



New York

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
- To vacate the judgment
- To set aside the sentence based on legal errors in the proceedings or new evidence

The prosecutor may ask the court to set aside 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 attend court.

Victims have the right to notification of criminal proceedings.

Victims have the right to freedom from discrimination, intimidation, threats, or harassment.

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

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 conviction to decide whether to appeal. If the person decides to appeal, the state assigns a lawyer to oppose the appeal for the prosecution. 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 attend 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. In New York, the main forms of post-conviction relief are:

- Motion to vacate the judgment: The convicted person may file this motion to challenge their conviction based on new evidence or legal errors in the proceedings.
- Motion to set aside the sentence: A convicted person may file this motion to contest their sentence on the grounds that it is legally invalid.
- State habeas corpus: An incarcerated person may file this petition to seek immediate release if they have already tried and failed to obtain post-conviction relief through other mechanisms.
- Judicial review of the actions of prison and parole officials: A person may seek relief from the administrative decisions of parole or prison officials, such as when they are denied parole or disciplined in prison proceedings.
- Writ of error coram nobis: A convicted person may seek this writ to raise a claim that they received ineffective assistance of counsel during their direct appeal. They may ask to vacate their conviction, set aside their sentence, or other relief.

Victims' Rights

Victims have the right to attend court.

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 the person was convicted after a trial and the court finds that, if a DNA test had been done earlier and the results had been admitted, there is a reasonable probability that the verdict would have been more favorable to the convicted person.

If the person pleaded guilty, the court must grant DNA testing in much narrower circumstances and only if the defendant was convicted of certain serious felonies. Essentially, the court must find that there is a substantial probability that the evidence would have established the person's innocence if a DNA test had been done earlier.

If the court grants testing and the evidence supports the convicted person's claim of innocence, then they may seek to vacate their 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 York 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 earlier than expected through one of these programs in New York: earning “credits” for good behavior or participation in vocational or educational programs in prison, temporary release, parole, participation in “shock” incarceration, conditional parole to allow them to be deported if they are not lawfully in the United States, or medical parole.

Victims’ Rights

Victims have the right to notification of an incarcerated individual’s release, conditional release, release to post-release supervision, transfer to Office of Mental Health custody, release from confinement on mental health supervision, escape or death if requested.

Victims have the right to be heard during the parole process.

Victims have the right to employment protection when the victim speaks at parole hearings.

Prosecutorial Review

Convicted individuals may ask the state-wide [Conviction Review Bureau](#) in the Attorney General’s Office to reconsider their case if they believe they were wrongly convicted.

Certain district attorneys’ offices within New York have also established their own conviction review units, including those in [Brooklyn](#), [Westchester](#), and [Queens](#).

Clemency

The governor can grant [clemency](#) to people convicted under New York law. The Executive Clemency Bureau supports the governor in this work. Clemency typically takes one of three 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. Youth Pardon: a pardon for certain individuals convicted of nonviolent offenses when they were minors.

Victims' Rights

Victims have the right to give their opinion on 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 to apply for the [Victim Compensation program](#).

Victims have the right to a free copy of the police report.

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.