

78B-9-108 Effect of granting relief -- Notice.

- (1) If the court grants the petitioner's request for relief, it shall either:
 - (a) modify the original conviction or sentence; or
 - (b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.
- (2)
 - (a) If the petitioner is serving a felony sentence, the order shall be stayed for five days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action.
 - (b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the custodian of the petitioner.
 - (c) If the respondent gives notice of intent to appeal the court's decision, the stay provided for by Subsection (2)(a) shall remain in effect until the appeal concludes, including any petitions for rehearing or for discretionary review by a higher court. The court may lift the stay if the petitioner can make the showing required for a certificate of probable cause under Section 77-20-10 and URCP 27.
 - (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the trial court may order any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session