



# California

## Post-Conviction Case Activity & Victims' Rights

### Post-Sentencing Review

After an individual has been convicted and sentenced, they may file motions in the trial court to challenge their conviction or sentence. For example, they may file:

- A motion for a new trial based on new evidence, jury misconduct, legal errors at trial, or other problems with the proceedings
- A motion to arrest the judgment
- A motion to vacate their conviction if they were a trafficking victim
- A motion to withdraw their plea
- A motion to recall their sentence

The prosecution may also file a motion to shorten the convicted individual's sentence in certain situations.

### Victims' Rights

Victims have a right to be informed of their rights.

If requested, victims have a right to notice of and to be present at post-trial proceedings.

Victims have the right to the prompt return of their property when it is no longer needed as evidence.

Victims have the right to be treated with fairness and respect for their privacy and dignity. This right extends throughout all stages of the post-conviction process.

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## Direct Appeal

After the court decides on any post-trial motions (or if no post-trial motions are filed), the individual convicted of a crime may ask a higher court to review the trial court's or jury's decisions. This is called a "direct appeal." On appeal, the court does not admit new evidence or call witnesses. Instead, it reviews what happened at trial (called the trial record) and written briefs filed by both sides describing their positions.

If an individual convicted of a crime requests an appeal, they may ask the trial court to release them while the appeal is ongoing. In misdemeanor cases, the individual convicted of a crime is highly likely to be released, but release is less likely in felony cases.

The individual convicted of a crime has 60 days after sentencing to decide whether to appeal. If the convicted person appeals, the state Attorney General's Office assigns a lawyer for the state to oppose the appeal. The state's lawyer and the convicted individual's lawyer then prepare written briefs for the judges, which may take 6-9 months. In some cases, the lawyers from both sides present oral arguments to the judges. Then, the judges prepare a written decision in the case. The appeal process takes roughly a year or more.

### Victims' Rights

Victims have a right to notice of post-conviction proceedings and victims may request a Criminal Appeal Notification. Victims may also request not to receive notification.

Victims may attend and listen to the presentations (called oral arguments) to the judges in direct appeal.

Victims have the right to a prompt and final conclusion of the case and any related post-judgment proceedings.

## State Post-Conviction Proceedings

Post-conviction motions are requests to have the conviction or sentence reviewed that are filed after the direct appeal process has ended. These motions can seek many outcomes, but the main requests and outcomes in California are the following:

- State habeas corpus: State habeas corpus can be used to overturn an individual's criminal conviction, modify their sentence, or seek some other outcome.
- Motion for new discovery: If the convicted person has been sentenced to death or life in prison without parole, they may seek additional information and evidence (called discovery) from prosecutors or law enforcement.
- Writ of error coram nobis: This allows a court to modify a conviction based on some new fact that would have prevented the original conviction, but was not presented to the court earlier through no fault of the individual convicted of a crime.
- Motion to vacate the judgment: A convicted person may ask the court to overturn their conviction if there is new evidence that the conviction resulted from fraud, false testimony, or misconduct involving the fabrication of evidence if that misconduct was committed by government officials.
- Compassionate release: If an incarcerated individual has a serious and advanced terminal illness or is permanently medically incapacitated, they may be released from prison.

### Victims' Rights

If requested, victims have a right to notice of and to be present at post-conviction proceedings and hearings.

A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecutor (upon request of the victim) may enforce the victim's constitutional rights in appellate court, and the court must respond to that request quickly.

A victim may refuse an interview, deposition, or discovery request by the individual convicted of the crime, the individual convicted of a crime's attorney, or any other person acting on behalf of the individual convicted of a crime, and to set reasonable conditions on any interview in which the victim participates.

Victims have the right to a prompt and final conclusion of the case and any related post-judgment proceedings.

## DNA Testing

An individual who was convicted of a felony and is still in prison can file a motion seeking DNA testing of physical evidence collected in the case.

The court will not automatically grant the requested testing. Instead, the individual convicted of a crime must show that they likely would not have been convicted if the DNA testing had been done earlier and proved they were not the person who committed the crime.

If the court grants DNA testing and the evidence shows the convicted person is innocent, the state will often agree to their release. If the state does not, then typically the convicted person will file a motion for a new trial. If the court grants that motion, the case starts over.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under California law may go to federal court in a process called "habeas corpus." Relief in federal habeas corpus is available only in specific and rare circumstances. Issues often raised in federal habeas cases include claims that the convicted person had an inept attorney, claims that police or prosecutors violated their rights, hid evidence, or committed other misconduct.

In general, a person can file only one request for relief in federal habeas proceedings, though there are some exceptions to this rule.

### Victims' Rights

Except for narrow exceptions when victims are testifying, victims have the right to attend federal habeas hearings, arguments, and proceedings.

Victims have the right to be heard at any federal district court proceeding involving the release, sentencing, or parole of the individual convicted of a crime.

Victims have the right to proceedings free from unreasonable delay.

## Early Release Programs

If someone is sentenced to a term of imprisonment, they may be released from prison earlier than expected through these programs: parole, youth offender parole, geriatric parole, or earning days off their sentences (called "good-time credits") for good behavior and participation in rehabilitative, educational, and career training programs.

### Victims' Rights

Victims of violent offenses have a right to request and receive notification from the Department of Corrections and other appropriate agencies about the release, escape and recapture, reentry or furlough program placements, scheduled execution, medical parole, release from mental facilities, transfer to another prison or death of the incarcerated person.

Victims have the right to be informed of all parole procedures, to participate in the parole process, to provide (either in writing or in person) information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

Victims can track the status of an incarcerated person via the Victim Information and Notification Everyday (VINE) website at [www.vinelink.com](http://www.vinelink.com). Victims should also register with the California Department of Corrections and Rehabilitation (CDCR) online at <https://e1707.cdcr.ca.gov/> or by downloading the CDCR [form 1701](#) and returning it to the Office of Victim and Survivor Rights Services (OVSRS). All information provided by victims to receive notification from the Department of Corrections must remain confidential and is not subject to public records requests.

Victims have a right to know if the incarcerated individual will reside in the county of residence of a witness, victim, or family member of a victim who has requested notification, or within 100 miles of the residence of a witness, victim, or family member of a victim who has requested notification.

## Prosecutorial Review

California has a state-wide office (the [Post-Conviction Justice Unit](#)) that allows prosecutors to investigate claims of actual innocence in past cases. Individual district attorneys' offices are also free to establish their own units to review past convictions and/or sentences, as [Los Angeles](#), [Yolo County](#), [Contra Costa](#), [San Joaquin](#), and [San Diego](#) have already done.

### Victims' Rights

Victims have the right to be heard, upon request, at any hearing, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

All victims of crime have the right to be notified if the individual convicted of the crime's sentence is modified due to the person convicted of the crime assisting in the prosecution.

Victims have the right to have their safety considered in release conditions for the incarcerated person.

## Clemency

The Governor can grant clemency to people convicted under California law. Clemency typically takes one of two forms:

1. Commutation: the reduction of a sentence to a less severe punishment
2. Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

### Victims' Rights

Victims have a right to notice that an incarcerated person has applied for clemency. Victims have a right to submit their recommendations to the Governor for or against clemency.

## Compensation

Restitution is a court-ordered payment from the convicted person to the victim to account for the victim's loss or injury.

Victim Compensation is state-sponsored funding to compensate victims for losses related to crimes that are not covered by other sources such as insurance or restitution.

### Victims' Rights

Victims are entitled to court-ordered restitution.

Victims may be entitled to compensation of up to \$70,000 through the California Victim Compensation and Government Claims Board.

*The information provided in this resource is not intended as legal advice and is current as of July 2024. States regularly change how they handle criminal proceedings and victims' rights during those proceedings. Confirm with the state agencies provided in this resource for more up-to-date information. Different stages and victims' rights may apply to certain types of cases and certain types of victims, such as cases involving accused individuals who are minors and cases involving sexual offenses, domestic violence, and child victims.*