



Delaware

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 their conviction or sentence. For example, they may file:

- A motion for an acquittal
- A motion for a new trial based on new evidence, jury misconduct, legal errors at trial, or other problems with the proceedings
- A motion to arrest the judgment
- A motion to modify a sentence.

The prosecution may also file a motion 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 a right to notice of sentence or modification orders.

Victims have the right to the prompt return of their property when it 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 individual generally has 30 days after sentencing to decide whether to appeal. If the convicted person appeals, the state Department of Justice's [Criminal Division](#) assigns a lawyer for the state to oppose the appeal. The state's lawyer and the convicted individual'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 notice of the date, time, and place of appellate hearings or oral arguments.

Victims have the right to notice of the decision of an appeal.

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. These motions can seek many outcomes, but the main requests and outcomes in Delaware are the following:

- Motion under Superior Court Criminal Rule 51: Within a year of a conviction becoming final, the convicted person may file this motion to seek relief from their conviction or sentence based on legal errors or new evidence.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called “habeas corpus.” These proceedings provide relief in only very limited circumstances, as most claims proceed under Rule 51.

Victims’ Rights

Victims have the right to notice of the date, time, and place of post-conviction hearings.

DNA Testing

The convicted person may file a motion seeking DNA testing of evidence. In general, this motion must be filed within 3 years of the conviction becoming final.

The court will not automatically grant the requested testing. Instead, testing will be awarded if the court finds the claim that the convicted person is innocent plausible.

If the court grants testing and the evidence supports the convicted person’s claims, that person may seek to vacate their conviction, obtain a new trial, or other relief. If the court grants a motion for a new trial, the case starts over.

Federal Habeas Corpus

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

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 from prison earlier than expected through these programs: parole, medical parole, reductions in their sentence (called "good-time credits") for good behavior, or completing certain educational, vocational, or rehabilitative programs.

Victims' Rights

Victims have the right to notice of the convicted person's projected release date.

Victims have a right to notice of sentence reduction or sentence modification.

Victims have a right to request and receive notification from the Department of Correction and other appropriate agencies about the release, escape and recapture, terms of probation and noncompliance with sentence, probation, or parole, reentry or furlough program placements, scheduled execution, medical parole, release from mental facilities, transfer to another prison or death of the incarcerated person.

Victims have the right to notification of parole board hearing dates and written notification of the Parole Board's decision.

Victims have the right to address the Board of Parole in writing or in person.

Victims have a right to a current photograph of the convicted person upon their release.

Prosecutorial Review

Delaware's [Actual Innocence Program](#) within the state's Department of Justice is designed to ensure that the Department is aware of and takes corrective action regarding people who are incarcerated despite empirical evidence establishing their innocence. People seeking review must apply to the Program. Review is discretionary, and a denial of review may not be challenged in court.

Clemency

The governor can grant clemency to people convicted of felonies under Delaware law. The [Board of Pardons](#) helps the governor in this process. Clemency typically takes one of three forms:

1. Commutation: the reduction of a sentence to a less severe punishment
2. Reprieve: a temporary delay of a sentence being carried out
3. Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

Victims' Rights

Victims have the right to notice of the date, time, and place of post-conviction hearings.

Victims have a right to notice of sentence reduction or sentence modification.

Victims' Rights

Victims have the right to notice when the convicted person files for a commutation, reprieve, or pardon.

Victims have the right to testify at the clemency hearing or submit a written statement.

Victims have the right to notice of recommendations by the Board of Pardons and the right to written notice if pardon, commutation, or reprieve is granted.

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 are entitled to court-ordered restitution.

Victims may be entitled to compensation of up to \$25,000 (or \$50,000 if the victim is permanently and totally disabled) through the [Delaware Victims' Compensation Assistance 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.