



# South 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, legal errors in the proceedings, or juror or prosecutorial misconduct
- For an acquittal
- To arrest the judgment
- To correct or reduce a sentence

The prosecution may also file a motion to reduce the convicted person's sentence in certain, limited 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 freedom from intimidation, harassment, and abuse.

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

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

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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 judgment to decide whether to appeal. If the person decides to appeal, the local prosecutor's office (or, in appeals to the South Dakota Supreme Court, the [Attorney General's Office](#)) assigns a lawyer to oppose the appeal. 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 communicate with the prosecution about appeals and post-conviction if requested.

Victims have the right to timely notification of appeals and post-conviction processes and procedures if requested.

Victims have the right to be present at any hearings in appellate court or post-conviction proceedings.

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

## 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 South Dakota, the main forms of post-conviction relief are:

- State habeas corpus: A person in prison may seek relief through a process called “habeas corpus.” In South Dakota, habeas relief is available when certain types of legal errors occur in the criminal case, when the person is innocent, or when parole officials have acted unlawfully.
- Writ of error coram nobis: This form of relief is available only where a constitutional error has occurred, other forms of post-conviction relief are unavailable, and the person has already served their sentence.
- Administrative Procedure Act: Under this Act, a convicted person may seek a court’s review of decisions of the Board of Pardons and Parole revoking a person’s parole or suspended sentence or setting (or refusing to set) a parole eligibility date.

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

Victims have the right, upon request, to privacy, which includes the right to refuse an interview, deposition, or other discovery request, and to set reasonable conditions on the conduct of any such interaction to which the victim agrees.

## DNA Testing

A person who was convicted of a felony in South Dakota and who claims to be innocent may seek DNA testing of biological material obtained in the case.

The court will not automatically grant the requested testing. Instead, the court may allow testing only if the convicted person has already tried to obtain DNA testing through state habeas corpus and if that person's defense during their trial is consistent with their claim of innocence.

If the court grants testing and the results exculpate the convicted person, that person must file a motion for a new trial. 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 South 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 South Dakota: earning “credits” for good behavior in prison, parole, or compassionate parole.

### Victims’ Rights

Victims have the right to prompt notification of any release, change in custody status, escape, or death of the incarcerated individual, upon request.

Victims have the right to be heard and participate in any proceedings involving release, sentencing, and parole, upon request.

Victims have the right to consideration of their safety in release decisions.

## Clemency

The governor can grant clemency to people convicted under South Dakota law. In South Dakota, clemency typically takes one of three forms:

1. Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime
2. Reprieve: a temporary delay of a sentence being carried out
3. Remission: reduces or cancels court-ordered fines

### Victims’ Rights

Victims have the right to timely notification of the clemency process if requested.

Victims have the right to submit their opinions about clemency.

Victims have the right to notification when clemency is granted if requested.

## 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 request restitution and the right to apply for the [South Dakota Crime Victims Compensation Program](#).

*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.*