



North Carolina

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 "appropriate relief," which may challenge the person's conviction or sentence based on legal errors in the proceedings or issues with the evidence
- A motion 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 reasonable, accurate, and timely notice of court proceedings, upon request.

Victims have the right to the prompt return of property that 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 14 days after sentencing to decide whether to appeal. If the person decides to appeal, the state [Attorney General's Office](#) 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 notification of the convicted individual's right to appeal.

Victims have the right to a clear explanation of the appellate process, upon request.

Victims have the right to notice of the date, time, and place of any appellate proceedings, upon request.

Victims have the right to notice of the results of an appeal, upon request.

Victims have the right to attend any appellate proceeding that is an open hearing.

Victims have the right to notice if the convicted person is released pending the outcome of the appeal, upon request.

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 North Carolina, the main forms of post-conviction relief are:

- Motion for appropriate relief: The convicted person may file this motion to challenge their conviction or sentence based on new evidence or legal errors in the prior proceedings.
- State habeas corpus: A convicted person may seek relief through a process called "habeas corpus." The scope of this relief in North Carolina is very limited because most claims are supposed to proceed via motions for appropriate relief.

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 swears to their innocence and the court concludes that there is a reasonable probability that the verdict would have been more favorable to the defendant if the DNA testing had been done earlier.

If the court grants testing, it must hold a hearing after the results are available. If the results are favorable to the convicted person, then the court may vacate the conviction or grant a new trial or other relief. If the court grants a new trial, the case starts over.

Victims' Rights

Victims have the right to notice of the results of post-conviction motions, upon request.

Victims can attend any post-conviction proceeding that is an open hearing.

Victims have the right to notification if the conviction is reversed.

Victims' Rights

Victims have the right to request access to victim services if a motion for post-conviction DNA testing is filed. Victims have a right to victim services during the reinvestigation of the case and while the proceedings are pending.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under North Carolina 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 North Carolina: earning "credits" for good behavior or participation in vocational, rehabilitative, educational, or other programs; parole; [Advanced Supervised Release](#), which allows people convicted of certain felonies to reduce their sentences by participating in risk-reduction programs and maintaining a defined level of positive behavior; [Extended Limits of Confinement](#), through which a person may serve part of their sentence outside the prison where the Department of Public Safety deems that placement necessary for family, vocational, medical or other reasons; or medical release.

Victims' Rights

Victims have the right to notification of escape, recapture, expected release date, release, death, or proposed parole, upon request.

Victims have the right to notification before the consideration of release for an individual convicted of a serious felony, upon request.

Victims have the right to be heard in the parole process and to request certain conditions of parole.

Victims have the right to information about the incarcerated individual's assignment to a minimum custody unit, the address of the unit, and whether the minimum custody status may lead to the incarcerated person's participation in one or more community-based programs such as work release or supervised leaves in the community.

Victims have the right to notification about probation conditions and post-release supervision, changes to these conditions, date and location of probation hearings, and the final disposition of any such hearing.

North Carolina Innocence Inquiry Commission

North Carolina has established a [Commission](#) to investigate claims of innocence filed by people convicted of homicide, robbery, sex offense, or class A through E felony in state court. For the Commission to review the claim, the convicted person must present new, credible evidence of innocence that the jury did not hear or that was not available before the plea. The Commission cannot review procedural errors, sentencing issues, or any other claims not associated with actual innocence.

Victims' Rights

Victims have the right to notification and an explanation if a formal inquiry regarding a claim of factual innocence is granted.

Victims have a right to notification that the victim has the right to present their views and concerns throughout the Commission's investigation.

Victims have the right to be present at Commission proceedings.

Victims have the right to notification of any court hearings regarding the Innocence Inquiry.

Clemency

The governor can grant clemency to people convicted under North Carolina law. The [Clemency Office](#) and [North Carolina Post Release Supervision and Parole Commission](#) support 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, on their request, to receive notification of the proposed pardon of the convicted individual or notice of a reprieve or commutation of the convicted individual's sentence.

Victims have the right to present a written statement before clemency is granted.

Victims have the right to notification of the Governor's clemency decision.

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 [Crime Victims Compensation](#).

Victims have the right to information about who to contact if restitution is not paid by the convicted individual.

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.