



# Wisconsin

## 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:

- To a new trial based on new evidence or legal errors in the proceedings
- To withdraw the plea
- To modify the sentence

The prosecution 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 privacy.

Victims have the right to proceedings free from unreasonable delay.

Victims have the right to reasonable protection.

Victims have the right to be present at all proceedings.

Victims have the right to reasonable and timely notification of proceedings.

Victims have the right to the return of property that 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 45 days after judgment to decide whether to appeal. If they decide to appeal, the state [Department of Justice](#) assigns a lawyer to oppose the appeal. The state's lawyer 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 reasonable and timely notification of proceedings.

Victims have the right to have their name redacted in appellate briefs, petitions for review, and responses to petition for review unless there is a good cause to identify the victim by any part of their name.

Victims have the right to be present at all 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. In Wisconsin, the main forms of post-conviction relief are:

- Wisconsin Postconviction Act: A convicted person may seek relief from their conviction or sentence based on legal errors in the earlier proceedings.
- Writ of habeas corpus: This is a very old remedy that requires state officials to justify a person's detention. The scope of habeas relief in Wisconsin is very limited because most claims must proceed under the Act.
- Petition to adjust the sentence: Many convicted people can petition the sentencing court to adjust the sentence if the person has served 85% of their sentence for a Class C to E felony or 75% for a Class F to I felony.
- Writ of certiorari: This mechanism may be used to seek review of revocations of probation or parole and prison disciplinary decisions.
- Writ of error coram nobis: This old remedy allows people to seek relief from their convictions based on evidence outside the record that could not have been brought to the court earlier.

### Victims' Rights

Victims have the right to reasonable and timely notification of proceedings.

Victims have the right to have their name redacted in appellate briefs, petitions for review, and responses to petition for review unless there is a good cause to identify the victim by any part of their name.

Victims have the right to be present at all proceedings.

Victims have the right to be accompanied by a victim advocate at post-conviction proceedings.

## DNA Testing

An incarcerated person convicted under Wisconsin law may seek forensic testing of material obtained in the case.

The court will not automatically grant the requested testing. Instead, the court may allow testing only if the convicted person swears they are innocent and the court finds a reasonable probability that they would not have been prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent if exculpatory DNA testing had been available earlier.

If the court grants testing and the results exculpate the convicted person, the court must hold a hearing to determine what relief is appropriate. The incarcerated 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 Wisconsin 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 have the right to have the court clerk make a reasonable attempt to send the victim a copy of motions for DNA testing and notification of any hearing on that motion.

### 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 Wisconsin: earning “credits” for good behavior in prison, special action release, parole, or release due to an extraordinary medical condition or advanced age.

### Victims’ Rights

Victims have the right to timely notice of any release, escape, or death of the individual convicted of a crime.

Victims have the right to notice of parole applications and notice of petitions for sentence adjustment.

Victims have the right to notification of parole revocation or extension of the incarcerated individual’s supervision.

Victims have the right to attend and to be heard at any proceeding implicating the victim’s rights including release, parole, revocation, sentence modification, probation modification, expungement or pardon, upon request.

## Clemency

The governor can grant clemency to people convicted under Wisconsin law. The [Parole Advisory Board](#) helps the governor in this process.

In Wisconsin, 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

### Victims’ Rights

Victims have the right to notice of pardon applications.

Victims have the right to be heard and make a written statement regarding a pardon application, upon request.

## 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 seek restitution and to apply for compensation through the [Crime Victim Compensation Program](#).

Victims have the right to assistance in collecting restitution.

*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.*