



The Federal System

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 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 the right to be reasonably protected.

Victims have the right to proceedings free from unreasonable delay.

Victims have the reasonable right to confer with the attorney for the Government in the case.

Victims have the right to make a motion to re-open a plea or sentence if (1) they asserted the right to be heard before or during the proceeding and the right to be heard is denied; (2) the victim files an appeal with the court of appeals within 10 days; and (3) in the case of a plea, the accused individual has not pled to the highest offense charged.

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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 cases involving non-violent offenses.

The convicted individual generally has 14 days after sentencing to decide whether to appeal. If the convicted person appeals, the Department of Justice's [Criminal Appellate 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 reasonable, accurate, and timely notice of any public court proceeding involving the crime.

Victims have the right to proceedings free from unreasonable delay.

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 the federal system are the following:

- Motion to reduce the sentence: The Bureau of Prisons or the convicted person may file a motion seeking to reduce the person's term of incarceration or change a term of their sentence.
- Compassionate release: Incarcerated people may ask to be released from prison due to extraordinary and compelling circumstances.
- Writ of error coram nobis: Convicted individuals may seek this writ to obtain relief from their convictions or sentences based on evidence outside the trial record (such as new proof they received ineffective assistance of counsel).

DNA Testing

A person who has been sentenced to prison or death may file a motion seeking DNA testing of evidence.

The court will not automatically grant the requested testing. Instead, testing will be awarded if the convicted person plausibly claims to be innocent.

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.

Victims' Rights

Victims have the right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any proceeding involving the release of the accused.

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.

Federal Habeas Corpus

A person convicted under federal law may also seek habeas corpus relief. 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 (which is available only in the federal system only in rare situations), or reductions in their sentence (called "good-time credits" and "earned-time credits") for good behavior or completing certain educational, vocational or rehabilitative programs.

Victims' Rights

Victims have the right to reasonable, accurate, and timely notice of any parole proceeding, involving the crime or of any release or escape of the accused.

Victims have the right to be reasonably heard at any public proceeding in the district court involving release or any parole proceeding.

Prosecutorial Review

Certain federal prosecutors' offices have established conviction integrity units, which typically focus on reviewing past prosecutions in which the convicted person has a claim of factual innocence. Currently, these offices exist in the [Southern District of New York](#), the [Eastern District of New York](#), and the [Central District of California](#).

Clemency

The President can grant clemency to people convicted under federal law. The [Office of the Pardon Attorney](#) helps the President in this process. Clemency typically takes one of four 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
4. Remission: a reduction of the fines or restitution amounts a convicted person must pay

Compensation

Restitution is a court-ordered payment from the convicted person to the victim in order to account for the victim's loss or injury.

Victims' Rights

Victims have the reasonable right to confer with the attorney for the Government in the case.

Victims' Rights

Victims may receive notification of clemency if the crime was a felony offense and the Attorney General determines that investigation of the clemency case warrants contacting the victim. If the Attorney General concludes that contact is necessary, then a victim will be notified that a clemency petition has been filed, that the victim may submit comments regarding clemency, and whether the clemency request is subsequently granted or denied by the president.

Victims' Rights

Victims have the right to full and timely restitution as provided in law. Victims have the right to apply for Victim Compensation Programs in the state where the crime occurred.

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.