



Massachusetts

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 finding of not guilty
- To vacate an illegal or unjust disposition
- For a new trial based on jury misconduct, new evidence, legal errors at trial, or other problems with the proceedings
- To withdraw a plea
- To vacate the judgment if the defense attorney failed to advise the accused of the immigration consequences of a conviction

The prosecution may agree with the motion for a new trial 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 present at all court proceedings.

Victims of certain crimes have the right to obtain the convicted individual's criminal record and/or compliance with the terms of a sentence.

Victims have the right to a prompt disposition of the criminal case.

Victims have the right to employer protection and creditor intercession services by the prosecutor to help victims who are participating in the criminal justice process.

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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 or ruling on a motion for a new trial (if one is filed) to decide whether to appeal. If the convicted person appeals, the District Attorney's Office or Attorney General'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 be present at all court proceedings.

Victims have the right to a prompt disposition of the case.

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 following are the most common in Massachusetts:

- Rule of Criminal Procedure 30: A convicted person may file a motion under this Rule seeking relief from their conviction or sentence based on legal errors in the proceedings or proof of their innocence.
- State habeas corpus: A convicted person may challenge their sentence or conviction through a process called "habeas corpus." In Massachusetts, state habeas corpus relief is very limited because claims are supposed to proceed under Rule 30.
- Writ of certiorari: Incarcerated people may seek this writ to challenge the actions of prison or parole officials that relate to the duration or conditions of their confinement.
- Declaratory judgment: Incarcerated people may also seek this form of relief to challenge the actions of prison or parole officials that relate to the duration or conditions of their confinement.

Victims' Rights

Victims have the right to be present at all court proceedings.

Victims have the right to a prompt disposition of the case.

Victims have the right to a separate waiting area and to have minimal contact with the convicted person and their family, friends, attorneys, or witnesses.

Victims have the right to employer protection and creditor intercession services by the prosecutor to help victims who are participating in the criminal justice process.

Victims have the right to agree to or decline an interview by defense counsel or anyone acting on the convicted person's behalf (unless the legal system requires the victim to submit to an interview because of a deposition or subpoena).

Victims have the right to impose reasonable conditions on the conduct of the interview.

DNA Testing

A person convicted of violent crimes may file a motion seeking forensic testing of evidence collected in the case.

The court will not automatically grant the requested testing. Instead, the court will allow testing only if the requested analysis has the potential to result in evidence that is material to the identification of the perpetrator of the crime in the case.

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

Victims' Rights

Victims have the right to notification by the prosecution when a convicted person files a motion for post-conviction forensic and scientific testing such as DNA testing.

Victims have the right to notification by the prosecutor when a court allows the motion for forensic or scientific testing.

Victims have the right to notification of the results of the forensic or scientific testing.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Massachusetts 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, or earning reductions to their sentences for good behavior or completion of rehabilitative, educational, or other programs (usually called “good-conduct credits”).

Prosecutorial Review

The state-wide Massachusetts Attorney General’s [Office](#) – as well as local prosecutors’ offices in [Middlesex County](#), [Hampshire and Franklin Counties](#) and the [Town of Athol](#), [Suffolk County](#), [Norfolk County](#), and [Plymouth County](#) – have established units to reconsider past convictions where the convicted person has a claim of innocence.

Victims’ Rights

Victims have the right to notification if an incarcerated person is transferred to a less secure facility, temporarily released or permanently released from custody, escapes, or dies.

Victims have the right to notification of parole hearings and results from parole hearings.

Victims have the right to submit statements in parole and clemency proceedings.

Victims’ Rights

Victims have the right to be present at all court proceedings.

Victims have the right to confer with the prosecutor before the filing of a nolle prosequi or other act terminating the prosecution.

Clemency

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

1. [Commutation](#): the reduction of a sentence to a less severe punishment
2. [Pardon](#): an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

Victims' Rights

The Board of Pardon and Parole must notify victims 30 days prior to a clemency hearing.

Victims have the right to notice of the Advisory Board of Pardons' recommendation about clemency.

The Board of Pardon and Parole must make a reasonable effort to give victims a meaningful opportunity to be heard at clemency hearings.

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 notification by the prosecutor of available financial assistance and information about applying for such assistance.

Victims have the right to seek restitution and the right to apply for [Crime Victim Compensation](#).

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.