University of Cincinnati

Ohio Public Defender – Wrongful Conviction Unit

# REPORTS ON WRONGFUL CONVICTIONS

California

Connecticut

Florida

Maryland

Massachusetts

New York (2)

Oklahoma

Pennsylvania

Texas

Virginia

Wisconsin

# WISCONSIN

1. Required electronic recording of interrogations with juveniles
2. Required law enforcement agencies to adopt policies on eyewitness identification procedures
3. Clarified retention of biological evidence
4. Clarified issues on DNA testing
5. Expanded statute of limitations

# VIRGINIA

1. Eyewitness Identifications
2. Interrogation Procedures
3. Discovery Practices
4. Unwarranted Focus on Single Suspect (“Tunnel Vision”)
5. Defense Counsel
6. Scientific Evidence
7. Postconviction Remedies

# CONNECTICUT

Recommended the use of a double-blind administration eyewitness identification procedure.

Double-blind administration means that the person conducting identification procedure is not aware of which person is the suspected perpetrator.

The protocol is now taught at all of the mandated recurring training for police officers.

# COMPARING STATES

## California

1. Eyewitness Identification
2. False Confessions
3. Informant Testimony
4. Scientific Evidence
5. Accountability of Prosecutors  
and Defense Lawyers
6. Remedies
7. Death Penalty

## Pennsylvania

1. Eyewitness Identification
2. Confessions
3. Informant Testimony
4. Forensic Science
5. Prosecutorial Practice
6. Indigent Defense Services
7. Postconviction Relief
8. Wrongful Conviction  
Redress

# NEW YORK

Each District Attorney's Office should establish a Conviction Integrity Unit or create a program for conviction review.

The state should help fund the creation of additional CIUs by allowing District Attorneys to apply for funding to establish a CIU.



# TEXAS AND JUNK SCIENCE

The panel “viewed its task as one of defining ‘systemic accidents’ rather than one placing blame on individual actors.”

Recommended amending habeas corpus to allow writs based on changing scientific evidence.

In 2013, Texas Legislature passed Article 11.073 of the Texas Code of Criminal Procedure—known by many as the Junk Science Writ

# OKLAHOMA

1. False Confessions
2. Eyewitness Identification
3. Forensic Evidence – including DNA access laws and preservation
4. Criminal law and procedures on issues of Informants, Misconduct, Competency of Counsel and Jury Instructions
5. Victim/Family Rights and Compensation
6. Prosecutorial or Investigatory Misconduct

# FLORIDA

Made recommendations in:

1. Eyewitness Identification
2. False Confessions
3. Informants and Jailhouse Snitches
4. Improper or Invalid Scientific Evidence
5. Professional Responsibility

Report also indicated that the underfunding of the criminal justice system in Florida *may* lead to wrongful convictions.

# CONCLUSION: SUBSTANTIAL OVERLAP

Common contributing factors for wrongful convictions:

1. Eyewitness Identification
2. False Confessions
3. Informant Testimony (including Jailhouse Snitches)
4. Forensic Evidence/Science
5. Discovery Practices
6. Competency and Accountability for both Prosecutors and Defense Lawyers

# ACKNOWLEDGEMENTS

Thank you to all of the Law Library Staff and specifically Librarian, Michelle Graff, as well as Assistant Deputy Clerk, Kathryn Patterson, for assisting with the research for this presentation.

## Appendix D

# Postconviction Relief Petitions and Conviction Integrity: 50 State Survey

# 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 statutes 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](#)

Exonerated 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](#). Exonerate 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; Exoneratee 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.

## Appendix E

### Rule 3.8: Special Responsibilities of a Prosecutor

# Rule 3.8: Special Responsibilities of a Prosecutor

Share:



## *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.

[Comment](#) | [Table of Contents](#) | [Next Rule](#)



## Appendix F

# Court of Claims: Wrongful Imprisonment Suits

Case Number	Case Name	Filing Date	Prayer	Decision	Amount of Judgment	Judgment Date
1976-0464 WI	<i>Theodore Tymcio v. State of Ohio</i>	8/26/1976	Not Stated	Entry of Dismissal		10/20/1976
1978-0228 WI	<i>Frank L. Johns v. State of Ohio</i>	2/17/1978	Not Stated	Entry of Dismissal		7/30/1981
1981-05750 WI	<i>Leonard O'Neil v. State of Ohio</i>	11/5/1981	\$100,000.00	Decision and Judgment for Plaintiff	\$80,935.25	12/10/1984
1981-06098 WI	<i>Earl W. Hahn v. State of Ohio</i>	11/23/1981	\$750,000.00	Decision and Judgment for Plaintiff	\$134,400.00	7/22/1982
1984-05611 WI	<i>William B. Jackson v. State of Ohio</i>	8/6/1984	\$1,000,000.00	Decision and Judgment for Plaintiff	\$720,645.00	7/15/1985
1984-09403 WI	<i>Richard A. Parker V. Ohio Department Of Rehabilitation And Correction</i>	12/28/1984	\$30,000.00	Entry of Dismissal		12/5/1985
1985-03522 WI	<i>Ernest R. Holbrook Jr. v. State of Ohio</i>	3/22/1985	\$150,000.00	Decision and Judgment for Plaintiff	\$83,940.00	1/5/1986
1986-09931 WI	<i>Kevin Dean Green v. State of Ohio</i>	9/11/1986	\$1,200,000.00	Decision and Judgment for Plaintiff	\$99,661.00	9/11/1987
1986-10174 WI	<i>Larry T. Smith v. State of Ohio</i>	9/18/1986	\$119,665.06	Entry of Dismissal		4/19/1988
1987-01691 WI	<i>Floyd F. Fay v. State of Ohio</i>	1/23/1987	\$123,618.46	Decision and Judgment for Plaintiff	\$129,867.70	3/2/1988
1987-02485 WI	<i>Linda L. Walden v. State of Ohio</i>	2/11/1987	\$3,492,055.00	Entry of Dismissal		11/4/1988
1987-03732 WI	<i>Bradley Charles Cox v. State of Ohio</i>	4/17/1987	\$3,649,500.00	Decision and Judgment for Plaintiff	\$110,000.00	12/19/1988
1987-09421 WI	<i>Linda L. Walden v. State of Ohio</i>	8/31/1987	\$2,000,000.00	Entry of Dismissal		11/3/1987
1987-11549 WI	<i>Nathaniel Edward Ellis v. State of Ohio</i>	11/6/1987	\$3,403,000.00	Entry of Dismissal		2/11/1993
1988-09777 WI	<i>Larry T. Smith v. State of Ohio</i>	9/2/1988	Not Stated	Decision and Judgment for Plaintiff	\$190,936.70	4/27/1992
1989-05392 WI	<i>Carl E. Goosman #01429-028 v. State of Ohio</i>	3/6/1989	\$302,250.00	Entry of Dismissal		10/18/1989
1990-03888 WI	<i>William Mark Mueller v. State of Ohio</i>	4/2/1990	\$56,245.39	Decision and Judgment for Plaintiff	\$54,245.39	4/3/1990
1990-08634 WI	<i>Randall Lynn Ayers v. State of Ohio</i>	9/17/1990	\$250,000.00	Decision and Judgment for Plaintiff	\$367,700.00	12/13/1990
1992-04113 WI	<i>Tyrone C. Ellington v. State of Ohio</i>	4/3/1992	Not Stated	Decision and Judgment for Plaintiff	\$65,736.33	1/29/1993
1993-09135 WI	<i>James Ward, Etc. v. State of Ohio</i>	7/16/1993	Not Stated	Decision and Judgment for Plaintiff	\$18,512.66	12/15/1993
1993-11831 WI	<i>Rusten Marsh v. State of Ohio</i>	9/7/1993	Not Stated	Voluntary Dismissal		12/1/1993

Case Number	Case Name	Filing Date	Prayer	Decision	Amount of Judgment	Judgment Date
1994-01049 WI	<i>Robert J. Ward v. State of Ohio</i>	1/3/1994	\$5,000.00	Entry Granting Summary Judgment		4/4/1995
1994-05893 WI	<i>Andrew Surritt Jr. v. State of Ohio</i>	4/20/1994	\$40,000.00	Decision and Judgment for Plaintiff	\$32,500.00	6/19/1995
1994-08141 WI	<i>Larry Holdsworth v. State of Ohio</i>	6/17/1994	Not Stated	Decision and Judgment for Plaintiff	\$88,000.00	12/14/1994
1994-13055 WI	<i>Brian Piszczek v. State of Ohio</i>	11/2/1994	Not Stated	Decision and Judgment for Plaintiff	\$105,000.00	6/19/1995
1995-12770 WI	<i>Eva Celestino, Admin. v. State of Ohio</i>	12/21/1995	\$34,657.53	Decision and Judgment for Plaintiff	\$57,000.00	5/29/1996
1996-06803 WI	<i>Kent E. Hammer v. State of Ohio</i>	6/3/1996	\$141,636.48	Decision and Judgment for Plaintiff	\$130,384.70	4/2/1997
1996-13401 WI	<i>Anthony Lewis v. State of Ohio</i>	12/10/1996	\$280,471.20	Decision and Judgment for Plaintiff	\$280,471.20	12/23/1996
1997-07684 WI	<i>Walter D. Smith v. State of Ohio</i>	6/26/1997	Not Stated	Decision and Judgment for Plaintiff	\$249,989.05	1/11/2001
1997-08532 WI	<i>Clarence R. Barnett v. State of Ohio</i>	7/25/1997	\$232,500.00	Decision and Judgment for Defendant		4/1/1999
1997-10502 WI	<i>Kim Hairston v. State of Ohio</i>	10/1/1997	\$30,000.00	Decision and Judgment for Plaintiff	\$30,000.00	11/6/1997
1997-11932 WI	<i>Carl Doss v. State of Ohio</i>	11/10/1997	Not Stated	Decision and Judgment for Plaintiff	\$75,500.75	8/12/1999
1999-07509 WI	<i>Tyeona Hunter v. State of Ohio</i>	4/9/1999	\$185,254.00	Decision and Judgment for Plaintiff	\$93,708.00	2/5/2001
2000-02623 WI	<i>Terry Achberger v. State of Ohio</i>	2/28/2000	\$192,283.08	Entry of Dismissal		8/7/2000
2000-03514 WI	<i>Constance Rief-Hill v. State of Ohio</i>	3/24/2000	\$286,670.00	Entry of Dismissal		8/16/2000
2000-04227 WI	<i>Timothy Neininger v. State of Ohio</i>	4/10/2000	Not Stated	Decision and Judgment for Plaintiff	\$11,069.75	1/24/2001
2000-08443 WI	<i>Johnny Reeves v. State of Ohio</i>	8/7/2000	Not Stated	Decision and Judgment for Plaintiff	\$389,510.64	4/3/2001
2001-04891 WI	<i>Jimmy Williams v. State of Ohio</i>	5/3/2001	\$666,208.00	Voluntary Dismissal	?	5/16/2001
2002-02540 WI	<i>Franklin D. Wilmoth v. State of Ohio</i>	2/22/2002	\$132,169.26	Decision and Judgment for Plaintiff	\$111,934.20	7/8/2003
2002-04101 WI	<i>Anthony Michael Green v. Ohio Department Of Rehabilitation And Correction</i>	4/19/2002	Not Stated	Entry of Dismissal		6/7/2002
2002-09064 WI	<i>Jimmy Williams And Thomas Watkins v. State of Ohio</i>	10/7/2002	\$748,614.00	Decision and Judgment for Plaintiff	\$834,583.85	9/29/2003

Case Number	Case Name	Filing Date	Prayer	Decision	Amount of Judgment	Judgment Date
2002-09889 WI	<i>Anthony Michael Green v. State of Ohio</i>	11/12/2002	Not Stated	Order Approving Settlement	\$552,500.00	11/17/2003
2004-01664 WI	<i>Michele Earley v. State of Ohio</i>	1/26/2004	\$40,000.00	Entry of Dismissal		4/7/2004
2004-06691 WI	<i>Daniel Jones v. Ohio Department Of Rehabilitation And Corrections</i>	6/18/2004	Not Stated	Voluntary Dismissal	?	9/7/2004
2005-03393 WI	<i>Donte Booker v. State of Ohio</i>	3/1/2005	Not Stated	Order Approving Settlement	\$618,683.33	7/20/2005
2005-07992 WI	<i>William C. Walker v. State of Ohio</i>	7/1/2005	\$60,767.23	Entry of Dismissal		9/27/2005
2005-08042 WI	<i>Nathaniel M. Lewis v. State of Ohio</i>	7/1/2005	Not Stated	Order Approving Settlement	\$662,000.00	9/27/2005
2006-01599 WI	<i>Clarence Elkins v. State of Ohio</i>	1/30/2006	Not Stated	Order Approving Settlement	\$807,970.75	5/10/2006
2006-02188 WI	<i>Kenneth W. Moore v. State of Ohio</i>	2/27/2006	Not Stated	Order Approving Settlement	\$601,450.00	7/29/2008
2006-02935 WI	<i>Timothy Howard v. State of Ohio</i>	4/3/2006	Not Stated	Order Approving Settlement	\$2,500,000.00	6/28/2006
2006-03524 WI	<i>Dartangnan Hill v. State of Ohio</i>	5/12/2006	Not Stated	Order Approving Settlement	\$260,000.00	3/23/2007
2007-03561 WI	<i>Michele Earley v. State of Ohio</i>	3/27/2007	\$25,000.00	Voluntary Dismissal	?	6/11/2007
2007-04443 WI	<i>Gary James v. State of Ohio</i>	4/19/2007	Not Stated	Order Approving Settlement	\$1,500,000.00	5/17/2007
2008-02371 WI	<i>Jasen Thomson v. State of Ohio</i>	2/19/2008	Not Stated	Entry of Dismissal		12/18/2008
2008-07250 WI	<i>Brock Henly v. State of Ohio</i>	6/17/2008	Not Stated	Entry of Dismissal		12/8/2008
2008-07624 WI	<i>William C. Walker v. State of Ohio</i>	6/25/2008	Not Stated	Entry of Dismissal		11/7/2008
2008-07861 WI	<i>Gerry E. Griffith Jr. v. State of Ohio</i>	7/1/2008	Not Stated	Entry of Dismissal		11/5/2010
2008-09503 WI	<i>Seth Nelson v. State of Ohio</i>	9/5/2008	Not Stated	Decision and Judgment for Plaintiff	\$248,630.72	8/4/2011
2008-09767 WI	<i>Ronald Larkins v. State of Ohio</i>	9/17/2008	Not Stated	Entry of Dismissal		11/5/2008
2008-11028 WI	<i>Ronald Larkins v. State of Ohio</i>	11/18/2008	Not Stated	Order Approving Settlement	\$510,000.00	3/14/2011
2009-01174 WI	<i>William C. Walker v. State of Ohio</i>	1/8/2009	Not Stated	Order Approving Settlement	\$85,865.85	4/21/2009
2009-02073 WI	<i>Robert McClendon v. State of Ohio</i>	2/9/2009	Not Stated	Order Approving Settlement	\$1,088,396.00	5/17/2010
2009-02138 WI	<i>Brock Henly v. State of Ohio</i>	2/9/2009	Not Stated	Order Approving Settlement	\$85,000.00	5/19/2009
2009-03240 WI	<i>Jerome Lee Howard v. State of Ohio</i>	3/13/2009	Not Stated	Entry of Dismissal		11/9/2010
2009-03461 WI	<i>Joseph Fears Jr. v. State of Ohio</i>	3/23/2009	Not Stated	Decision and Judgment for Plaintiff	\$237,884.70	7/28/2010
2009-03819 WI	<i>Carlos Roche v. State of Ohio</i>	4/6/2009	Not Stated	Order Approving Settlement	\$41,907.94	1/20/2011
2009-08781 WI	<i>Joseph Mcgrath v. State of Ohio</i>	11/9/2009	Not Stated	Decision and Judgment for Defendant		3/23/2011

Case Number	Case Name	Filing Date	Prayer	Decision	Amount of Judgment	Judgment Date
2010-06010 WI	<i>Vicki Harrison, Admr. v. State of Ohio</i>	4/14/2010	Not Stated	Order Approving Settlement	\$260,000.00	10/5/2011
2010-06257 WI	<i>Frank C. Davis v. State of Ohio</i>	4/20/2010	Not Stated	Entry of Dismissal		11/5/2010
2010-07148 WI	<i>Raymond D. Towler v. State of Ohio</i>	5/12/2010	Not Stated	Order Approving Settlement	\$2,593,621.00	4/4/2011
2011-02093 WI	<i>Iran Doss v. State of Ohio</i>	2/7/2011	Not Stated	Voluntary Dismissal	?	11/23/2016
2011-03367 WI	<i>Solomon Stallings v. State of Ohio</i>	3/4/2011	Not Stated	Order Approving Settlement	\$280,000.00	5/12/2011
2011-07826 WI	<i>Joseph R. Bedford v. State of Ohio</i>	5/23/2011	Not Stated	Order Approving Settlement	\$40,000.00	7/19/2011
2012-08516 WI	<i>Darrell Houston v. State of Ohio</i>	11/30/2012	Not Stated	Decision and Judgment for Plaintiff	\$718,783.41	11/27/2013
2013-00049 WI	<i>Joe D'Ambrosio v. State of Ohio</i>	1/23/2013	Not Stated			
2014-00128 WI	<i>Kendle Jenkins v. State of Ohio</i>	2/14/2014	Not Stated	Entry of Dismissal		11/6/2014
2014-00591 WI	<i>Scott Chessman v. State of Ohio</i>	6/27/2014	Not Stated	Order Approving Settlement	\$82,000.00	9/12/2014
2014-00854 WI	<i>Terry Swalley v. State of Ohio</i>	10/27/2014	Not Stated	Decision and Judgment for Plaintiff	\$72,531.73	7/6/2015
2014-00989 WI	<i>Albert Graves v. State of Ohio</i>	12/22/2014	Not Stated	Order Approving Settlement	\$221,252.80	4/2/2015
2015-00127 WI	<i>Ricky Jackson v. State of Ohio</i>	2/20/2015	Not Stated	Order Approving Settlement	\$2,647,055.80	4/6/2016
2015-00149 WI	<i>Kwame Ajamu v. State of Ohio</i>	2/27/2015	Not Stated	Order Approving Settlement	\$4,378,684.18	2/22/2016
2015-00909 WI	<i>Jack M. Dempsey v. State of Ohio</i>	10/22/2015	Not Stated	Order Approving Settlement	\$337,433.98	1/20/2016
2015-00921 WI	<i>Robert Gondor v. State of Ohio</i>	10/27/2015	Not Stated	Order Approving Settlement	\$4,018,100.00	3/6/2017
2016-00251 WI	<i>Frank C. Davis v. State of Ohio</i>	3/25/2016	Not Stated	Order Approving Settlement	\$111,846.95	5/2/2017
2016-00684 WI	<i>Shayla Johnson v. State of Ohio</i>	9/12/2016	\$100,000.00			





THE SUPREME COURT *of* OHIO