

# PROCESS FOR POST-CONVICTION RELIEF



## What is Post-Conviction Relief?

Once the appellant completes the entire direct appeal process there is yet another way for the appellant to challenge their conviction. The next step in the process is called "post-conviction relief" or PCR. In the PCR process, the offender is called the "petitioner."

## How Does the Process Work?

In a direct appeal, the appellant challenges legal rulings that led to the conviction and sentence and the entire process is based on the record created at the trial court level. In a PCR proceeding, the petitioner may raise new claims. The petitioner must initiate PCR proceedings within two years of the completion of his or her direct appeal.

The petitioner begins the PCR process by filing a "PCR petition." The PCR petition sets out "claims of error" and explains what relief the petitioner seeks. In response, the State files an "Answer Petition" responding to the petitioners claims.

One of the most common PCR claims is that the defense attorney did not adequately represent the petitioner during the original trial and/or direct appeal process. For this reason, the court always appoints or the appellant hires a new attorney to represent the petitioner in PCR proceedings.

PCR proceedings are open to the public and the victim has the right to attend. During a PCR proceeding most of the evidence consists of written material such as affidavits (a witness' sworn statement) and other documentary exhibits (the transcripts from earlier court proceedings, etc). The attorneys testify to present this evidence. Occasionally, a petitioner will request that the victim testify in a PCR proceeding. It is important to note that if a petitioner makes such a request, the Judge must authorize it and that rarely happens.

PCR proceedings generally last 30 minutes and are conducted before a judge. Typically the petitioner is present by telephone or video conference for the proceeding. Unlike during a direct appeal, the petitioner may address the court during a PCR hearing. The victim has a right to address the judge as well in order to give a victim impact statement. It is more common to provide victim impact statements in writing, in advance.

The court will issue a written decision addressing the petitioner's claims. Depending on the complexity of the case, the timing of the court's decision can vary greatly.

Though every case is different, there are essentially two possible outcomes in a PCR proceeding:

- The petition for relief will be "denied" (meaning the conviction and sentence are upheld); or
- The petition will be granted, and the judge will:
  - Order a new trial,
  - Modify the sentence, or
  - Order other relief as necessary.

At this stage, either the petitioner or the State can appeal the ruling if they are unhappy with the outcome.

## PCR Appeal

The "PCR appeal" follows the same basic path as a direct appeal. At this stage the petitioner again becomes the "appellant."

Either side may begin the PCR appeal process by filing a "Notice of Appeal" in the Oregon Court of Appeals. (see additional handout on the Appeal Process)

## Please Contact Us to Find Out More

The best way to know what is going on with your case is to stay in touch with our office:

Oregon Department of Justice | Crime Victims' Services Division | Post-Conviction Advocacy Program

Mailing Address	1162 Court St NE Salem, OR 97301-4096
Telephone	503-378-4284
Toll Free	800-503-7983
E-Mail	<a href="mailto:crimevictimservices@doj.state.or.us">crimevictimservices@doj.state.or.us</a>