



Louisiana

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 the judgment against them. For example, they may file:

- A motion for a new trial based on jury misconduct, new evidence, legal errors at trial, or other problems with the proceedings
- A motion to modify the 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 heard at all critical stages of post-conviction proceedings.

Victims have the right to be informed through consistent, reliable, easy access to information.

Victims have the right to be notified of proceedings.

Victims are entitled to the prompt return of property 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 person generally has 30 days after sentencing to decide whether to appeal. If the convicted person appeals, the Appellate Section of the District Attorney's Office assigns a lawyer to oppose the appeal for the state. The prosecutor and the convicted person'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 notice and to be present at all critical stages of post-conviction proceedings.

Victims have the right to be heard at all critical stages of post-conviction proceedings.

Victims have the right to be informed through consistent, reliable, easy access to information.

Victims have the right to notification of successful court appeals.

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 Louisiana are the following:

- Postconviction Hearing Act: If the convicted person is sentenced to prison, they may file a motion to set aside or correct their conviction or sentence based on legal errors in the proceedings or new evidence.
- State habeas corpus: A convicted person may seek relief through a process called “habeas corpus.” In Louisiana, state habeas corpus relief is available only when relief is not available under the Act.
- Petition for a mentally incompetent person sentenced to death: In death penalty cases only, the convicted person may file a petition contesting the death sentence on the grounds that they are intellectually disabled.

DNA Testing

A person convicted of a felony in Louisiana may file a motion seeking DNA testing of physical evidence.

The court will not automatically grant the requested testing. Instead, the court will allow testing only if it finds there is an articulable doubt based on competent evidence about the individual’s guilt and a reasonable likelihood that the requested testing will resolve that doubt and establish the person’s innocence.

If the court grants testing and the evidence supports the convicted person’s claim, that person may file a motion under the Postconviction Hearing Act seeking 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.

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Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Louisiana 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: parole, medical parole, geriatric parole, compassionate release, or earning reductions to their sentences for good behavior or completion of rehabilitative, educational, or other programs (usually called "good-time credits").

Victims' Rights

Victims have the right to be present in pardon, parole, and reentry processes.

Victims have the right to notification of the incarcerated individual's release, escape, or apprehension.

Victims have the right to notification of parole board or other release hearings at least 30 days before the hearing date.

Victims have the right to testify or submit a statement for consideration in the parole process.

Victims have the right to request that an incarcerated person be subject to certain location or contact restrictions while on parole.

Victims have a right to obtain a photograph of the incarcerated person ten days before their release.

Prosecutorial Review

In Orleans Parish, convicted individuals may ask the local prosecutor's [office](#) to review their convictions or sentences. The office focuses on cases in which evidence now suggests the person is innocent, where the conviction was obtained by prosecution or law enforcement misconduct, or through the use of racially discriminatory prosecution or law enforcement practices or the use of a racially discriminatory law.

Clemency

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

- Commutation: the reduction of a sentence to a less severe punishment
- Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

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 have the right to be heard at all critical stages of post-conviction proceedings.

Victims have the right to be informed through consistent, reliable, easy access to information.

Victims' Rights

Victims have the right to notification of pardon board hearings at least 30 days before hearings.

Victims have the right to testify or submit a statement for consideration in the pardon process.

Victims' Rights

Victims have the right to seek restitution for damages and losses. Victims have the right to apply to the Louisiana [Crime Victims Reparations 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.