



# Montana

## Post-Conviction Case Activity & Victims' Rights

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### Post-Sentencing Review

After an individual has been convicted and sentenced, they may file motions in the trial court to challenge the judgment against them. For example, they may file a motion:

- For a new trial based on jury misconduct, legal errors at trial, or other problems with the proceedings
- To withdraw their plea
- To correct a factually erroneous sentence or judgment
- To review the sentence

The prosecution may also move to reduce the person's sentence if the prosecution believes their conduct, diligence, and attitude warrant a reduction.

### 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 fairness and respect, as well as freedom from intimidation, harassment, and abuse.

Victims have the right to notice and be present at public proceedings.

Victims have the right to prompt return of property when it 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 person generally has 10 days after the criminal judgment becomes final to decide whether to appeal. The [Appellate Services Bureau of the Montana Attorney General's Office](#) assigns a lawyer to oppose the appeal for the state. The prosecutor and the convicted person'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 notification and presence at public proceedings including appeals.

Victims have the right to proceedings free from unreasonable delay.

## 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 following are the most common in Montana:

- Uniform Postconviction Procedure Act: A person convicted of a felony may seek to invalidate their conviction or sentence based on legal errors in the proceedings or newly discovered evidence of innocence.
- State habeas corpus: A convicted person may challenge their sentence or conviction through a process called "habeas corpus." In Montana, state habeas corpus relief is very limited because claims are supposed to proceed under the Act.
- Motion for an out-of-time appeal: If the convicted person did not pursue a direct appeal and can show their failure to do so was not their fault, they may seek permission to file a belated direct appeal.

## DNA Testing

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

The court will not automatically grant the requested testing. Instead, the court may allow testing only if it finds that the identity of the perpetrator was at issue in the case and the requested testing would prove whether the convicted person was the perpetrator.

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

### Victims' Rights

Victims have the right to privacy and the protection of confidential information.

Victims have the right to refuse an interview with the convicted individual and their representatives.

Victims have the right to notification and presence at public proceedings including post-conviction hearings.

Victims have the right to notification of post-conviction decisions.

Victims have the right to proceedings free from unreasonable delay.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Montana 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. The main types of early-release programs in Montana are parole and medical parole.

### Victims' Rights

Victims have the right to information about the sentence, incarceration, release, and escape.

Victims have the right to express their views in release, sentencing, and parole proceedings.

## Clemency

The governor can grant clemency to people convicted under Montana law. In this work, the governor is assisted by the [Board of Pardons and Parole](#). 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 information and participation in clemency procedures.

## 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 and the right to apply for the [Crime Victim Compensation Program](#).

*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.*