

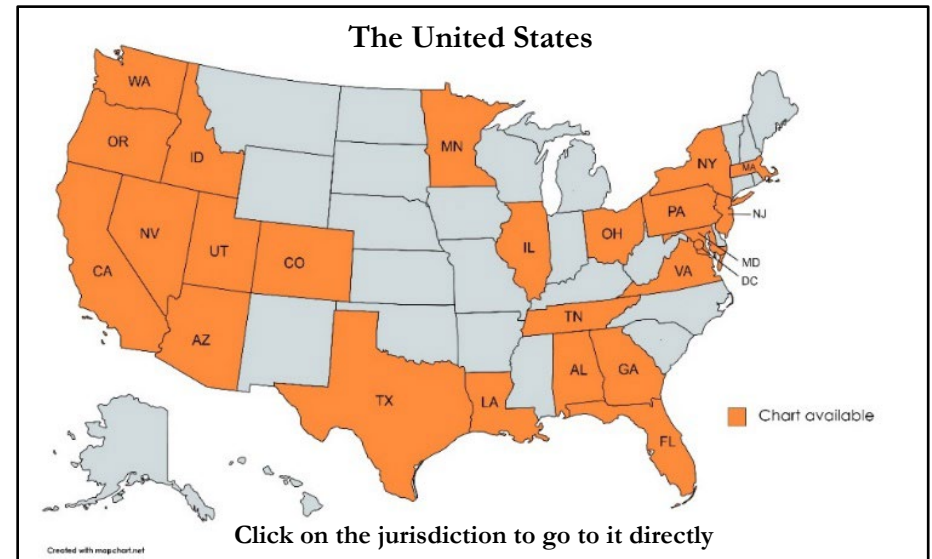
Post-Conviction Relief State Summary Chart: Guide For Select States (April 2022)¹

This chart is intended to provide immigration attorneys with an overview of post-conviction relief (PCR) vehicles in selected states and the federal courts. When representing noncitizens who have criminal convictions, practitioners should consider, in addition to arguments and applications in immigration court, whether PCR would mitigate the immigration consequences of the conviction. While outside the scope of this quick reference chart, PCR applications must comply with the requirements of *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) and not be based solely on rehabilitation or immigration hardship. Ineffective assistance of counsel (IAC) under *Padilla v. Kentucky*, 559 U.S. 356 (2010) is a common claim, but PCR can be based on any substantive or procedural defect in the underlying conviction, including failure to comply with state criminal procedure law.

While PCR is often subject to time limits, there are usually exceptions that must be investigated. Statute of limitation (SOL) information is provided so that counsel can meet deadlines where possible. The PCR vehicles described herein are created by either statute, rule, or judicial decision, and thus are not uniformly available in each jurisdiction and may be characterized differently. For example, the common law writ of habeas corpus has been superseded and codified by a statutory framework in many states. Therefore, it is important to review the specific procedures that apply in the relevant jurisdiction.

The summaries in this resource are not exhaustive and are based on a review of each jurisdiction's statutes and court rules, and case law interpreting them. They are not intended as legal advice. This guide is intended as a starting point for immigration attorneys investigating the possibility of PCR. For more information about whether a particular PCR vehicle is available for a noncitizen client, attorneys should contact the organizations listed for each jurisdiction or seek appointed counsel.

The resource is organized by jurisdiction and includes common



vehicles for PCR, not all of which are available in every jurisdiction. They include statute and rule-based requests, withdrawal of guilty pleas, writs of habeas corpus, court judicial notification failures,² late-filed direct appeals, and writs of error coram nobis. For each PCR vehicle, the resource describes, if applicable:

- The statutory, judicial, or common law authority for the vehicle
- The statute of limitations (SOL) or generally applicable rule
- Any exceptions to the SOL or rule
- Whether the person seeking PCR must show due diligence during the period between the conviction and application for PCR, or upon discovering the basis for the PCR claim³
- Whether the person must be in custody to use the PCR vehicle
- Whether the jurisdiction applies *Padilla v. Kentucky* retroactively to convictions final before March 31, 2010

¹ Special thanks to the American Immigration Lawyers Association's Federal Court Litigation Section Steering Committee for assistance.

² In most jurisdictions, courts must notify defendants who are pleading guilty that the plea "may" have immigration consequences. However, jurisdictions vary on whether failure to provide a judicial notification may be the basis for PCR.

³ This includes requirements that the basis for the PCR claim could not have been discovered earlier by a reasonable person exercising due diligence.

Alabama Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Ala. R. Crim. P. 32	1 year from certificate of judgment if there was an appeal or if no appeal then 1 year from the time for filing an appeal lapses (42 days post-sentencing) Ala R. Crim. P. 32.2(c)	No SOL if jurisdictional and State must raise SOL. If new evidence, within 6 months of discovery	Yes, for IAC. Ala. R. Crim. P. Rule 32.2(d)	No
Plea withdrawal	Ala. R. Crim. P. 14.4(e)	30 days from date of sentencing. <i>See Mashburn v. State</i> , 148 So. 3d 1094, 1131 (Ala. Crim. App. 2013). Equivalent to “motion for new trial” under Rule 24.1(b). <i>Waters v. State</i> , 155 So.3d 311, 315 (Ala. Crim. App. 2013) Only permitted in court’s discretion “to correct manifest injustice.” Rule 14.4(e); <i>Alford v. State</i> , 651 So. 2d 1109, 1112 (Ala. Crim. App. 1994)	Federal courts may not recognize 30 day SOL. <i>See Morrow v. Myers</i> , 2018 U.S. Dist. LEXIS 16998, at *17-18; 2018 WL 4572735 (N.D. Ala. June 14, 2018)	No. <i>Banks v. State</i> , 845 So.2d 9, 26 (Ala. Crim. App. 2002)	No
Habeas	Superseded by Ala. R. Crim. P. 32				
Judicial Notification Failure	n/a				
Late direct appeal	None. <i>Allen v. State</i> , 883 So. 2d 737, 740 (Ala. Crim. App. 2003)	42 days, starting after both durational and dispositional decisions by the court. <i>Hyde v. State</i> , 185 So. 3d 501, 510 (Ala. Crim. App. 2015)	Certain post-conviction motions toll under Ala R. Crim. P. 4(b)	n/a	No
Coram Nobis	Common law, only for juvenile delinquency. <i>W.B.S. v. State</i> , 244 So.3d 133, 144 (Ala. Crim. App. 2017).				

Alabama Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. *See Ex parte Williams*, 183 So. 3d 220, 227 (Ala. Crim. App. 2015) (citing approvingly to *Johnson v. Ponton*, 780 F.3d 219, 224-25 (4th Cir. 2015) (rev'd on other grounds by *Williams v. Alabama*, 136 S. Ct. 1365 (2016))

Pro bono resources

Appointed counsel available at court's discretion under Ala. R. Crim. P. 32.7(c)

Alabama Post-Conviction Relief Project: www.alapcrp.org/about-apcrp/

Rule 32 Post-Conviction Remedies Manual: www.huntsvillebar.org/Resources/Documents%20CLE/2014/rule_32.pdf

Arizona Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Ariz. R. Crim. Proc. 32 (after trial) and 33 (after plea)	90 days from pronouncement of sentence or 30 days from issuance of mandate in direct appeal, whichever is later, if based on a constitutional violation	New evidence; court lacked jurisdiction; in custody after sentence expired; untimely notice no fault of defendant; significant change in law; actual innocence	Yes, if based on exception must be “within reasonable time after discovering the basis”	No
Plea withdrawal	Ariz. R. Crim. Proc. 17.5	Before sentencing only	No	No	No
Habeas	Superseded by rule				
Judicial notification failure	Ariz. R. Crim. P. 17.2(b)(1)	Failure not grounds for reversal. <i>Martin v. Reinstein</i> , 195 Ariz. 293, 319 (1999)	n/a	n/a	n/a
Late direct appeal	Ariz. R. Crim. P. 32.1(f) (after trial only)	Within 20 days of an order granting a delayed appeal, based on a PCR claim that failure to timely file notice of appeal was not defendant's fault	No	Yes, must be “within reasonable time after discovering” that failure to timely file notice of appeal not defendant's fault	No
Coram Nobis	Superseded by rule				

Arizona Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not, *State v. Poblete*, 260 P.3d 1102, 1107 (Ariz. Ct. App. 2011)

Pro bono resources

Right to appointed counsel under Ariz. R. Crim. P. 33.5

Forms available at: www.azcourts.gov/selfservicecenter/Criminal-Law/Post-Conviction-Relief

For support, contact Professor Juan Rocha, Arizona State University College of Law at Juan.Rocha@asu.edu

California Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Cal. Pen. Code § 1473.7	None. Prejudice required. § 1473.7(e)(1). Can be based on defendant's subjective inability to understand possible immigration consequences, or actual innocence	n/a	Yes, once defendant is on notice based on NTA, denied immigration application, or final removal order. § 1473.7(b)(2)	Cannot be in actual or constructive custody. § 1473.7(a)
Statute	Cal. Pen. Code § 1203.43 for Deferred Entry of Judgment	None. Vacatur available for Deferred Entry of Judgment entered after 1/1/1997	n/a	No	No
Plea withdrawal	Cal Pen. Code § 1018	Before judgment or within 6 months of probation order if judgment suspended, based on “good cause” showing that the defendant failed to meaningfully understand the immigration consequences. <i>People v. Giron</i> , 11 Cal.3d 793 (1971)	No	No	No
Habeas	Cal Pen. Code § 1473	None	n/a	Yes. <i>In re Robbins</i> , 18 Cal. 4th 770 (1998)	Yes, actual or constructive (incl. probation), but not ICE custody. <i>People v Villa</i> , 45 Cal. 4th 1063 (2009)
Judicial notification failure	Cal. Penal Code Ann. § 1016.5	Prejudice required, but no statutory deadline. <i>People v. Zamudio</i> , 23 Cal. 4th 183 (2000)	n/a	Yes, once defendant is aware of possible immigration consequences. <i>Zamudio</i> , 23 Cal. 4th at 207	No
Late direct appeal	No. Cal. R. of Ct. 8.60(d)				

California Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Duty to advise about immigration consequences previously recognized under state constitution. *People v. Soriano*, 194 Cal.App.3d 1470, 1478-79 (1987)

Pro bono resources

Right to appointed counsel only in death penalty-related cases. Cal. Rules of Court 4.561

ILRC for referrals and technical assistance: www.ilrc.org/immigrant-post-conviction-relief

Immigrant Defenders Law Center: www.immdef.org/pcr

Some county public defender offices file PCR in-house: www.cpda.org/County/CountyPDWebSites.html

Colorado Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute and Rule	Colo. R. Crim. P. 35(c); <i>see also</i> Colo. Rev. Stat. § 16-5-402 (time limitations)	(1) Class 1 felony, no SOL; (2) Any other felony, within 3 years of conviction; (3) Misdemeanors, within 18 mos.; (4) For petty offenses, within 6 mos.; (5) Where challenging illegal sentence, within 18 wks of imposition of sentence or the decision on appeal	(1) Sentencing court lacked jurisdiction; (2) petitioner adjudicated incompetent; (3) “justifiable excuse or excusable neglect” by pet’r, which may include <i>Padilla</i> IAC. <i>People v Chavez-Torres</i> , 442 P.3d 843 (2019)	Where PCR petition alleges the discovery of new facts, petitioner must demonstrate facts could not have been known by the petitioner at the time of conviction even through the exercise of reasonable diligence	No.
Statute	Colo. Rev. Stat. § 18-1-410.5 for Deferred Judgments	None. Deferred Judgment vacatur, upon showing imm consequences and failure to advise	n/a	No	No
Plea Withdrawal	Colo. R. Crim. P. 32(d)	Only prior to sentencing	No	No	No
Habeas	Guaranteed by COLO. CONST. art. II, § 21, but only for unlawful detention. <i>See Horton v. Suthers</i> , 43 P.3d 611, 616 (2002) (en banc)	None, but habeas petition may only be filed after all other legal remedies have been exhausted, including PCR under Rule 35(c)	n/a	No.	Yes. <i>Duran v. Price</i> , 868 P.2d 375, 377 (Colo. 1994)
Judicial Notification Failure	n/a				
Late Direct Appeal	Colo. App. R. 4(b)	Appeal must ordinarily be filed within 49 days after the entry of the judgment or order appealed from	35-day extension can be granted upon a showing of excusable neglect. Colo. App. R. 4(b)(1). Appellate court can enlarge time for filing or permit a late appeal for good cause. 26(b)	Petitioner must demo good cause or excusable neglect	No
Coram Nobis	Superseded by Colo. R. Crim. P. 35(c). <i>See Hackett v. People</i> , 406 P.2d 331, 332 (1965)				

Colorado Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Colorado courts have recognized since at least 1987 the duties owed by attorneys to noncitizen Ds similar to the duties announced by the Supreme Court in *Padilla*. See *People v. Pozo*, 746 P.2d 523, 529 (Colo. 1987)

Pro bono resources

Right to appointed counsel under Colo. R. Crim. P. 35(c)(3)(V)

Petitioner seeking to file Rule 35 PCR petition must file PCR Form 4, available from Colo. Judicial Branch at:

[https://www.courts.state.co.us/Forms/PDF/Form%204%20petition%20for%20postconviction%20relief%20pursuant%20to%20crim.%20p%2035\(c\).pdf](https://www.courts.state.co.us/Forms/PDF/Form%204%20petition%20for%20postconviction%20relief%20pursuant%20to%20crim.%20p%2035(c).pdf)

Add'l resources for pro bono petitioners available from Office of the Alternative Defense Counsel at: <https://www.coloradoadc.org/public-information/forms-and-procedures/appellate-post-conviction-procedures/8-case-management>

Washington, D.C. Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	D.C. Code § 23-110	None. Otherwise follows construction of federal habeas statute, 28 U.S.C. § 2255. <i>Williams v. U.S.</i> , 878 A.2d 477 (D.C. 2005)	n/a	Yes, if delay "materially prejudiced" government. D.C. Code § 23-110(b)(2)	Yes
Plea withdrawal	D.C. Super. Ct. R. Crim. P. 11(d)(3)	After sentencing only to correct manifest injustice	n/a	Yes. <i>Alpizar v. U.S.</i> , 595 A.2d 991, 994-95 (D.C. 1991)	No
Habeas	Superseded by § 23-110.				
Judicial notification failure	D.C. Code § 16-713	None. Pet'r must show immigration consequences, but not prejudice. <i>Slytman v. United States</i> , 804 A.2d 1113, 1117-18 (D.C. 2002)	n/a	No, but unexplained delay after pet'r faces immigration consequences may affect credibility determination. <i>Zalmeron v. United States</i> , 125 A.3d 341, 347-48 (D.C. 2015)	No. <i>Daramy v. U.S.</i> , 750 A.2d 552, 554 (D.C. 2000)
Late direct appeal	D.C. Ct. App. R. 4(b)(4)	Add'l 30 days from 30-day appeals deadline for "excusable neglect or good cause"	No. D.C. Ct. App. R. 26(b)(1)	No.	No
Coram Nobis	Common law	None. <i>U.S. v. Hamid</i> , 531 A.2d 628, 632 (D.C. 1987). <u>Can</u> be used for legal error, including IAC. <i>Fatumababirtu v. United States</i> , 148 A.3d 260, 268 (D.C. 2016)	n/a	No. <i>U.S. v. Hamid</i> , 531 A.2d 628, 632 (D.C. 1987)	Cannot be in custody, including constructive

Is *Padilla v. Kentucky* retroactive?

Undecided

Pro bono resources

No right to appointed counsel

Federal Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Habeas corpus statute, 28 U.S.C. § 2255	1 year from finality, or from relevant new facts which could have been discovered with due diligence. 28 U.S.C. § 2255(f)(1)-(4)	Impeded by unlawful gov't action, 28 U.S.C. § 2255(f)(2); new retroactive constitutional right recognized by SCOTUS, <i>id.</i> § 2255(f)(3)	Yes	Yes, actual or constructive
Plea withdrawal	Fed. R. Crim. Pro. 11(d)	Before sentencing, defendant must show "fair and just reason for requesting the withdrawal." R. 11(d)(2)(B)	If not preserved, post-sentencing request to withdraw plea is reviewed under plain-error standard on appeal. <i>Puckett v. United States</i> , 556 U.S. 129 (2009)	No	No
Habeas	Superseded by 28 U.S.C. § 2255				
Judicial notification failure	Fed. R. Crim. Pro. 11(b)(1)(O)	1 year or direct appeal claim. No due process right, but may be a reversible procedural violation on direct appeal. <i>Cf. U.S. v. Gonzales</i> , 884 F.3d 457, 462 (2d Cir. 2018); <i>U.S. v. Ataya</i> , 884 F.3d 318, 326 (6th Cir. 2018)	Rule 11 violations may not be challenged in § 2255 proceedings absent a "complete miscarriage of justice." <i>United States v. Timmreck</i> , 441 U.S. 780 (1979)	Yes, if brought through 2255	No
Late direct appeal	Fed. R. App. Pro. 4(b)(4)	Add'l 30 days from 14-day appeals deadline, if "excusable neglect or good cause"	No	n/a	No
Coram Nobis	Common law	None. Can be used for legal error. See <i>United States v. Morgan</i> , 346 U.S. 502, 74 S. Ct. 247, 98 L. Ed. 248 (1954)	n/a	Yes.	Cannot be in actual/constructive custody (including supervised release)

Federal Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

No. *Chaidez v. United States*, 568 U.S. 342 (2013)

Pro bono resources

No right to appointed counsel

Model 2255 materials available from U.S. Courts website: www.uscourts.gov/sites/default/files/AO_243_0.pdf

Some District Courts have pro se clerks offices that may have materials

Florida Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Rule	Fla. Rule of Crim. Proc. 3.850	2 years from final judgment	R. 3.850(b) et seq: “affirmative steps... to discover the effect of the plea” R. 3.850(b)(1); new retroactive constitutional rights; neglect by PCR counsel (up to two addt’l years); or “excusable neglect” under R. 3.050	Yes. <i>State v. Green</i> , 944 So. 2d 208, 218 (Fla. 2006)	No, “both custodial and noncustodial movants may rely on and be governed by the rule.” <i>Wood v. State</i> , 750 So. 2d 592, 595 (Fla. 1999)
Plea withdrawal	Fla Rule of Crim. Proc. 3.170(l)	Up to 30 days after sentencing, but only if waived appeal and on grounds specified in Fl R. App. Pro. 9.140(b)(2)(A)(ii)(a)-(e), including “involuntary”	No	No	No
Habeas	Superseded by rule				
Judicial notification failure	Fla. Rule Crim. Proc. 3.172(c)(8)	2 years from judgment. Must show prejudice. R. 3.172(j)	Only if pet’r “could not have ascertained” immigration consequences within 2 years. Rule 3.850, <i>State v. Green</i> , 944 So. 2d 208, 219 (Fla. 2006)	Yes	No
Late direct appeal	Fla. Rule. App. Proc. 9.141(c)	2 years from expiration of 30-day appeal period. R. 9.141(c)(5). Must show failure by counsel or misadvice, or other circumstances outside pet'r's control. R. 9.141(c)(4)(F)	Up to 4 years from deadline, if: Pet'r unaware notice of appeal not filed; not advised of right to appeal; or prevented by circumstances outside pet'r's control	Yes	No
Coram Nobis	Cannot be used for legal error. <i>Wood v. State</i> , 750 So.2d 592 (Fla. 1999)	2 years from sentence	Previously unavailable facts	Yes	No

Florida Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

No. *Hernandez v. State*, 124 So. 3d 757, 764 (Fla. 2012)

Pro bono resources

Appointed counsel available at court's discretion under Fla. Rule of Crim. Proc. 3.850(7)

For amicus or consulting support, contact Professor Michael Vastine, St. Thomas University College of Law at: mvastine@stu.edu

Georgia Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	O.C.G.A. § 5-5-41, Extraordinary motion for new trial	Only for trial convictions. <i>Downs v. State</i> , 509 S.E.2d 40 (1998). 30 days from final judgment by right, after 30 days considered “extraordinary” and need exception	Previously unavailable facts and no adequate alternative remedy, like habeas. <i>Mitchum v. State</i> , 834 S.E.2d 65 (2019)	Yes	No
Plea withdrawal	O.C.G.A. § 17-7-93; Ga. Unif. Super. Ct. 33.12	Must be before the term of the sentencing court ends. ¹ <i>Davis v. State</i> , 561 S.E.2d 119 (2002). Must show “manifest injustice,” including <i>Padilla</i> IAC. <i>Smith v. State</i> , 697 S.E.2d 177, 186 (2010)	After expiration of term, must bring habeas petition. <i>Brown v. State</i> , 631 S.E.2d 687 (2006)	No	No
Statute	O.C.G.A. § 17-9-61, Motion in arrest of judgment	Must be before the term of the sentencing court ends. Limited to errors in the record, and errors in the indictment for pleas. <i>Hall v. State</i> , 42 S.E.2d 130, 133 (1947)	No	No	No
Habeas	O.C.G.A. § 9-14-42	4 years (felony) or 1 year (misdemeanor) from final conviction date. Constitutional violations only	Unconstitutional impediment to filing; newly recognized right; discovery of new facts. No equitable tolling. <i>Stubbs v. Hall</i> , 840 S.E.2d 407, 419 (2020)	Yes	Yes, but interpreted broadly. <i>Parris v. State</i> , 208 S.E.2d 493, 495 (1974)
Judicial notification failure	O.C.G.A. § 17-7-93(c)	Only applies to pleas after July 1, 2000. Reversible only on appeal or motion to withdraw plea, if prejudiced. <i>Smith v. State</i> , 697 S.E.2d 177, 185-88 (2010)	n/a	State may argue prejudicial delay. <i>Collier v. State</i> , 834 S.E.2d 769, 779-80 (2019)	No
Late direct appeal	As a habeas proceeding only. <i>Cook v State</i> , No. S21A1270, 2022 Ga. LEXIS 65 (Mar. 15, 2022)				

¹ Terms of Georgia trial courts vary by county and judicial circuit. See O.C.G.A. § 15-6-3.

Georgia Post-Conviction Relief Chart (April 2022)

Coram Nobis	Likely superseded by O.C.G.A. §§ 5-5-41 and 17-7-93, <i>Clemmons v. State</i> , 796 S.E.2d 297, 298 (2017)				
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Is *Padilla v. Kentucky* retroactive?

No. *State v. Sosa*, 733 S.E.2d 262, 265 (2012)

Pro bono resources

No right to appointed counsel in habeas corpus proceedings, *Gibson v. Turpin*, 513 S.E.2d 186, 188 (1999)

Right to appointed counsel in plea withdrawal proceedings, *Fortson v. State*, 532 S.E.2d 102, 104 (2000)

Contact the circuit defender in the county of conviction: www.gapubdef.org/index.php/circuit-public-defender-offices

For possible low bono representation, contact: Jessica Stern, jessica@sternlawfirm.us

Idaho Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute/ Rule	Idaho Code § 19-4901-11.	1 year from final decision on appeal or the termination of the time for appeal (if no appeal filed)	Yes, where claim not known to petitioner prior to termination of 1-year time limit. <i>Windom v. State</i> , 398 P.3d 150, 155 (Idaho 2017)	Yes	No
Plea Withdrawal	Idaho Code § 19-1714; Idaho Crim. R. 33(c)	Guilty plea may be withdrawn at any time prior to sentencing for a “just reason.” Court may permit petitioner to withdraw guilty plea after sentencing only “to correct manifest injustice” and before judgment becomes final in 42 days. <i>State v. Jakoski</i> , 79 P.3d 711, 714 (2003)	No	No	No
Habeas	Idaho Code §§ 19-4201-26 (only available to challenge unlawful restraint)	None	n/a	All other post-conviction remedies must have been exhausted	Yes, but includes revocation of parole
Judicial Notification Failure	Idaho Criminal Rule 11(d)(1)	Failure probably not grounds for reversal. <i>See State v. Flowers</i> , 249 P.3d 367 (2011)	n/a	n/a	n/a
Late Direct Appeal	Idaho App. R. 14	Appeals must always be filed within 42 days of judgment being appealed	No exceptions. <i>State v. Ciccone</i> , 246 P.3d 958, 961 (2010)	No	No
Coram Nobis	Superseded by Idaho Code § 19-4901. <i>State v. Iverson</i> , 310 P.2d 803, 805 (1957)				

Idaho Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. *Gutierrez-Medina v. State*, 333 P.3d 849, 852–58 (Idaho Ct. App. 2014)

Pro bono resources

Appointed counsel available at court's discretion under Idaho Code § 19-4904

PCR should be filed using the form provided by the Idaho Judicial Branch, available at: isc.idaho.gov/rules/forms/petition-for-post-conviction-relief-form-0717.pdf

Illinois Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	725 Ill. Comp. Stat. Ann. § 5/122-1	3 years from conviction date if no direct appeal; if defendant files direct appeal, deadline is 6 months from deadline for filing certiorari petition with SCOTUS	Delay was not due to culpable negligence; actual innocence	Yes, if based on new evidence of innocence. <i>People v. Barrow</i> , 195 Ill.2d 506, 541 (2001)	Yes, including supervised release and probation
Plea withdrawal	Ill. Sup. Ct. R. 604(d)	30 days from sentence imposition, to correct manifest injustice	Yes, if trial court failed to admonish defendant of written motion requirement for appeal. <i>People v. Foster</i> , 171 Ill. 469 (1996)	n/a	No
Habeas	735 Ill. Comp. Stat. Ann. § 5/10-124	Only available when court lacked personal or subject-matter jurisdiction, or post-conviction events entitle defendant to release. <i>Beacham v. Walker</i> , 231 Ill.2d 51, 896 N.E.2d 327 (2008). No statutory deadline	No	n/a	Yes
Judicial notification failure	725 Ill. Comp. Stat. Ann. § 5/113-8	For defendant arraigned on or after Jan. 1, 2020, can withdraw on motion within 2 years of conviction. § 5/113-8(b)	If arraignment was before Jan. 1, 2020, can only be challenged through Rule 604(d) motion. <i>People v. Devillar</i> , 235 Ill. 2d 507, 522 (2009)	n/a	No
Late direct appeal	Ill. Sup. Ct. R. 606(c)	60 days from conviction date based on reasonable excuse, or 7 months from conviction date if demonstrate merits to appeal and failure to file not based on negligence. If guilty plea, R. 604(d) plea withdrawal motion is required before appeal, and limitations period runs from date the motion is denied, unless trial court failed to advise that a motion to withdraw plea was prerequisite to appeal. <i>People v. Flowers</i> , 208 Ill.2d 291, 301 (2003)	n/a	Yes. Reasonable excuse within 60 days, or not based on culpable negligence <i>and</i> merit to appeal within 7 months	No

Illinois Post-Conviction Relief Chart (April 2022)

Coram Nobis	Superseded by 735 Ill. Comp. Stat. Ann. § 5/2-1401. May not be used for legal error. <i>People v. Pinkonsly</i> , 207 Ill.2d 555 (2003)	2 years from entry of judgment	Legal disability, duress, fraudulent concealment of information. <i>People v. Caballero</i> , 179 Ill.2d 205, 688 N.E.2d 658 (1997)	Yes. <i>Smith v. Airoom, Inc.</i> , 114 Ill.2d 209, 220–21, 499 N.E.2d 1381 (1986)	No
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Is *Padilla v. Kentucky* retroactive?

Undecided; No, per 1st Dist Ct of Appeals, *People v. Cabue*, 2014 Ill. App. Unpub. LEXIS 1427 (Dist. Ct. App. June 30, 2014), and 5th Dist Ct of Appeals, *People v. Delacruz*, 2013 Ill. App. Unpub. LEXIS 1315 (Dist. Ct. App. June 17, 2013)

Pro bono resources

Right to appointed counsel, if requested and initial petition not dismissed, under 725 Ill. Comp. Stat. Ann. § 5/122-4

Illinois State appellate defender criminal handbook chapter on collateral remedies:

www2.illinois.gov/osad/Publications/DigestbyChapter/CH%2009%20Collateral%20Remedies.pdf

Louisiana Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	La. C. Cr. P. arts. 924 – 930.9.	2 years after a judgment of conviction and the sentence have become final, and no pending direct appeal	(1) Newly discovered facts; (2) within 1 year of a new retroactive constitutional right. La. C. Cr. P. art. 930.8	Yes, La. C. Cr. P. art. 930.8(A)(1)	Yes, but includes probation and parole
Plea Withdrawal	La C. Cr. P. art. 559	Yes, prior to pronouncement of sentence	Post-sentencing, plea withdrawal in ltd. circumstances. See <i>State v. Lewis</i> , 421 So.2d 224 (La. 1982)	No	No
Habeas	La. C. Cr. P. arts. 351-370	None, but limited to pre-conviction complaints concerning custody	n/a	No	Yes, only available for criminal detention or confinement related to an existing or anticipated criminal proceeding
Judicial Notification Failure	None				
Late Direct Appeal	Available as post conviction claim. See <i>State v. Counterman</i> , 475 So. 2d 336, 339 (1985)	Same as statute			
Coram Nobis	Probably treated as post-conviction motion under La. C. Cr. P. 924. <i>State ex rel. Wheeler v State</i> , 208 So.3d 364 (2017)				

Louisiana Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. *State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1296 (1992) adopted the *Teague* standards and may indicate a willingness to follow *Chaidez*.

Pro bono resources

Appointed counsel available at court's discretion under La. C. Cr. P. 930.7(A); right to appointed counsel if hearing ordered under La. C. Cr. P. 930.7(C)

Louisiana requires submission of the Uniform Application for Post-Conviction Relief, available at: www.lasc.org/rules/supreme/appA.pdf

Maryland Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Md. Crim. Proc. Code § 7-101 <i>et seq</i>	10 years from date sentence imposed if after 10/1/1995. § 7-103(b); <i>State v. Williamson</i> , 408 Md. 269 (2009). No deadline for sentences imposed before 10/1/1995. <i>Lopez v. State</i> , 72 A.3d 579 (2013)	Extraordinary cause	No, if timely filed. After 10 years, state may argue laches. Waiver under § 7-106(b) may apply to non-IAC claims	Yes, includes probation & parole. <i>Fairbanks v. State</i> , 331 Md. 482, 629 A.2d 63 (1993)
Plea withdrawal	Md. Rule 4-242(h)	Within 10 days of sentence imposition	No	No	No
Habeas	Superseded by statute				
Judicial notification failure	Md. Rule 4-242(f)	Cannot be used to set aside plea. <i>Miller v. State</i> , 435 Md. 174, 199 (2013). Allows prosecutors to give notification as well	n/a	n/a	n/a
Late direct appeal	As a post-conviction motion under § 7-101. <i>Garrison v. State</i> , 711 A.2d 170, 177 (Md. 1998)	None. Only if counsel failed to file appeal or defendant was not at fault for failure to timely file, including counsel's failure to consult about an appeal	n/a	Yes, defendant must have "been diligent in attempting to assert his appeal rights." <i>Garrison v. State</i> , 711 A.2d 170, 175 (Md. 1998)	No
Coram Nobis	Md. Rule 15-1201 <i>et seq</i>	None. <u>Can</u> be used for legal error. <i>State v Smith</i> , 443 Md. 572, 576, 117 A.3d 1093, 1096 (2015). Collateral consequences must be unknown at time of plea. <i>Vaughn v. State</i> , 232 Md. App. 421, 429 (2017)	n/a	Yes, if state is prejudiced by delay. <i>Jones v. State</i> , 445 Md. 324, 363 (2015)	No

Maryland Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. *Miller v. State*, 77 A.3d 1030, 1044-45 (Ct. App. 2013)

Pro bono resources

Right to appointed counsel under Md. Crim. Proc. Code § 7-108

For possible pro bono counsel through the Office of the Public Defender, please contact:
Nadine Weston, Director, Immigration Division, Maryland Office of the Public Defender at nwettstein@opd.state.md.us

Massachusetts Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Mass. R. of Crim. Proc. R. 30(a)	None	n/a	Yes. <i>Commonwealth v. Weichell</i> , 446 Mass. 785 (2006)	Yes (imprisoned or liberty restrained pursuant to criminal conviction). <i>Commonwealth v. Lupo</i> , 394 Mass. 644, 646 (1985)
Plea withdrawal	Mass. R. Crim. Proc. 30(b) (motion for new trial). <i>See Commonwealth v. Fanelli</i> , 412 Mass. 497, 504 (1992)	None	n/a	Yes. <i>Commonwealth v. Weichell</i> , 446 Mass. 785 (2006)	No
Habeas	Superseded by Rule 30(a) for most claims				
Judicial notification failure	Mass. Gen. Laws, ch. 278, § 29D	Must show actual immigration consequence of conviction or admission. <i>Commonwealth v. Petit-Homme</i> , 482 Mass. 775, 784 (2019). No statutory deadline	n/a	No	No
Late direct appeal	Mass. R. App. Proc. 14(b)	1 year from judgment or sentencing, whichever is later, for good cause shown	No	No	No
Coram Nobis	Superseded by Mass. R. Crim. Proc. 30(b)				

Massachusetts Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Yes, if final after 4/24/1996. *Commonwealth v. Mercado*, 474 Mass. 80, 81 (2016)

Pro bono resources

Appointed counsel available at court's discretion under Criminal Procedure Rule 30(c)(5)

Appointment of counsel requests for eligible, indigent individuals should include docket numbers and contact information and be sent to:

CPCS Crim. Appeals Unit,
Private Counsel Division,
44 Bromfield St
Boston, MA 02108

Minnesota Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Minn. Stat. §§ 590.01 – 590.11.	2 years from final judgment, waivable by the State. <i>Carlton v. State</i> , 816 N.W.2d 590 (2012)	2 years from: (1) physical disability or mental disease; (2) new evidence; (3) new interpretation of law; (4) interests of justice (does not include IAC, <i>Sanchez v. State</i> , 816 N.W.2d 550, 558 (2012))	Yes	No
Plea Withdrawal	Minn. R. Crim. P. 15.05	Pre-sentence when it is “fair and just,” and at any time to correct a manifest injustice. Post-conviction is the vehicle for post-sentence plea withdrawal. <i>See James v. State</i> , 699 N.W.2d 723, 727 (2005).	No, <i>but see Johnston v. State</i> , 955 N.W.2d 908, 915 n.2 (2021) (dissent)	Yes	No
Habeas	Superseded by statute. Minn. Stat. § 590.01(2); <i>Carlton v. State</i> , 816 N.W.2d 590, 602 (2012)				
Judicial Notification Failure	Minn. R. Crim. P. 15.01(6)(l) (felonies); Minn. R. Crim. P. 15.02(1)(3) (misdemeanors)	Failure not grounds for reversal	n/a	n/a	n/a
Late Direct Appeal	Minn. R. Crim. P. 28.02(4)(3)(g)	Add’l 30 days for “good cause” from 90 days for felony/gross misdemeanor or 30 days from misdemeanor/petty misdemeanor	No. <i>State v. Sullivan</i> , 121 N.W.2d 590, 593 (1963)	Yes	No
Coram Nobis	Superseded by statute				

Minnesota Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

No. See *Campos v. State*, 816 N.W.2d 480 (Minn. 2012)

Pro bono resources

Right to appointed counsel under Minn. Stat. § 590.05

Add'l information available at: www.pubdef.state.mn.us/public-defense-corporations and www.pubdef.state.mn.us/file-appeal

Nevada Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Nev. Rev. Stat. § 34.724	1 year from final judgment	Delay not fault of defendant and dismissal will unduly prejudice defendant, Nev. Rev. Stat. § 34.726	Yes, if state is prejudiced by delay. If more than 5 years after conviction, rebuttable presumption of prejudice. Nev. Rev. Stat. § 34.800	Yes, including probation and parole. <i>Coleman v. State</i> , 130 Nev. 190 (2014)
Plea withdrawal	Nev. Rev. Stat. § 176.165	After sentencing, may only correct manifest injustice, including IAC. <i>Rubio v. State</i> , 124 Nev. 1032, 1039 (2008). Post-sentencing withdrawal motions are construed as habeas petitions unless (1) first postconviction motion, (2) within 1 year of conviction, (3) not incarcerated, and (4) not barred by laches. Nev. Rev. Stat. § 34.724(3)	Specific facts demonstrating that external impediment precluded bringing motion earlier. Nev. Rev. Stat. § 34.724(3)(b)	No, but if more than 5 years after conviction, rebuttable presumption of prejudice based on laches. Nev. Rev. Stat. § 34.724(3)(d)	No
Habeas	Superseded by statute				
Judicial notification failure	None				
Late direct appeal	Nev. R. App. Pro. 4(c)	Only available if timely habeas petition establishes deprivation of right to appeal	Same as habeas statute	Same as habeas statute	Same as habeas statute
Coram Nobis	Common law	Cannot be used for legal error. See <i>Trujillo v. State</i> , 129 Nev. 706, 716, 310 P3d 594, 601 (2013) (IAC is legal error, unreviewable by coram)	n/a	n/a	No

Nevada Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. See unpublished Nevada Supreme Court decisions: *Morente v. State*, 130 Nev. 1220 (2014); *Desantiago v. State*, 130 Nev. 1170 (2014); *Felix v. State*, 130 Nev. 1176 (2014); *but see Nev. v. Canedo*, 2013 Nev. Dist. LEXIS 7 (Nev. Dist. Ct. July 1, 2013)

Pro bono resources

Appointed counsel available at court's discretion under Nev. Rev. Stat. § 34.750 or under Nev. Rev. Stat. § 34-980 if hearing ordered on factual innocence

New Jersey Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Rule	N.J. Ct. R. 3:22-1 (superior court); R. 7:10-2 (municipal court)	5 years from final judgment	Excusable neglect and reasonable probability if true would result in fundamental injustice, R. 3:22-12(a)(1); new constitutional right or factual predicate, if filed within 1 year, R. 3:22-12(a)(2)	Yes, if based on new evidence. R. 3:22-12(a)(2)(B)	No. <i>See State v. Roper</i> , 827 A.2d 1099 (N.J. App. Div. 2003)
Plea withdrawal	N.J. Ct. R. 3:21-1 (superior court); R. 7:6-2(b) (municipal court)	Before sentencing	Manifest injustice, which is not always met by ineffective assistance. <i>State v. Slater</i> , 198 N.J. 145, 156 (2009)	Yes. <i>Slater</i> , 198 N.J. at 160 (“In general, the longer the delay in raising a reason for withdrawal, or asserting one’s innocence, the greater the level of scrutiny needed to evaluate the claim.”)	No. <i>See State v. Stoeckel</i> , 2019 WL 980588 (N.J. App. Div. 2019)
Habeas	Superseded by rule				
Judicial notification failure	N.J. Directives Dir. 09-11 (municipal court only); Dir. 05-11 (superior court - plea form)	Failure not grounds for reversal	n/a	n/a	n/a
Late direct appeal	N.J. Court Rule 2:4-4(a)	Add’l 30 days from 45-day appeals deadline for “good cause”	45 days from post-conviction relief based on failure of trial counsel to appeal. R. 2:4-1(a)(2)	No	n/a
Coram Nobis	Superseded by rule				

New Jersey Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

No. *State v. Gaitan*, 209 N.J. 339, 372, 37 A.3d 1089, 1108 (2012)

Pro bono resources

Right to appointed counsel for first motion under R. 3:22-6(a) (Superior Court) and R. 7:10-2(e) (Municipal Court)

For Superior Court convictions, contact the New Jersey Office of the Public Defender Conviction Integrity Unit:

www.state.nj.us/defender/structure/pcr/

For municipal court convictions, the court requires submission of an indigency application: www.njcourts.gov/forms/10693_5a_indigency.pdf

New York Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	N.Y. Crim. Proc. Law § 440.10	None	n/a	Not for IAC. § 440.10(3)(a)	No
Plea withdrawal	N.Y. Crim. Proc. Law § 220.60(3)	Before sentencing only, based on court's discretion	n/a	n/a	n/a
Habeas	Superseded by N.Y Crim. Proc. Law § 440				
Judicial notification failure	<i>People v. Peque</i> , 22 N.Y.3d 168 (2013) and N.Y. Crim. Proc. Law § 220.50(7)	Only raisable on direct appeal; 11/19/2013 effective date	n/a	No	No
Late direct appeal	N.Y. Crim. Proc. Law § 460.30	1 year, 30 day deadline from sentencing if failure to file based on improper conduct of public servant, or improper conduct, death, disability, or failure to communicate appeal right by defense counsel	Coram nobis petition in limited circumstances	Yes	No
Coram Nobis	Common law	Only legal error by appellate counsel. <i>People v. Bachert</i> , 69 N.Y.2d 593 (N.Y. 1987). No specific deadline. <i>People v. D'Alessandro</i> , 13 N.Y.3d 216, 221 (2009)	n/a	Yes, if based on failure to file notice of appeal. <i>People v. Rosario</i> , 26 N.Y.3d 597, 604 (2015)	No

New York Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

No. *People v. Baret*, 23 N.Y.3d 777 (2014)

Pro bono resources

Appointed counsel available at court's discretion if evidentiary hearing ordered under N.Y. County Law § 722(4)

Right to appointed counsel under N.Y. County Law § 722(5) if direct appeal pending

For support, contact the New York State Regional Immigration Assistance Center: www.ils.ny.gov/node/204/riac-general-information

For New York City convictions, submit requests at: www.immdefense.org/what-we-do/legal-advice/pcr-referral-form/

Ohio Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute/Rule	Ohio Rev. Code § 2953.21; Ohio Crim. R. 35	365 days after date transcript is filed in court of appeals in direct appeal; if no appeal, 365 days after expiration of time for filing appeal. Ohio Rev. Code § 2953.21(a)(2)	Petitioner 1) was prevented from discovering facts; 2) constitutional error at trial; or 3) exculpatory DNA evidence (felonies) O.R.C. § 2953.23	No	No
Plea withdrawal	Ohio Crim. R. 32.1	Guilty plea may be withdrawn at any time prior to sentencing and any time after sentencing “to correct manifest injustice,” which can include IAC	n/a	Yes, <i>State v. Straley</i> , 2019-Ohio-5206, ¶ 15	No
Habeas	Ohio Rev. Code § 2725.04	None, but only to challenge court jurisdiction. <i>Gomez v. Bennett</i> , 2021-Ohio-2797, ¶ 8	n/a	No	Yes
Judicial notification failure	Ohio Rev. Code § 2943.031	None, but timeliness one of many factors to consider. <i>State v. Bush</i> , 2004-Ohio-6894, ¶ 42	n/a	n/a	No
Late direct appeal	Ohio App. Rule 5	Any time after initial 30 day deadline	n/a	Yes. <i>State v. Funk</i> , 2015-Ohio-813, ¶ 13 (Ct. App.)	No
Coram Nobis	Superseded by statute. <i>State v. Perry</i> , 10 Ohio St. 2d 175, 180 (1967)				

Ohio Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Undecided, but several courts of appeals have held against retroactivity. See *State v. Bishop*, 2014-Ohio-173, 7 N.E.3d 605, ¶ 9-16 (1st Dist.), *State v. Husbands*, 1st Dist. Hamilton No. C-170165, 2018 Ohio App. LEXIS 1243, *2-3 (Mar. 28, 2018); *State v. Brooks*, 7th Dist. Jefferson No. 14 JE 3, 2015-Ohio-836, ¶ 17 18; *State v. Passafiume*, 2018-Ohio-1083, 109 N.E.3d 642, at ¶ 21, 24; *State v. Bravo*, 2017-Ohio-272, 81 N.E.3d 919, ¶ 12 (9th Dist.); *State v. Spivakov*, 10th Dist. Franklin Nos. 13AP-32, 13AP-33, 2013-Ohio-3343, ¶ 15; *State v. Tovar*, 10th Dist. Franklin No. 11AP-1106, 2012-Ohio-6156, ¶ 12; *State v. Leon*, 2019-Ohio-1178, ¶ 66 (Ct. App.); but see *State v. Yahya*, 2011-Ohio-6090, ¶ 1 (Ct. App.)

Pro bono resources

Appointed counsel available at court's discretion under Ohio Rev. Code § 120.16(A)(1). See *State v. Crowder*, 573 N.E.2d 652 (1991)

Office of the Ohio Public Defender, Postconviction Relief: opd.ohio.gov/wps/portal/gov/opd/law-library/criminal-law-casebook/postconviction-relief

University of Cincinnati Ohio Innocence Project: law.uc.edu/real-world-learning/centers/ohio-innocence-project-at-cincinnati-law.html

Oregon Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Or. Rev. Stat. §§ 138.510–688	2 years from: (1) date of judgment (no appeal filed); (2) date of final decision on appeal (appeal filed); (3) date of denial of cert or decision post-cert grant	Grounds for relief “could not reasonably have been raised” earlier, which includes petitioners “unaware of the” imm consequences. <i>Gutale v. State</i> , 435 P.3d 728, 735 (2019)	Yes, using a “reasonable person” standard. <i>Gutale</i> at 734. Judicial notification puts reasonable D on notice. <i>Perez-Rodriguez v. State</i> , 435 P.3d 746, 750 (2019)	No. Or. Rev. Stat. § 138.560, <i>Morasch v. State</i> , 493 P.2d 1364 (1972)
Statute	Or. Rev. Stat. § 137.218	None, but only allows post-conviction in “the interests of justice” so will probably not be recognized under federal immigration law. <i>Matter of Pickering</i> , 23 I&N Dec. 621 (2006)	n/a	No	No
Plea Withdrawal	Or. Rev. Stat. § 135.365	Court may permit withdrawal of guilty plea at any point before judgment	Post-sentencing, must use PCR proceedings. <i>Berg v. Nooth</i> , 359 P.3d 279, 285 (Or App 2015)	No	No
Habeas	OR. CONST. art. I, § 23; Or. Rev. Stat. §§ 34.310–730	None. Only available to challenge lawfulness or conditions of confinement. <i>Penrod v. Cupp</i> , 581 P.2d 934, 935 (1978)	n/a	Must exhaust all other available relief, including postconviction relief	Yes
Judicial Notification Failure	Or. Rev. Stat. § 135.385(2)(d)	Claim in postconviction relief, but subject to harmless error, such as written notification or effective assistance. <i>Lyons v. Pearce</i> , 694 P.2d 969, 974 (1985); <i>Hartzog v. Keeney</i> , 742 P.2d 600, 603 (1987)			
Late Direct Appeal	Or. Stat. tit. 14 § 138.071	Add’l 90 days from 30-day appeals deadline from judgment or order being challenged, if no fault of D and colorable claim of error	?	Failure to file appeal within 30 days must not be attributable to D personally	No
Coram Nobis	Superseded by statute				

Oregon Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

No, *Chavez v. State*, 438 P.3d 381, 395 (2019). Effective assistance in Oregon only required counsel notification that conviction “may result” in adverse consequences until *Padilla* under *Lions v. Pearce*, 694 P.2d 969 (1985). *Chavez* at 386 (“*Padilla* imposed a higher requirement on counsel than this court had done in *Lions*”)

Pro bono resources

Right to appointed counsel under Or. Rev. Stat. § 138.590

Sample PCR petition as well as add'l forms and info available from Oregon Office of Public Defense Services at:
oregonpcr.com/wp-content/uploads/2016/09/Current-PCR-Packet-and-Blank-Letter-2014-15.pdf

Pennsylvania Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	42 Pa.C.S. § 9541 <i>et seq</i>	1 year from final judgment (at conclusion of direct review or expiration of time for seeking review)	Delay result of government interference; facts unknown to defendant; or new retroactive constitutional right. 42 Pa.C.S. § 9545(b)(1)	Yes, if government prejudiced by delay. 42 Pa.C.S. § 9543(b)	Yes, including probation or parole.
Plea withdrawal	Pa. R. Crim. P. 591	Two standards. Pre-sentence, withdrawal motions are in court's discretion but liberally granted. Post-sentence withdrawal requires timely post-sentence motion within 120 days and showing of manifest injustice. <i>See Com. v. Bomar</i> , 573 Pa. 426, 464-65 (Pa. 2003). IAC claims normally require PCR motion under the statute	n/a	May be denied if government prejudiced	No
Habeas	Superseded by statute. <i>Com. ex rel. Dadario v. Goldberg</i> , 773 A.2d 126, 127 (Pa 2001)				
Judicial notification failure	None				
Late direct appeal	None. See Pa. R. Crim. P. 903 for appeal deadlines	30 days after judgment, or within 30 days of post-sentence motions (if any)	None. See Official Note to the rule	n/a	n/a
Coram Nobis	Superseded by statute. <i>Com. v. Descardes</i> , 136 A.3d 493 (2016)				

Pennsylvania Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Undecided

Pro bono resources

Right to court-appointed counsel on first petition under Pa. R. Crim. P. 904(C)

Pro se petitioner form provided by the Pennsylvania Department of Corrections, available at: www.immigrantdefenseproject.org/wp-content/uploads/2020/10/PA-PCR-Form-DC198.pdf

Tennessee Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Tenn. Code § 40-30-102	1 year from final action if appealed or date on which the judgment became final. Judicial diversion not final until revoked. <i>State v. Norris</i> , 47 S.W.3d 457 (Tenn. Crim. App. 2000)	(1) within 1 year of new retroactive constitutional right; (2) new evidence of actual innocence; (3) prior offense used to enhance was vacated	Yes. <i>Whitehead v. State</i> , 402 S.W.3d 615, 631 (2013)	No
Plea withdrawal	Tenn. R. Crim. P. Rule 32(f)	Plea withdrawn before sentencing for “any fair and just reason.” After sentence, 30 days before judgment final to “correct manifest injustice,” which includes pleas that are not knowing and voluntary. <i>State v. Nagele</i> , 353 S.W.3d 112, 121 (2011)	Beyond 30 days, must file post-conviction relief to withdraw plea	No	No
Habeas	Tenn. Code § 29-21-101 et. seq.	None, but only to challenge jurisdiction. <i>Archer v. State</i> , 851 S.W.2d 157, 163 (1993)	n/a	No	Yes
Judicial notification failure	Tenn. R. Crim. P. Rule 11(b)(1)(J), raisable in Tenn. Code § 40-30-102 motion	No statutory remedy. Court’s failure to give the notification may not be a constitutional error; subject to “harmless error” if counsel gave advice. <i>Garvia v. State</i> , 425 S.W.3d 248, 265 (2013)			
Late direct appeal	Tenn. R. App. P. Rule 4(a)	May extend appeal beyond initial 30 days “in the interest of justice,” usually by a few months. <i>See, e.g., Delk v. State</i> , 2020 Tenn. Crim. App. LEXIS 102 (2020)	n/a	Yes	No
Coram Nobis	Tenn. Code § 40-26-105	1 year after the judgment becomes final. <i>State v. Mixon</i> , 983 S.W.2d. 661 (1999). Not available for guilty pleas. <i>Frazier v. State</i> , 495 S.W.3d 246, 253 (2016)	Yes. <i>Workman v. State</i> , 41 S.W.3d 100 (2001)	Yes. <i>Nunley v. State</i> , 552 S.W.3d 800, 828 (2018)	No

Tennessee Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Supreme Court of Tennessee has not ruled on *Padilla* retroactivity, but the Criminal Appeals Court has found no retroactive application. *See e.g., Echeveria v. State*, 2017 Tenn. Crim. App. LEXIS 649, at *8 (Crim. App. 2017); *Inzunza v. State*, 2013 Tenn. Crim. App. LEXIS 13, at *7 (2013) (citing cases in which the criminal appeals court found *Padilla* was not entitled to retroactive application)

Pro bono resources

Right to appointed counsel under Tenn. Code § 40-30-115

Texas Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Tex. Code Crim. Proc. Art. 11.07 (felonies), Art. 11.09 (misdemeanors)	None	n/a	Court may consider laches. <i>Ex parte Bowman</i> , 447 S.W.3d 887 (Tex. Crim. App. 2014)	Yes, but custody includes collateral consequences. <i>Ex Parte Harrington</i> , 310 S.W.3d 452 (Tex. Crim. App. 2010). <i>See also State v. Jimenez</i> , 987 S.W.2d 886, 888-89 (Tex. Crim. App. 1999) (“That a guilty plea may result in deportation is generally considered a collateral consequence”)
Plea withdrawal	Post-sentencing, requires motion for new trial under Tex. R. App. Proc. 21. <i>State v. Evans</i> , 843 S.W.2d 576, 577 (Tex. Crim. App. 1992)	30 days from imposition of sentence, for good cause	No	n/a	No
Habeas	Superseded by Code Crim. Proc. Art. 11				
Judicial notification	Tex. Code. Crim. Proc., Art. 26.13(a)(4)	Reversible on appeal if record is insufficient to determine U.S. citizenship. <i>VanNortrick v. State</i> , 227 S.W.3d 706, 714 (Tex. Crim. App. 2007). Requires prejudice if challenged in habeas. <i>Ex parte Tovar</i> , 901 S.W.2d 484, 486 (Tex. Crim. App. 1995)	n/a	n/a	n/a
Late direct appeal	Tex. R. App. Proc. 26.3	Add’l 15 days from 30-day appeals deadline, if “reasonably explain[ed]” R. 10.5(b)(2)	No. <i>Slaton v. State</i> , 981 S.W.2d 208 (Tex. Crim. App. 1998)	n/a	No

Texas Post-Conviction Relief Chart (April 2022)

Coram Nobis	Not recognized; may be construed as habeas petition. <i>Ex parte Massey</i> , 249 S.W.2d 599 (Tex. Crim. App. 1952)				
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Is *Padilla v. Kentucky* retroactive?

No, *Ex parte De Los Reyes*, 392 S.W.3d 675 (Tex. Crim. App. 2013)

Pro bono resources

Right to appointed counsel under Tex. Code Crim. Proc. Art. 11.074

Form provided by the Court of Criminal Appeals of Texas for felonies, available at: www.txcourts.gov/media/1442926/1107-form-rev-2018.pdf

For support, contact Professor Fatma Marouf, Immigrant Rights Clinic, Texas A&M School of Law at: fatma.marouf@law.tamu.edu

Utah Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute/ Rule	UT ST § 78B-9-104, UT R. Civ. Pro. 65C	1 year from: (1) termination of time for appeal; (2) final judgment on appeal; (3) termination of time to petition for cert. or denial of cert; (4) new evidence. UT ST §§ 78B-9-107(1)	(1) new court rule; (2) incapacity. May include new evidence of immigration consequences. <i>Lopez v. Ogden City</i> , 402 P.3d 3, 8 (App. Ct. 2017)	Yes	No
Rule	UT R. Civ. Pro. 60(b)(6)	Within “a reasonable time,” vacatur vehicle for plea in abeyance. <i>Meza v. State</i> , 359 P.3d 592, 598 (2015)	n/a	Yes	No
Plea Withdrawal	UT ST § 77-13-6	Any time prior to sentencing or within 30 days if plea held in abeyance, if plea not knowing & voluntary. Must show prejudice. <i>Arriaga v. State</i> , 469 P.3d 914, 923–24 (Utah 2020). After sentencing, only via postconviction	None	No	No
Habeas	Superseded by statute. UT ST § 78B-9-102	Only available in limited circumstances (e.g., to challenge involuntary commitment to a mental hospital, <i>see</i> UT ST § 62A-15-642)			
Judicial Notification Failure	None				
Late Direct Appeal	UT R. App. P. 4(e)	Add’l 30 days from 30-day appeals deadline for “good cause”	Can reinstate 30-day period if: (1) IAC; (2) despite diligence, unable; (3) no notice of right to appeal. UT R App. P. 4(f); <i>State v. Brown</i> , 489 P.3d 152 (2021)	Yes	No
Coram Nobis	Superseded by statute. UT ST § 78B-9-102.				

Utah Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. *Collins v. State*, 307 P.3d 648, 649 (Utah Ct. App. 2013)

Pro bono resources

Appointed counsel available at court's discretion under UT CT § 78B-9-109

Right to counsel in motion to reinstate direct appeal under UT R App P 4(f)

One seeking PCR in Utah must complete the Petition for Relief Under the PCR Act form, available at the Utah Courts website at:
https://www.utcourts.gov/resources/forms/criminal/04_PCRA_Petition.pdf

Virginia Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Statute	Va. Code § 8.01-654	2 years from trial court final judgment (which is 21 days after signed) or 1 year from direct appeal, whichever later	May be tolled if delay is the result of obstruction by the state, <i>Hicks v. Director</i> , 289 Va. 288, 297 (2015). No tolling of SOL based on previously unavailable evidence, see <i>Brown v. Booker</i> , 297 Va. 245 (2019)	No	Yes, including probation and parole (but not immigration detention). <i>Escamilla v. Superintendent</i> , 290 Va. 374, 380 (2015)
Plea withdrawal	Va. Code § 19.2-296	Before sentence imposed or suspended, or within 21 days after final judgment if “manifest injustice,” which does not generally include collateral consequences. <i>Brown v. Commonwealth</i> , 297 Va. 295, 302-03 (2019); but see <i>id.</i> n.2 (deportation not before the court)	No	No	No
Habeas	Superseded by statute				
Judicial notification failure	n/a				
Late direct appeal	Va. Code § 19.2-321.1	6 months from appeal deadline, if failure to file notice of appeal was due to IAC	No	No	No
Coram Nobis ¹	Va. Code § 8.01-677	Coram vobis cannot be used for legal error. <i>Com. v. Morris</i> , 705 S.E.2d 503 (Va. 2011) (no coram vobis for <i>Padilla</i> -based IAC)	n/a	No	No

¹ Referred to as “coram vobis” in the State of Virginia. See *Neighbors v. Commonwealth*, 650 S.E.2d 514, 517 n.5 (2007).

Virginia Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Probably not. *Ibrahim v. Superintendent, Rappahannock Reg'l Jail*, 82 Va. Cir. 353 (Cir. Ct. 2011)

Pro bono resources

No right to appointed counsel, *Darnell v. Peyton*, 160 S.E.2d 749, 750 (1968)

Washington Post-Conviction Relief Chart (April 2022)

Vehicle	Authority	Statute of Limitations/Rule	SOL exceptions?	Due diligence required?	Custody required?
Rule	CrR 7.8(b), Motion to Vacate Judgment	1 year, Rev. Code Wash. § 10.73.090	(1) New evidence; (2) unconstitutional; (3) actual innocence; (4) change in law. Pre- <i>Padilla</i> convictions exempt under (4), <i>In re Garcia-Mendoza</i> , 479 P.3d 674, 677 (2021). Post- <i>Padilla</i> , must argue equitable tolling based on “bad faith, deception, or false assurance” from counsel. <i>In re Fowler</i> , 479 P.3d 1164, 1169 (2021)	No, except must be within 1 year of discovering new evidence or, for equitable tolling, within 1 year of discovering the error	No
Rule	RAP 16.3, Personal Restraint Petition	1 year. Petition filed directly to appellate court or trial court can transfer CrR 7.8 motion	Same as CrR 7.8(b). Rev. Code Wash. § 10.73.100	No, except must be within 1 year of discovering error for equitable tolling or new evidence	Yes, but includes possible immigration detention. Wash. R. App. P. 16.4(b)
Plea Withdrawal	CrR 4.2(f)	At any time, necessary to “correct manifest injustice.” If filed after judgment, governed by CrR 7.8	n/a	No	No
Habeas	Rev. Code Wash. § 7.36.010	None, but only used to challenge jurisdiction	n/a	No	Yes
Late direct appeal	Wash. R. App. P. 18.8	Any time after initial 30-day appeals deadline, “to prevent gross miscarriage of justice.”	n/a	Yes	No
Judicial notification failure	Rev. Code Wash. § 10.40.200	1 year, Rev. Code Wash. § 10.73.090. Standard plea form includes required warning. <i>In re Tsai</i> , 351 P.3d 138, 143 (2015)	Same as CrR 7.8(b). Rev. Code Wash. § 101.73.100	No	No
Coram Nobis	Superseded by Rule				

Washington Post-Conviction Relief Chart (April 2022)

Is *Padilla v. Kentucky* retroactive?

Yes, *In re Tsai*, 351 P.3d 138 (2015). Held *Padilla* was significant change in law per Rev. Code Wash. § 10.73.100(6)

Pro bono resources

Appointed counsel available at court's discretion under Rev. Code Wash. § 10.73.150(4) for motions under CrR 7.8 if “substantial showing” of relief or hearing ordered

Standard Personal Restraint Petition form available at: www.courts.wa.gov/court_rules/pdf/RAP/APP_RAP_16_07_00.pdf

For support, resources available from the Immigrant Post Conviction Relief Project, a joint project of Washington Defender Association & Seattle Clemency Project, available at: defensenet.org/case-support/wda-immigration-project/wdaip-resources/post-conviction-project/

For technical support, contact Sarah Hudson at sarah@defensenet.org