



New Jersey

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 new evidence, jury misconduct, legal errors at trial, or other problems with the proceedings
- To arrest the judgment
- To withdraw their plea
- To reduce or modify their sentence

The prosecutor may ask the court to reduce 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 free from intimidation, harassment, or abuse.

Victims have the right to information about the criminal justice process freedom from intimidation.

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

Victims have the right to be present at public proceedings.

Victims have the right to not be charged a fee to obtain copies of the victim's records including law enforcement reports.

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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 45 days after sentencing to decide whether to appeal. If the person decides to appeal, the [Appellate Bureau of the Division of Criminal Justice](#) 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 present at public proceedings such as oral arguments.

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. In New Jersey, the main form of post-conviction relief is a petition under Court Rule 3:22. The convicted person may challenge their sentence or conviction under this Rule based on new evidence or legal problems with the prior proceedings.

Victims' Rights

Victims have the right to be present at public proceedings.

DNA Testing

An incarcerated person 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 holds a hearing and determines that the identity of the perpetrator was a significant issue in the case, the convicted individual has made a preliminary showing that testing would reveal the perpetrator's identity, and the court would likely grant the convicted person a new trial if the results are exculpatory.

If the court grants testing and the evidence supports the convicted person's claim of innocence, then they may seek to vacate the conviction, 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 New Jersey 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 New Jersey are: earning “credits” to reduce their sentences for good behavior or participation in vocational or educational programs in prison, parole, or compassionate release.

Victims’ Rights

Victims have the right to notification of parole proceedings if requested.

Victims have the right to be heard at parole proceedings.

Victims have the right to notification of release, escape, and an application for compassionate release.

Prosecutorial Review

Individuals who have claims of actual innocence may also ask New Jersey’s state-wide [Conviction Review Unit](#) to examine their case. To be eligible for this review, a person must have been prosecuted in Superior Court and convicted of a felony.

Clemency

The governor can grant clemency to people convicted under New Jersey law. The [Parole Board](#) supports the governor in this work. 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

Victims have the right to notice of commutation applications and notice of the outcome of that application if requested.

The governor considers the views of victims in their decision to grant clemency.

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 apply for [Victims of Crime Compensation](#).

Victims have the right to information about available remedies, financial assistance, and social services compensation for loss whenever possible.

Victims have the right to not be charged a fee to obtain copies of the victim's records including law enforcement reports.

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.