



# Washington

## 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 the judgment against them. For example, they may file a motion:

- For a new trial or reconsideration based on new evidence, legal errors in the proceedings, or misconduct by the jury or prosecution
- To arrest the judgment
- To vacate the judgment
- To withdraw the plea

The prosecution or the Department of Corrections may also seek to modify the sentence in certain situations.

### 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 the return of property when it is no longer needed as evidence.

Victims have the right to protection from harm.

Victims have the right to a criminal advocate in judicial proceedings.

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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 30 days after judgment to decide whether to appeal. If the person decides to appeal, the local prosecutor's office or state [Attorney General's Office](#) assigns a lawyer to oppose the appeal. The state lawyer & the convicted person's lawyer 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. In Washington, the main forms of post-conviction relief are:

- Personal restraint petition: Convicted people may file this petition to seek relief based on new evidence, legal errors in the proceedings, or a recent change in the law.
- Writ of habeas corpus: This is a very old remedy that requires state officials to justify a person's detention. The scope of this relief in Washington is very limited because most requests must proceed via personal restraint petition.

## DNA Testing

A person convicted of a felony under Washington law may seek DNA testing of biological material obtained in the case.

The court will not automatically grant the requested testing. Instead, the court may allow testing only if it finds that DNA evidence is material to the identity of the perpetrator.

If the court grants testing and the results exculpate the convicted person, then the person may file a motion for a new trial, to vacate the conviction or for other relief. If the court grants a new trial, the case starts over.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Washington 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

Victims of sexual assault have the right to be informed, upon the request of a survivor, of when the forensic analysis of their sexual assault kit and other related physical evidence will be or was completed, the results of the forensic analysis, and whether the analysis yielded a DNA profile and match, provided that the disclosure is made at an appropriate time to not impede or compromise an ongoing investigation.

### 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 earlier than expected through one of these programs in Washington: earning "credits" for good behavior and good performance in prison, sentence review by the [Indeterminate Sentence Review Board](#) (most common for people convicted for offenses committed when they were under 18 and people convicted of certain sex offenses), extraordinary medical placement, or extraordinary relief.

## Prosecutorial Review

If a person was convicted and sentenced in King County, they may ask the [local prosecutor's office](#) to review their sentence and/or grant them early release.

### Victims' Rights

Victims have the right to make a statement when incarcerated individuals are considered for post-sentence release.

Victims have the right to submit a victim impact statement to the court which will be made a part of the convicted individual's file.

Victims have the right to notice of the conditional release, final release, escape, transfer, community custody, work release placement, or furlough.

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## Clemency

The governor can grant clemency to people convicted under Washington law. The [Clemency and Pardons Board](#) helps the governor in this process, and clemency cannot be granted unless and until the Board holds a hearing and makes a recommendation to the governor.

In Washington, clemency typically takes one of three 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
3. Reprieve: a temporary delay of a sentence being carried out

## 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 notification of the date and place of the clemency hearing.

Victims have the right to make a statement when incarcerated individuals are considered for pardon or commutation.

### Victims' Rights

Victims have the right to request restitution and the right to apply for the [Washington Crime Victims 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.*