



# Hawaii

## 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 withdraw a plea
- A motion to modify the 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 by the police and the prosecuting attorney of the final disposition of the case.

Victims of felony crimes have the right to be notified of major developments in the case.

Victims have the right to receive protection from threats or harm.

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

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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 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 30 days after sentencing (or the denial of a motion for a new trial, if one is filed) to decide whether to appeal. If the convicted person appeals, the state [Attorney General's Office](#) assigns a lawyer to oppose the appeal for the state. 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.

## 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 Hawai'i are the following:

- Petition under Rule of Penal Procedure 40: In this petition, a convicted person may seek relief from a conviction, sentence, revocation of parole, or other forms of relief.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called "habeas corpus." Habeas petitions challenge the legality of a person's detention, but most of these claims are brought under Rule 40.

## DNA Testing

The convicted person may file a motion seeking DNA testing of physical evidence. The court will not automatically grant the requested testing. Instead, testing will be awarded if the court finds a reasonable probability that the convicted person would not have been prosecuted or convicted if exculpatory results had been obtained through earlier DNA analysis.

If the court grants testing and the evidence supports the convicted person's claim, 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.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Hawai'i 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 or medical parole.

### Victims' Rights

Victims have the right to be informed about the release of the incarcerated individual including escape, furlough, work release, placement on supervised release, release on parole, release on appeal bond, transfer to another state, and final discharge at the end of the prison term.

## Clemency

The governor can grant clemency to people convicted under Hawai'i law. The [Director of the Department of Corrections and Rehabilitation](#) and the [Paroling Authority](#) may help the governor in this process. Clemency typically takes one of three forms:

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

## Compensation

Restitution is a court-ordered payment from the convicted person to the victim in order 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 request restitution.

Victims have the right to apply to the [Hawaii Crime Victim Compensation](#).

*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.*