



# Nebraska

## 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, legal errors at trial, or other problems with the proceedings
- To arrest the judgment
- To withdraw their plea

### 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 notification of all criminal court proceedings.

Victims have the right to protection from harm and threats of harm.

Victims have the right to speedy disposition of the case.

Victims have the right to the prompt return of property no longer needed as evidence.

Victims have the right to notice if the convicted individual is released pending appeal.

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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. The [Nebraska Attorney General's Office](#) assigns a lawyer to oppose the appeal for the state. The state lawyer 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 notified that the convicted individual has filed an appeal.

Victims have the right to be notified about the appeal process, including possible outcomes.

Victims have the right to notification of the time and place of any appeal proceedings and any changes to the time and place of those proceedings.

Victims have the right to notification of the results of the appeal and the final disposition of the case.

Victims have the right to have certain personal identifying information redacted from public documents.

## 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 Nebraska:

- Postconviction Act: A convicted person may seek to invalidate their conviction or sentence based on legal errors in the proceedings.
- State habeas corpus: A convicted person may challenge their sentence or conviction through a process called "habeas corpus." In Nebraska, state habeas corpus relief is very limited because claims are supposed to proceed under the Act.
- Writ of error coram nobis: A convicted person may seek this writ to obtain relief from their sentence or conviction based on new facts.

### Victims' Rights

Victims have the right to be notified that the convicted individual has filed a post-conviction motion.

Victims have the right to be notified about the post-conviction process, including possible outcomes.

Victims have the right to notification of the time and place of any post-conviction proceedings and any changes to the time and place of those proceedings.

Victims have the right to notification of the results of the post-conviction and the final disposition of the case.

Victims have the right to have certain personal identifying information redacted from public documents.

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## DNA Testing

A person convicted of a felony may file a motion seeking DNA testing of evidence collected in the case.

The court will not automatically grant the requested testing. Instead, the court may allow testing only if it finds that the testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

If the court grants testing and the evidence supports the convicted person's claim, then the 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.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Nebraska 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. The main types of early-release programs in Nebraska are: earning "good-time credits," which can allow people to reduce their sentences by up to 50% through good behavior and participating in programming, parole, and medical parole.

## Victims' Rights

Victims have the right to be notified if the convicted person is released for 24 hours or longer, transferred to community status, released to community-based programs, or released from custody because they have completed their sentence.

Victims have the right to notification if the convicted person escapes or is returned to custody.

Victims have the right to notification of the earliest date the convicted person can receive parole and any reduction in the individual's minimum sentence.

Victims have the right to notification of sentencing, parole, and conditional release proceedings. Victims have the right to notification when a convicted person is returned to incarceration because of parole violations.

Victims have the right to notification when the incarcerated individual is released.

## Clemency

The governor can grant clemency to people convicted under Nebraska law. In this work, the governor is assisted by the [Board of Pardons](#). 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

In [Lincoln](#) or [Omaha](#), a person may also seek a mayoral pardon for violations of the city code.

### Victims' Rights

Victims have the right to notification of pardon and commutation proceedings.

Victims have the right to be heard at pardon and commutation proceedings.

## 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 seek restitution and the right to apply for [Crime Victims' Reparations](#).

*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.*