

INSTRUCTIONS

Petition for Postconviction Relief

If you have been convicted of a crime and cannot file an appeal (because you have already appealed your case, or the time to appeal has run out), you may still be able to challenge your conviction and sentence by filing a *Petition for Postconviction Relief* in district court.

If you cannot afford an attorney to represent you in a postconviction proceeding (a court action after you have been convicted and sentenced), you can contact the Appellate Public Defender's office to see if you qualify to be represented by a public defender.

Office of the Minnesota Appellate Public Defender

540 Fairview Ave N, Suite 300

St. Paul, MN 55104

(651) 219-4444

You can find the statutes regarding "Postconviction Relief" in Minn. Stat. ch. 590 (<https://www.revisor.mn.gov/statutes/cite/590>). There may be other rules, statutes, and case law that you should know about, so getting legal advice is very important.

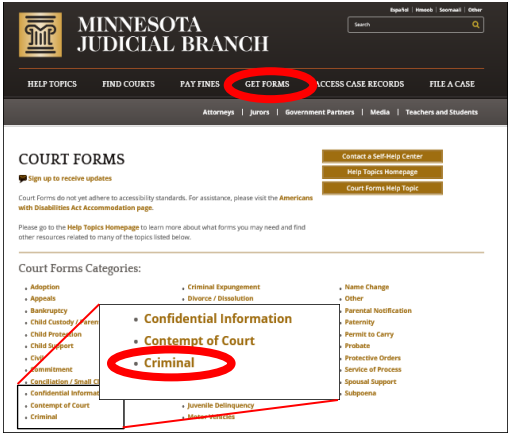
Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

If you decide to represent yourself, these instructions describe the steps you need to take.

Step 1

Gather Forms and Information

The packet of forms for asking the district court for **postconviction relief** is available online at www.mncourts.gov/forms (“Criminal” Court Forms Category).



Forms in the Postconviction Relief Packet (You may not need all of the forms)

- *Petition for Postconviction Relief* (CRM1202)
- *Proof of Service (Postconviction Relief)* (CRM1203)
- *Memorandum of Law* (CRM1204)

Information You Will Need to Fill Out the Forms

- Case information:
 - District Court file number (usually starts with a number followed by the letters “CR” and more numbers; for example, 88-CR-15-365);
 - The criminal charge;
 - Date that the judgment, sentence, or other disposition was entered; and
 - Information about past appeals and requests for postconviction relief (if any).
- Legal grounds (reasons) why the court should grant your *Petition for Postconviction Relief*.

Step 2

Fill Out the *Petition for Postconviction Relief* (CRM1202)

SECTION A: THE CAPTION

<p>State of Minnesota</p> <p>County 1</p> <hr/> <p>Petitioner 4</p> <p>vs</p> <p>State of Minnesota</p>	<p style="text-align: right;">District Court</p> <p>Judicial District: 2</p> <p>Court File Number: 3</p> <p>Case Type: Criminal - Postconviction</p> <p style="text-align: center;">Petition for Postconviction Relief</p> <p style="text-align: center;">Minn. Stat. § 590.01</p> <p>TO THE DISTRICT COURT OF 1 COUNTY:</p> <p>My name is 4</p>
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1. List the county where the criminal case was filed.
2. List the Judicial District. Each county belongs in one of ten judicial districts. If you need help, see <http://www.mncourts.gov/Find-Courts.aspx>.
3. List the court file number.
4. Print your full name. If your name has changed since you were convicted, list your former name (the one you were convicted under), followed by “NKA” (now known as) and your new legal name.

SECTION B: THE *PETITION*

The *Petition* has five different sections:

- Information about the case;
- Previous requests for postconviction relief (if any);
- Legal reasons (grounds) for postconviction relief;
- Legal memorandum; and
- Hearing.

1. Information about the Case

Describe the charge and disposition/sentence that you are now challenging in this postconviction *Petition*.

2. Previous Appeals or Postconviction Requests in this Case (if any)

Describe any previous appeals of your conviction or sentence, or any prior requests for postconviction relief in this case.

3. Grounds for Postconviction Relief

Choose the option that best describes the reason you believe the court should grant postconviction relief from your judgment or sentence.

Choose (a) or (b), or mark both if they both apply.

If you mark (a), briefly list the reasons why you believe your rights were violated.

4. Legal Memorandum

Tell whether you will file a *Memorandum of Law* with a more detailed description or argument. Step 3 below might help you decide whether you will file a *Memorandum of Law* with your *Petition*.

5. Hearing

Are you asking the court for a hearing on your *Petition for Postconviction Relief*? The court may not schedule a hearing even though you have asked for one. If the court schedules a hearing, the hearing may not be in person. The judge may order that the hearing will be held by video or telephone.

SECTION C: THE SIGNATURE BLOCK

Everything I have stated in this petition is true and correct to the best of my knowledge. C

<p>1</p> <p>Dated _____</p> <p>Attorney License No. _____</p> <p>Firm: _____ 5</p>	<p>2</p> <p>Signature _____</p> <p><input type="checkbox"/> Self-Represented <input type="checkbox"/> Attorney for Petitioner</p> <p>3</p> <p>Name: _____</p> <p>Address: _____</p> <p>City/State/Zip: _____ 4</p> <p>Telephone: _____</p> <p>Email: _____</p>
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1. Date the *Petition*.
2. Sign your name.
3. If you do not have an attorney representing you, check the “Self-Represented” box.
4. Print your name and contact information.
5. If you are an attorney representing the petitioner, include your attorney license number and the name of your law firm.

Step 3

Prepare the *Memorandum of Law* (CRM1204) - Optional



The “postconviction statutes” (Minn. Stat. ch. 590, <https://www.revisor.mn.gov/statutes/cite/590>) do not require petitioners to file a *Memorandum of Law*.

However, many petitioners choose to file a *Memorandum of Law*, which allows you to give the district court the specific legal arguments that you believe entitle you to relief.

If your arguments to the district court are based only on facts that are already part of the record in your case, you might choose to file a *Memorandum of Law* instead of asking for a hearing. This helps provide the district court with the facts and authority the district court needs to decide your case. Even if you are requesting a hearing in your *Petition*, a *Memorandum of Law* may still be useful to help the court better understand the issues your case presents, the law that applies, and how the facts that you intend to establish at the hearing will entitle you to relief.

If you decide to file a *Memorandum of Law*, use CRM1204. You may need to do some legal research to decide what arguments to make, what facts to include, and what legal authorities to cite in your *Memorandum of Law*.

Step 4

**Make Copies and
Arrange for Service on the MN Attorney General,
County Attorney, and if applicable, the City Attorney**

COPIES

Make copies of all of the forms you have prepared for the court (including the *Petition for Postconviction Relief* and the *Memorandum of Law*, if any) for:

- The Minnesota Attorney General’s Office,
- The County Attorney’s Office in the county where the conviction happened,
- The City Attorney if the case was prosecuted by a city attorney, and
- Your records.

SERVICE OF PROCESS

You have to arrange for the Minnesota Attorney General, County Attorney, and if applicable, the City Attorney to receive complete copies of all documents you have prepared for the court. This is called “service of process.” Papers cannot be served on a legal holiday.

For more information, see the “Service of Process” Help Topic on the court’s website at <http://mncourts.gov/Help-Topics/Service-of-Process.aspx>.

Service by Mail: You or another adult (for example, a friend or family member, sheriff’s deputy, or process server) will need to mail copies of your forms to the Minnesota Attorney General, County Attorney, and if applicable, the City Attorney. Regular first class mail is all that is required.

Minnesota Attorney General’s Office - <http://www.ag.state.mn.us/>
445 Minnesota St., Suite 1400
St. Paul, MN 55101

To find the address for the county attorney’s office, visit the MN County Attorneys Association’s website at <https://mcaa-mn.org/page/links>. On the “Resource Links” page, click “Minnesota County Attorney Offices.”



Step 5
Proof of Service (Postconviction Relief) (CRM1203)

After the papers are served on the Attorney General, County Attorney, and if applicable, the City Attorney, the person who served the papers (the server) must fill out the *Proof of Service (Postconviction Relief)* form (CRM1203). This completed form will be your proof that the papers were served.

State of Minnesota	District Court
County _____	Judicial District: _____
	Court File Number: _____
	Case Type: _____ Criminal - Postconviction
Petitioner _____	1
vs _____	Proof of Service
State of Minnesota _____	(Postconviction Relief)

1. Fill out the top part of the form (the caption) the same way you did on the *Petition*.

My name is _____	I am at least 18 years old.
On _____ (date), at _____ (city and state	
where mailed), I served a copy of the following:	
<input type="checkbox"/> <i>Petition for Postconviction Relief</i>	
<input type="checkbox"/> <i>Memorandum of Law</i>	
<input type="checkbox"/> Other: _____	
upon each entity checked below by mailing a copy in a sealed envelope, postage prepaid, with the U.S. Postal Service.	

2. The server’s name goes on this line.
3. The date the papers were mailed goes on this line.
4. This line is for the city and state the papers were mailed from.
5. Identify which papers were mailed. If you check “Other,” write in the names of the other documents.

<input checked="" type="checkbox"/> Office of the MN Attorney General 445 Minnesota Street St. Paul, MN 55101	<div style="text-align: center;">6</div> <input checked="" type="checkbox"/> _____ County Attorney’s Office _____ _____ _____	<input type="checkbox"/> _____ City Attorney’s Office _____ _____ _____
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6. Identify which entity was served by checking the boxes.
 - a. For the county attorney:
 - Write the name of the county next to the words “County Attorney’s Office,” and
 - Write the address where the papers were mailed on the lines underneath.
 - b. If the city attorney was served:
 - Write the name of the city next to the words “City Attorney’s Office,” and

- Write the address where the papers were mailed on the lines underneath.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.	
Dated: _____	7
County and state where signed: _____	Signature _____
_____	Name: _____
_____	Address: _____
_____	City/State/Zip: _____
_____	Telephone: _____
_____	E-mail address: _____

7. Next, the server should complete the bottom of the form. When the server signs the *Proof of Service*, they are signing under *penalty of perjury*. Perjury is the crime of intentionally lying or misrepresenting the truth.

Step 6

File Documents with Court Administration

File the following forms with court administration in the county where the conviction happened:

- *Petition for Postconviction Relief*,
- *Memorandum of Law* (if you have one),
- *Proof of Service* (showing that the Attorney General, County Attorney, and if applicable, the City Attorney were served),
- Any other document you prepared for the court in this postconviction proceeding.

There is no filing fee to file these forms.

If you need to find the address of a courthouse, look online starting at <http://mncourts.gov/Find-Courts.aspx> (choose the county from the drop-down menu and click “Go”).

What Happens Next?

After you file your *Petition for Postconviction Relief*, the prosecuting authorities (Attorney General, County Attorney, or City Attorney) will have 20 days to file a response unless the district court gives a different time period. See Minn. Stat. § 590.03 (<https://www.revisor.mn.gov/statutes/cite/590.03>). After the 20 days have passed, the district court will begin considering your *Petition*.

The Court may not schedule a hearing even though you have asked for one in your petition. A district court may deny a petition for postconviction relief without a hearing if the petition and the record “conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04,

subd. 1 (<https://www.revisor.mn.gov/statutes/cite/590.04>). If the court denies your *Petition* without a hearing, it will issue a written order that explains its reasons.

If the district court decides to have a hearing on your *Petition*, you will be notified by mail of the date and time of the hearing. The hearing may not be an in-person hearing; the judge may order that the hearing will be held by video or telephone. At this hearing, you will typically be allowed to present any evidence and testimony that you believe is necessary to show that you are entitled to the relief requested in your *Petition*. The State will also have an opportunity to present its own evidence and testimony, and will be allowed to cross-examine any witness who testifies on your behalf, including yourself. You also may be given the opportunity to argue your *Petition* orally to the district court.

After the hearing, the court will usually take the matter under advisement and will issue a written decision regarding your *Petition for Postconviction Relief*. The court's order usually has a memorandum that sets out the facts of the case, summarizes the arguments of the parties, and explains its reasons for the decision reached. Although the postconviction statute does not provide a specific deadline by which the district court must decide your postconviction *Petition*, the statute says that a court should do so "promptly" and you are generally likely to hear something from the court within 30 or 60 days. *See* Minn. Stat. § 590.04, subd. 1.

If the district court denies your *Petition for Postconviction Relief*, or grants you less relief than you asked for in your *Petition*, you may appeal the district court's decision to the Minnesota Court of Appeals within 60 days of the entry of the postconviction order. *See* Minn. Stat. § 590.06 (<https://www.revisor.mn.gov/statutes/cite/590.06>) and Minn. R. Crim. P. 28.02, subd. 4 (3)(c) (https://www.revisor.mn.gov/court_rules/cr/id/28/#28.02).