



Vermont

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 legal errors in the proceedings, new evidence, or misconduct by jurors or the prosecution
- For an acquittal
- To arrest the judgment
- To modify the sentence

In certain situations, the prosecution may also file a motion to modify the sentence.

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 notification when any court proceeding is scheduled.

Victims have the right to access public records in their case.

Victims have the right to be present at hearings related to post-trial motions.

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

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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 [State's Attorney's Office](#) assigns a lawyer to oppose the appeal. 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 prompt notification if the convicted person appeals. The prosecutor's office should explain the significance of the appeals process and promptly notify the victim of the date, time, and place of any hearing and the decision.

Victims have the right to be present at oral argument or appellate hearings.

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 Vermont, the main forms of post-conviction relief are:

- Petition for review: A person in prison may file a petition challenging their sentence or conviction based on legal errors in the proceedings or new evidence.
- Writ of habeas corpus: Convicted people may also seek a writ of habeas corpus, which is a very old remedy that requires state officials to justify the person's detention. The scope of habeas relief in Vermont is very limited because most requests for post-conviction relief must proceed via petition for review.
- Writ of certiorari: A convicted person can seek review of prison disciplinary proceedings or parole revocation decisions through this writ.

Victims' Rights

Victims have the right to prompt notification if the convicted person requests a post-conviction review. The prosecutor's office should explain the significance of the post-conviction process and promptly notify the victim of the date, time, and place of any hearing and the decision.

Victims have the right to be present at post-conviction hearings.

Representatives for the prosecution or defense, including attorneys, investigators, or experts, must identify themselves and their employer if they contact the victim or the victim's family.

DNA Testing

People convicted of certain felonies under Vermont law may seek DNA testing of biological material obtained in the case.

The court will not automatically grant the requested testing. Instead, the court must allow testing only if the convicted person certifies under oath that they are innocent and the court finds a reasonable probability that the person would not have been convicted or would have received a lesser sentence if the results of the requested DNA testing had been done at the time of the initial prosecution.

If the court grants testing and the results exculpate the convicted person, the court must hold a hearing to determine what relief is appropriate. The convicted person may seek a new trial, to vacate their conviction 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 Vermont 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

Victims have the right to notification when a convicted person files a claim of innocence and requests for DNA testing.

If requested, victims have the right to notification of the time and place of any hearing on the petition for DNA evidence.

If DNA testing is ordered, victims have the right to notification of hearings related to the DNA testing and the outcome of the hearings.

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 Vermont: earning “credits” for good behavior in prison or for extraordinary acts to protect others’ safety, parole, medical parole, or medical furlough.

Victims’ Rights

Victims have the right to notification about the incarcerated individual’s release of any kind, status, or location.

Victims have the right to notification of the convicted person’s escape or death.

Victims have the right to notification 30 days before a parole hearing and the right to testify before the parole board or submit a written statement if requested.

Victims have the right to prompt notification of the parole board’s decision and any conditions of release.

Clemency

The governor can grant clemency to people convicted under Vermont law. The [Parole Board](#) often helps with reviewing clemency applications. In Vermont, 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 to notification of the convicted person’s pardon or commutation of sentence.

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 [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.