

MARYLAND UNIFORM POST CONVICTION PROCEDURE ACT
CRIMINAL PROCEDURE 7-101 THRU 7-109
2014

§ 7-101. Scope of title

This title applies to a person convicted in any court in the State who is:

- (1) confined under sentence of imprisonment; or
- (2) on parole or probation.

§ 7-102. Right to begin proceeding

(a) In general. -- Subject to subsection (b) of this section, §§ 7-103 and 7-104 of this subtitle and Subtitle 2 of this title, a convicted person may begin a proceeding under this title in the circuit court for the county in which the conviction took place at any time if the person claims that:

- (1) the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of the State;
- (2) the court lacked jurisdiction to impose the sentence;
- (3) the sentence exceeds the maximum allowed by law; or
- (4) the 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.

(b) Requirements to begin proceeding. -- A person may begin a proceeding under this title if:

- (1) the person seeks to set aside or correct the judgment or sentence; and
- (2) the alleged error has not been previously and finally litigated or waived in

the proceeding resulting in the conviction or in any other proceeding that the person has taken to secure relief from the person's conviction.

§ 7-103. Number and time of filing of petitions

- (a) Only one petition allowed. -- For each trial or sentence, a person may file only one petition for relief under this title.
- (b) 10-year filing period. -- Unless extraordinary cause is shown, a petition under this subtitle may not be filed more than 10 years after the sentence was imposed.

§ 7-104. Reopening postconviction proceeding

The court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice.

§ 7-105. Victim's and representative's rights of notice and attendance

- (a) Right of notice. -- Before a hearing is held on a petition filed under this title, the victim or victim's representative shall be notified of the hearing as provided under § 11-104 or § 11-503 of this article.
- (b) Right of attendance. -- A victim or victim's representative is entitled to attend any hearing under this title as provided under § 11-102 of this article.

§ 7-106. Allegation of error

- (a) When finally litigated. -- For the purposes of this title, an allegation of error is finally litigated when:
 - (1) an appellate court of the State decides on the merits of the allegation:

(i) on direct appeal; or

(ii) on any consideration of an application for leave to appeal filed under § 7-109 of this subtitle; or

(2) a court of original jurisdiction, after a full and fair hearing, decides on the merits of the allegation in a petition for a writ of habeas corpus or a writ of error coram nobis, unless the decision on the merits of the petition is clearly erroneous.

(b) Waiver of allegation of error. --

(1) (i) Except as provided in subparagraph (ii) of this paragraph, an allegation of error is waived when a petitioner could have made but intelligently and knowingly failed to make the allegation:

1. before trial;
2. at trial;
3. on direct appeal, whether or not the petitioner took an appeal;
4. in an application for leave to appeal a conviction based on a guilty plea;
5. in a habeas corpus or coram nobis proceeding begun by the petitioner;
6. in a prior petition under this subtitle; or
7. in any other proceeding that the petitioner began.

(ii) 1. Failure to make an allegation of error shall be excused if special circumstances exist.

2. The petitioner has the burden of proving that special circumstances exist.

(2) When a petitioner could have made an allegation of error at a proceeding set forth in paragraph (1)(i) of this subsection but did not make an allegation of

error, there is a rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation.

(c) Effect of judicial decision that Constitution imposes new standard. --

(1) This subsection applies after a decision on the merits of an allegation of error or after a proceeding in which an allegation of error may have been waived.

(2) Notwithstanding any other provision of this title, an allegation of error may not be considered to have been finally litigated or waived under this title if a court whose decisions are binding on the lower courts of the State holds that:

(i) the Constitution of the United States or the Maryland Constitution imposes on State criminal proceedings a procedural or substantive standard not previously recognized; and

(ii) the standard is intended to be applied retrospectively and would thereby affect the validity of the petitioner's conviction or sentence.

§ 7-107. Effect of postconviction remedy on trial proceedings and appeals

(a) Trial proceedings. -- The remedy provided under this title is not a substitute for and does not affect any remedy that is incident to the proceedings in the trial court or any remedy of direct review of the sentence or conviction.

(b) Appeals. --

(1) In a case in which a person challenges the validity of confinement under a sentence of imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law or statutory remedy other than this title, a person may not appeal to the Court of Appeals or the Court of Special Appeals.

(2) This subtitle does not bar an appeal to the Court of Special Appeals:

(i) in a habeas corpus proceeding begun under § 9-110 of this article; or

(ii) in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime, including confinement as a result of a proceeding under Title 4 of the Correctional Services Article.

§ 7-108. Right to counsel and hearing

(a) In general. -- 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.

(b) Exceptions. --

(1) If a person seeks to reopen a postconviction proceeding under § 7-104 of this subtitle, the court shall determine whether assistance from counsel or a hearing should be granted.

(2) If an appeal has been taken from the judgment of conviction to the Court of Special Appeals, until the judgment of conviction becomes final in the Court of Special Appeals, the court need not:

(i) appoint counsel;

(ii) hold a hearing; or

(iii) act on the petition.

§ 7-109. Appeal of final order

(a) Application. -- Within 30 days after the court passes an order in accordance with this subtitle, a person aggrieved by the order, including the Attorney General and a State's Attorney, may apply to the Court of Special Appeals for leave to appeal the order.

(b) Appeal procedure. --

(1) The application for leave to appeal shall be in the form set by the Maryland Rules.

(2) If the Attorney General or a State's Attorney states an intention to file an application for an appeal under this section, the court may:

(i) stay the order; and

(ii) set bail for the petitioner.

(3) If the application for leave to appeal is granted:

(i) the procedure for the appeal shall meet the requirements of the Maryland Rules; and

(ii) the Court of Special Appeals may:

1. affirm, reverse, or modify the order appealed from; or

2. remand the case for further proceedings.

(4) If the application for leave to appeal is denied, the order sought to be reviewed becomes final.

(c) Costs. -- The Court of Special Appeals shall direct the political subdivision in which an order is passed to pay the necessary costs and expenses associated with a review under this section, including all court costs, stenographic services, and printing, if:

(1) a person seeks a review under this section within 30 days after judgment;

(2) the Court of Special Appeals grants leave to appeal under this section; and

(3) the Court of Special Appeals finds that the person is unable to pay the costs of the review.