



North Dakota

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 or legal errors in the proceedings
- A motion to arrest the judgment
- A motion to withdraw the plea
- A motion to correct the sentence

The prosecution may file a motion to correct 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, and abuse.

Victims have the right to a prompt and final conclusion of post-judgment proceedings.

Victims have the right to information about registering for notification.

Victims have the right to be notified and present at proceedings related to their case.

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 entry of judgment to decide whether to appeal. If the person decides to appeal, the local prosecutor or the state [Attorney General's Office](#) assigns a lawyer to oppose the appeal for the prosecution. The state lawyer & 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 timely notification of all post-judgment processes and procedures and to participate in such processes and procedures, 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 Dakota, the main forms of post-conviction relief are:

- Motion under the Uniform Postconviction Procedure Act: The convicted person may file this motion to challenge their conviction or sentence based on new evidence, legal errors in the proceedings, significant changes in the law, or improper execution of the sentence.
- State habeas corpus: A convicted person may seek relief through a process called "habeas corpus." The scope of this relief in North Dakota is very limited because most claims are supposed to proceed under the Act.
- Sentencing reductions for juveniles: A court may reduce the sentence imposed on a person who was under 18 at the time of the offense and who has served at least 20 years of their sentence.

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 contested at trial and the testing has the scientific potential to produce new evidence materially relevant to the convicted person's claim of actual innocence.

If the court grants testing and the results exculpate the convicted person, the person may ask the court to 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 timely notification of all post-judgment processes and procedures and to participate in such processes and procedures, upon request.

Victims have the right to privacy including the right to refuse an interview or discovery request made by the convicted individual and their defense team.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under North Dakota 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 Dakota: earning "credits" for good behavior or participation in vocational, rehabilitative, educational, or other programs; earning "meritorious conduct sentence reductions" for outstanding performance in prison programs or heroic acts; parole; or medical release.

Victims' Rights

Victims have the right to an explanation of the parole process and the pardon process, and to information about registering for notifications from the parole board and prisons.

Victims have the right to information about the temporary or final release, escape, transfer, or death of an incarcerated individual.

Victims have the right to notification of parole proceedings and notification of the parole board's decision.

Victims have the right to be heard in any proceeding involving release, sentencing, or parole.

Victims have the right to have their safety and welfare considered in release decisions.

Clemency

The governor can grant clemency to people convicted under North Dakota law. The [Pardon Advisory 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. Reprieve: a temporary delay of a sentence being carried out
3. Remission: a full or partial reduction of a fine
4. 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 a right to notice when a convicted individual seeks clemency.

Victims have the right to notice of the clemency decision and, if applicable, notice of the date of the convicted person's release.

Victims have the right to submit a written statement for consideration during the pardon process. Victims of violent crimes may make a statement in person, at the discretion of the governor or Pardon.

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 Compensation](#).

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.