



Colorado

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 an acquittal
- 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 modify the sentence

In certain circumstances, the prosecution may also file a motion to modify the convicted person's sentence.

Victims' Rights

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

Victims have the right to be informed of any motion concerning post-plea relief.

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Direct Appeal

After the court decides on any post-trial motions are decided by the court (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 court to release them while the appeal is ongoing. The convicted individual is more likely to be released in misdemeanor cases than in felony cases.

The convicted individual generally has between 35 and 49 days after sentencing to decide whether to appeal, depending on the court they're appealing from. If the convicted person appeals, the state Attorney General's Criminal Appeals Section 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 generally takes several 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 the right to be informed of appellate proceedings and decisions.

Victims have the right to be present by appearing in person, by phone, or virtually at appellate proceedings and decisions.

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 Colorado are the following:

- Motion under Colorado Rule of Criminal Procedure 35: These motions can be used to seek to vacate their conviction, to have a new trial, to modify their sentence, or to obtain other relief.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called "habeas corpus." State habeas relief is available only if relief is not available under Rule 35.
- Motion to correct or reduce an illegal sentence: A convicted person may seek to correct a sentence in exceptional circumstances.
- Judicial review of prison disciplinary proceedings: An incarcerated person may seek review of prison disciplinary proceedings if they involved an abuse of discretion or were held without jurisdiction.

DNA Testing

The convicted person may file a motion seeking DNA testing of evidence collected in the case.

The court will not automatically grant the requested testing. Instead, testing will be awarded only if the court finds a reasonable probability that the incarcerated person would not have been convicted if favorable results had been obtained through earlier DNA testing and that the lack of DNA testing to date is not the result of the incarcerated person's neglect.

If the court grants testing and the evidence supports the convicted person's claims, that person may seek to vacate their conviction, obtain a new trial, or other relief. If the court grants a motion for a new trial, the case starts over.

Victims' Rights

Victims have the right to be informed of appellate proceedings and decisions and any attack on the judgment or conviction where there is a hearing scheduled.

Victims have the right to be present by appearing in person, by phone, or virtually at appellate proceedings, appellate decisions, and any attack on the judgment or conviction where there is a hearing scheduled.

Victims' Rights

Victims have the right to notification of post-conviction DNA testing, the results of post-conviction DNA testing, and the right to be present at court hearings regarding the results of post-conviction DNA testing.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Colorado law may seek habeas corpus relief in federal court. Relief 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, special needs parole for certain ill or elderly people, or reductions in their sentence (called "earned-time" credits) for completing certain educational or rehabilitative programs.

Victims' Rights

Victims have the right to notice of parole hearing and notice if the incarcerated person waives their parole hearing.

Victims have the right to attend and be heard at parole hearings, probation hearings, and any hearings regarding the potential release of the incarcerated person.

Prosecutorial Review

Several counties – including [Boulder](#), [Denver](#), [Gulpin & Jefferson](#) – have established conviction review units to review past convictions to investigate plausible allegations of actual innocence.

The Denver unit also reviews past sentences to determine if convicted individuals' sentences are not compatible with current standards of fairness.

Victims' Rights

Victims have the right to be informed of any attack on the judgment or conviction where there is a hearing scheduled.

Victims have the right to be present by appearing in person, by phone, or virtually at any attack on the judgment or conviction where there is a hearing scheduled.

Victims have the right to be informed of and to be present at resentencing hearings and any modification of the sentence of the person convicted of the crime.

Clemency

The governor can grant clemency to people convicted of felonies under Colorado law. The [Office of Executive Clemency](#) helps the governor in this process. 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 the right to notification of clemency applications.

Victims have the right to submit a written statement in clemency.

Victims have the right to notification of whether clemency is granted or denied.

Compensation

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

Crime victims' compensation helps with financial losses that directly result from violent crime. These losses include loss of wages, medical expenses, mental health counseling, as well as funeral and burial costs.

Victims' Rights

Victims have the right to restitution if requested by the prosecution and ordered by the trial court.

Victims may be eligible for [Crime Victim Compensation](#) up to \$30,000.

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.