



# New Mexico

## 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
- For an acquittal
- To withdraw their plea
- To reduce 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 timely disposition of the case.

Victims have the right to reasonable protection.

Victims have the right to notification of court proceedings.

Victims have the right to attend all public court proceedings.

Victims have the right to prompt return of property when it is 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 the criminal judgment is entered to decide whether to appeal. If the person decides to appeal, the [New Mexico Department of 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 notification of court proceedings including proceedings in the district court, court of appeals, or supreme court.

Victims have the right to attend all public court proceedings including in the district court, court of appeals, or supreme court.

## 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. In New Mexico, the main form of post-conviction relief is a petition for state habeas corpus. "Habeas corpus" is a process through which a convicted person may challenge their sentence or conviction based on legal errors in the proceedings or new evidence.

### Victims' Rights

Victims have the right to notification of court proceedings including proceedings in the district court, court of appeals, or supreme court.

Victims have the right to attend all public court proceedings including in the district court, court of appeals or supreme court.

Victims have the right to employment protection if the victim has to be present or testify at a court proceeding.

## 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 must allow testing only if it finds that the perpetrator's identity was an issue in the case and, if DNA testing had been done earlier and the results had been exculpatory, there is a reasonable probability that the convicted person would not have pleaded or been found guilty.

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 Mexico 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 Mexico are: participating in vocational or educational programs in prison (this is often called "earning meritorious time"), parole, or medical or geriatric parole.

### Victims' Rights

Victims have the right to information about sentencing, imprisonment, escape, or release of the convicted individual if requested.

Victims have the right to notification of Parole Board hearings if requested.

Victims have the right to make a statement at any post-sentencing hearings including parole hearings.

## Clemency

The governor can grant clemency to people convicted under New Mexico law. The [Parole Board](#) supports the governor in this work. Clemency typically takes one of four 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
3. Conditional release: a release subject to parole conditions
4. Reprieve: a form of temporary relief that postpones punishment

## 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

The governor must consider the impact of the crime on the victim(s) before granting clemency.

### Victims' Rights

Victims have the right to seek restitution.

Victims have the right to apply for compensation through the [Crime Victim Reparations Commission](#).

*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.*