

OVERTURNING
**Sex Crime Convictions
in New York**

*CPL 440 Motions, Post-Conviction Relief,
and Wrongful Conviction Remedies*

CRIMINAL APPEALS ATTORNEYS

Post-Conviction Relief and Appellate Advocacy

2027 Edition

About This Guide

This guide addresses the legal mechanisms available to challenge a sex crime conviction in New York. It does not minimize the seriousness of sex offenses or the harm they cause. The legal system provides post-conviction remedies precisely because the stakes run in both directions: convicting the wrong person destroys an innocent life and leaves the actual perpetrator unaccountable.

This guide is information, not legal advice. Every case carries unique facts, a unique procedural history, and strategic choices that demand the judgment of counsel who has reviewed the record. A poorly prepared or premature filing can permanently foreclose claims that would otherwise have succeeded. Anyone who believes they have grounds to challenge a conviction should consult an experienced New York post-conviction attorney before filing anything with a court.

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1. When a Sex Crime Conviction Is Not the End

Every year in New York, people are convicted of sex crimes they did not commit. Some are convicted at trial on forensic evidence that science has since discredited, or after a prosecutor withheld what the defense was entitled to see. Others plead guilty under pressure, without understanding the lifelong consequences, or on the advice of counsel who never did the work the case demanded. These convictions carry the harshest collateral consequences in the system: long prison terms, mandatory sex offender registration under SORA, the possibility of indefinite civil confinement under Article 10 of the Mental Hygiene Law, and a stigma that follows a person for life.

A conviction is not necessarily the end of the road. New York law provides several mechanisms to challenge and overturn a conviction, even years or decades after judgment. The most important is Article 440 of the Criminal Procedure Law, which authorizes post-conviction motions to vacate a judgment and set aside a sentence. For a person convicted of a sex offense, these provisions open a structured legal pathway to present new evidence, raise constitutional violations, challenge the adequacy of prior representation, and secure DNA testing that may establish innocence. Recent reforms have widened that pathway further, including a landmark change that resolved a procedural catch-22 which once prevented defendants from raising ineffective assistance claims in either appellate or post-conviction proceedings.

This guide covers the primary vehicle for relief, CPL 440.10, and the procedural rules that govern how and where a motion is filed. It addresses the grounds most frequently litigated in sex crime cases, the specialized DNA testing provisions New York pioneered as the first state to grant post-conviction forensic testing, the realities of SORA classification and its modification, and federal habeas corpus as the final remedy. Controlling authority is cited throughout so that each proposition can be verified and carried into a filing.

2. Understanding Your Conviction: The Starting Point

Which remedies apply, what standards govern, and what strategic choices are available all turn on two threshold distinctions: how the conviction was obtained, and the difference between a direct appeal and a collateral attack.

Trial Convictions Versus Guilty Pleas

A trial conviction follows a jury or bench verdict on the evidence presented. Challenging it reaches a broad universe of claims: improper admission of evidence, prosecutorial misconduct, ineffective cross-examination, failure to call witnesses. The standards for relief tend to be more favorable. On a motion for DNA testing under CPL 440.30, for instance, a defendant convicted at trial need only show a reasonable probability that the verdict would have been more favorable had the DNA been available.

A guilty plea generally waives most claims arising before the plea. A defendant cannot ordinarily argue that the evidence was insufficient or that the trial court erred, because there was no trial. The claims that survive focus on whether the plea was knowing, voluntary, and intelligent; whether counsel gave effective advice about pleading; and whether the court ensured the defendant understood the consequences. This matters acutely in sex crime cases for two reasons. A large share of sex offense convictions in New York come from pleas negotiated under the pressure of severe exposure and mandatory registration. And the post-conviction DNA

standard for a plea is higher: a substantial probability of actual innocence, rather than a reasonable probability of a more favorable verdict.

Direct Appeal Versus Collateral Attack

A direct appeal is the immediate challenge, filed in the Appellate Division, which reviews the existing record for legal error. It is confined to what appears in the record. A problem not documented in the transcripts or papers generally cannot be considered.

A collateral attack is a separate proceeding in the original trial court, asking that court to reexamine the conviction on information beyond the record. The primary vehicle is the CPL 440.10 motion, which permits the defendant to introduce affidavits from uncalled witnesses, expert reports on the forensic evidence, documentation of concealed misconduct, and other material that never reached the transcript.

Why the Record Is Everything

The distinction between the record and matters outside it goes to the heart of why 440 motions matter in sex crime cases. Consider the recurring patterns: counsel never retains a forensic expert to challenge DNA or medical testimony; the prosecution holds a complainant's prior inconsistent statements or evidence pointing to another perpetrator and never discloses it; a jailhouse informant testifies falsely after a promise of leniency the jury never hears about; defense counsel labors under a conflict or an impairment. None of this appears in the transcript. The direct appeal offers no remedy because the appellate court has nothing to see. The 440 motion is the only vehicle that can put these facts before a court, supported by sworn proof.

Why Timing Matters

CPL 440.10 carries no general statute of limitations; a motion lies at any time after judgment. But timing governs the practice in four ways. DNA testing under CPL 440.30 carries a five-year limitation from judgment, with limited tolling. The mandatory and permissive denial provisions tie directly to timing: a failure to appeal, or to raise a claim in a first motion, can foreclose it later. For anyone who may eventually seek federal habeas relief, the one-year AEDPA clock runs from finality, tolled while a properly filed state motion is pending. And as a practical matter, delay destroys evidence: witnesses move or die, memories fade, and biological material degrades. Anyone considering a challenge should consult counsel as early as possible.

3. CPL 440.10: The Primary Vehicle for Relief

CPL 440.10 is the statute most commonly invoked to overturn a sex crime conviction. It authorizes the court that entered the judgment to vacate it on a defined set of grounds. A successful motion can overturn the conviction, dismiss the charges, or return the case for a new trial. The grounds appear in subdivision 1, lettered (a) through (k); the ones that drive sex crime litigation are set out below.

Fraud by the Court or Prosecution (CPL 440.10(1)(b))

Reaches a judgment procured by duress, misrepresentation, or fraud on the part of the court or prosecutor. In sex crime cases this includes a prosecutor mischaracterizing the evidence during plea negotiations, overstating forensic results, or concealing exculpatory information to pressure a plea.

False Evidence Known to the Prosecution (CPL 440.10(1)(c))

Reaches the knowing use of false testimony or fabricated evidence, invoked where prosecutors presented false forensic testimony, relied on a fabricating jailhouse informant, or allowed a complainant to testify falsely about a material fact while aware of the falsity.

Improper Conduct Not in the Record (CPL 440.10(1)(f))

A particularly valuable provision because it captures off-the-record misconduct: undisclosed Brady violations, jury tampering, ex parte communications between prosecution and court, anything that leaves no trace in the transcript.

Newly Discovered Evidence (CPL 440.10(1)(g))

Reaches new evidence that could not have been produced at trial with due diligence and is of such character as to create a probability of a more favorable verdict. Evaluated under the six-factor test of *People v. Salemi*, 309 N.Y. 208 (1955). In sex crime cases the evidence often takes the form of a complainant recantation, which courts approach with caution and require to be corroborated. See Section 5.

DNA Evidence (CPL 440.10(1)(g-1))

Reaches post-judgment forensic DNA results that undermine the conviction. For a trial conviction, the standard is a reasonable probability of a more favorable verdict; for a guilty plea, a substantial probability of actual innocence. New York was the first state to create a statutory right to post-conviction DNA testing, and given how often biological evidence is present in these cases, this ground is among the most consequential. See Section 8.

Constitutional Violation (CPL 440.10(1)(h))

The broadest ground, reaching any violation of a state or federal constitutional right. This is the vehicle for ineffective assistance claims and for Brady violations that affected the outcome. In sex crime cases, ineffectiveness claims most often center on failure to investigate or call alibi witnesses, failure to retain forensic experts, and failure to advise about SORA registration or Article 10 civil commitment. This is the most heavily litigated basis in the field.

Trafficking Victim (CPL 440.10(1)(i))

Reaches a conviction where the defendant's participation in the offense resulted from being a victim of trafficking. Originally limited to prostitution-related offenses, the provision was expanded in 2021 to cover any offense resulting from trafficking victimization.

Filing the Motion

A 440.10 motion is filed in the court that entered the judgment, which for a felony sex offense is the Supreme Court in New York City or the County Court elsewhere, and is heard by a trial-level judge, not the Appellate Division. The motion must be in writing and served on the District Attorney, and must include a notice of motion, a supporting affirmation or affidavit setting out the factual and legal grounds, and sworn allegations of the essential facts. Documentary proof, expert reports, and witness affidavits are attached as exhibits. The People may answer, and in sex crime cases they virtually always do.

The Court's Decision Path and the Burden of Proof

Under CPL 440.30, the court may grant the motion without a hearing where the facts are conceded or established by documentary proof; may deny without a hearing where the papers state no legal basis, lack sworn support, are conclusively refuted, or rest on the defendant's own uncorroborated affidavit with no reasonable possibility of truth; and must hold a hearing where the motion cannot be resolved on the papers. At a hearing, the defendant bears the burden of proving every essential fact by a preponderance of the evidence under CPL 440.30(6). The defendant's testimony standing alone, uncorroborated, is rarely enough.

The Mandatory Bars and the Ineffectiveness Exception

Subdivision 2 carries mandatory denial provisions. Under (2)(a), the court must deny where the issue was decided on the merits on direct appeal, absent a retroactive change in law. Under (2)(b), it must deny where the conviction is appealable or pending on appeal and the record suffices to review the issue. Under (2)(c), it must deny where the defendant unjustifiably failed to take a direct appeal on a record that was adequate. The 2021 reform added a decisive exception: the (2)(b) bar does not apply to a claim of ineffective assistance of counsel, resolving a catch-22 that had long trapped these claims between the appeal and the motion. A defendant may now raise ineffectiveness in a 440 motion regardless of whether the supporting facts appear on the record.

The one-shot problem: Under CPL 440.10(3)(c), a court may deny a later motion raising a ground the defendant could have raised in an earlier one. In sex crime cases, where ineffectiveness, DNA, newly discovered evidence, and Brady claims often coexist in a single case, a first motion that raises only one or two grounds can forfeit the rest. The statute's interest-of-justice safety valve exists but should never be relied on. The first filing is the one that matters, and it should raise every viable ground.

4. Ineffective Assistance of Counsel

Ineffective assistance is the most commonly raised ground in sex crime post-conviction litigation. These are among the most complex and highest-stakes prosecutions in the system, demanding a level of investigation and expertise that not every defense attorney brings. When representation falls short, the consequences are permanent: a prison sentence, mandatory SORA registration, potential civil commitment under SOMTA, and lifelong collateral effects.

New York's Standard: Meaningful Representation

New York applies its own standard, more protective than the federal test. Under *People v. Baldi*, 54 N.Y.2d 137 (1981), the right to counsel is satisfied so long as the evidence, the law, and the circumstances, viewed in totality and as of the time of representation, show that the attorney provided meaningful representation. This is a holistic inquiry. Courts examine the entire course of the defense, not a single error in isolation, and New York recognizes a cumulative-error principle: individual mistakes that would not each amount to ineffectiveness can, together, deprive a defendant of meaningful representation. See *People v. Benevento*, 91 N.Y.2d 708 (1998).

How New York Diverges from Strickland

The federal standard under *Strickland v. Washington*, 466 U.S. 668 (1984), requires both deficient performance and prejudice. New York's is broader. As the Court of Appeals explained in *People v. Stultz*, 2 N.Y.3d 277 (2004), a showing of prejudice is a significant but not indispensable element in assessing meaningful representation. This matters enormously in sex crime cases, which so often turn on a credibility contest between complainant and defendant with limited physical evidence. In that setting, counsel's failure to investigate, prepare, or challenge the prosecution's narrative can gut the defense without producing a single clean but-for moment, and under New York's standard that failure may still warrant relief.

Recurring Failures

Failure to Retain Forensic Experts

Sex crime cases frequently involve DNA analysis, medical findings, and older methods like hair comparison. Competent counsel must evaluate that evidence and, where warranted, retain an independent expert. The case of Anthony Broadwater shows the stakes. Convicted in 1982 of raping writer Alice Sebold, in part on microscopic hair analysis the Department of Justice has since classified as unreliable, Broadwater served 16 years and registered as a sex offender for decades. A New York court vacated the conviction in November 2021 on the Onondaga County District Attorney's motion, finding the case deeply flawed. New York later settled his wrongful-conviction claim for \$5.5 million.

Failure to Investigate Alibi or Alternative Suspects

Investigation is the foundation of competent advocacy. Where the prosecution relies heavily on a single complainant's account, counsel's failure to develop an alibi or an alternative theory can leave the defendant without any meaningful defense.

Failure to Impeach the Complainant

Where the case depends on the complainant's testimony, thorough cross-examination is essential: background, prior statements, potential motives to fabricate, inconsistencies across accounts. This is where New York's *Rosario* rule, discussed in Section 6, can intersect with an ineffectiveness claim. If the prosecution turned over the complainant's prior statements but counsel failed to use them, the failure rests with counsel.

Failure to Advise on SORA and Article 10

Sex crime convictions carry unique collateral consequences counsel must explain. SORA can require lifetime registration with community notification; SOMTA (Article 10) authorizes civil commitment or intensive supervision after the sentence is served. *People v. Gravino*, 14 N.Y.3d 546 (2010), held SORA registration a collateral consequence, and *People v. Harnett*, 16 N.Y.3d 200 (2011), extended that to SOMTA, so the court need not mention them at the plea. But that classification does not insulate counsel. If an attorney failed to advise about SORA or SOMTA and the defendant can show that knowledge would have changed the decision to plead, that failure may support vacatur.

Defective Plea Advice

The right to effective assistance extends to plea bargaining. Inaccurate advice about sentencing exposure, the odds at trial, or the consequences of a plea, including registration, SOMTA, or immigration, can render the plea involuntary. In *People v. Peque*, 22 N.Y.3d 168 (2013), the Court of Appeals held that a defendant who shows a reasonable probability that proper advice would have changed the decision to plead may obtain vacatur.

Strengthening the Claim

The most valuable evidence is often an affidavit from trial counsel. Where counsel acknowledges that a failure was not strategic, or that they were unaware of critical evidence, that candor eliminates the presumption of reasonable strategy courts otherwise apply. Affidavits from uncalled witnesses, reports from forensic experts showing what a competent investigation would have revealed, and documentation of what counsel did and did not do all strengthen the motion.

5. Newly Discovered Evidence

The discovery of new evidence after conviction is among the most powerful grounds for relief, and it carries particular force in sex crime cases. Advances in DNA technology, the discrediting of once-accepted forensic methods, and witnesses willing to come forward have together overturned numerous New York sex crime convictions.

The Six-Factor Salemi Test

Under CPL 440.10(1)(g) and *People v. Salemi*, 309 N.Y. 208 (1955), the defendant must show that the evidence (1) would probably change the result; (2) was discovered since trial; (3) could not have been discovered earlier with due diligence; (4) is material; (5) is not cumulative; and (6) does not merely impeach prior testimony. The sixth factor is the most litigated. In *People v. Hargrove*, 162 A.D.3d 25 (2d Dep't 2018), the Appellate Division affirmed vacatur based on evidence of a detective's pattern of suggesting identifications and manufacturing confessions, holding it qualified as newly discovered even though it took the form of impeachment, because it went to the core of the prosecution's case.

What Qualifies

- **New forensic evidence.** DNA testing unavailable or not performed at trial, or results obtainable only with current technology from smaller or degraded samples.
- **Discredited methodologies.** Forensic science debunked since the conviction, including microscopic hair analysis, bite mark comparison, and certain blood-spatter interpretation.
- **New witnesses.** People who surface after trial with an alibi, with knowledge of the complainant's inconsistent statements, or able to identify the actual perpetrator.
- **Digital evidence.** Text messages, social media, or location data not obtained in the original investigation.

Recantation by the Complainant

Few issues are as complex as recantation. New York treats it with deep skepticism, tracing to *People v. Shilitano*, 218 N.Y. 161 (1916), which observed that there is no form of proof so unreliable as recanting testimony. Yet recantation is not an automatic dead end. In *People v. Tuckett*, a 2011 conviction for sexual abuse of a minor cousin was vacated in 2015 after the cousin admitted he had lied, and the People declined to re-prosecute. The same case marks the limit: when Tuckett later sought compensation, the courts held he had failed to prove actual innocence by clear and convincing evidence even though the conviction was vacated. Recantation may suffice to vacate, which requires only a probability of a more favorable verdict, while proving actual innocence for other purposes demands more. The practical requirement is corroboration: inconsistencies in the original account, a motive to fabricate, contradicting physical evidence, or other supporting witnesses.

Illustrative Cases

Anthony Broadwater (Onondaga County, 2021). Convicted in 1982 of raping Alice Sebold on a cross-racial identification and microscopic hair analysis. At the lineup, Sebold had identified a different man; the hair analysis relied on discredited methodology. The conviction was vacated in November 2021 as deeply flawed after 16 years served, and the State settled his claim for \$5.5 million.

Rafael Ruiz (New York County, 2020). Convicted of sexual assault in 1985, Ruiz served 25 years while a rape kit sat untested. The Innocence Project and the Manhattan District Attorney's Conviction Integrity Program finally tested it, and every sample excluded Ruiz. The conviction was vacated and all charges dismissed on January 28, 2020.

6. Prosecutorial Misconduct and Brady Violations

The prosecution must both pursue convictions and ensure justice, an obligation that includes a constitutional duty to disclose favorable evidence. In sex crime cases, where the evidence is often thin and the stakes extraordinary, suppressed evidence can be the difference between a just outcome and a wrongful conviction.

Brady v. Maryland: The Duty to Disclose

Brady v. Maryland, 373 U.S. 83 (1963), holds that suppression of evidence favorable to the accused violates due process where the evidence is material to guilt or punishment, irrespective of the prosecution's good or bad faith. A violation has three elements: the evidence is favorable, whether exculpatory or impeaching; the prosecution suppressed it, willfully or inadvertently; and the suppression was material, meaning a reasonable probability of a different outcome. These violations are hidden at trial by definition, surfacing later through FOIL requests, post-conviction investigation, cooperation from witnesses, or Conviction Integrity Unit review.

New York's Rosario Rule

New York adds a layer beyond Brady. Under *People v. Rosario*, 9 N.Y.2d 286 (1961), codified at CPL 240.45(1)(a), the prosecution must disclose all prior recorded statements of its witnesses, whether favorable, unfavorable, or neutral, before the opening statement. A *Rosario* violation is treated as a per se error that can produce reversal without a separate showing of prejudice, which makes it a powerful ground when discovered after trial.

What Gets Withheld in Sex Crime Cases

The Complainant's Prior Inconsistent Statements

A different account given to police, a nurse, a friend, or a relative is both Brady material, if favorable, and *Rosario* material, if the complainant testified. Inconsistencies go directly to the credibility that is usually the central issue.

Psychiatric and Mental Health Records

Fuentes v. Griffin, 829 F.3d 233 (2d Cir. 2016), illustrates the category. The prosecution withheld a psychiatric consultation report documenting the complainant's mental health evaluation, and the Second Circuit reversed, holding the report was the only evidence by which the defense could have impeached the complainant, who provided the only evidence that a crime occurred. The lesson: a claim of privilege or sensitivity does not override the Brady obligation when the records bear materially on credibility.

Prior False Accusations

Evidence that the complainant previously made false allegations of sexual assault is highly relevant and must be disclosed. It goes beyond ordinary impeachment because it addresses the specific type of accusation at issue, and while the rape shield law (CPL 60.42) limits evidence of sexual history, prior false accusations are generally treated as a separate, admissible category.

Exculpatory Forensic Results

Forensic testing that favored the defendant, such as DNA excluding him or a medical examination inconsistent with the alleged assault, must be disclosed; failing to do so is among the most egregious Brady violations. In *People v. Wright*, 86 N.Y.2d 591 (1995), the Court of Appeals reversed where the prosecution failed to disclose that the complainant had served as a police informant, holding the relationship was material to credibility.

Raising the Claim and the Role of Conviction Integrity Units

A Brady claim is raised under CPL 440.10(1)(f) or (1)(h), and the 440 motion is ordinarily the only vehicle because the violation was concealed from the record. The motion must establish all three elements with specific proof. Several District Attorney's offices now operate Conviction Integrity Units that review wrongful-conviction claims independently of the trial divisions. The Brooklyn office's Post-Conviction Justice Bureau is widely regarded as the national model and has supported hundreds of exonerations; the Manhattan unit was instrumental in the Ruiz exoneration. These units are not defense counsel and do not advocate for the defendant, but they hold access to prosecution files the defense cannot reach, and a favorable review can be a powerful catalyst for vacatur. A defendant whose case may involve withheld evidence should consider applying.

7. False Confessions and Coerced Guilty Pleas

Confessing to a crime one did not commit seems impossible, yet false confessions are a leading cause of wrongful convictions, and they occur with disproportionate frequency in sex crime cases, where interrogators can exploit shame and stigma, isolation wears down resistance, and the threat of decades in prison plus lifetime registration drives some to accept pleas for crimes they never committed. According to the Innocence Project, false confessions contributed to roughly 29% of DNA exonerations nationwide. In New York, they factored into 10 of the state's 24 DNA exonerations, a rate of 42% well above the national average, and nearly half of all false confessors were 21 or younger.

The Exonerated Five

No case illustrates the problem better. In 1989, five Black and Latino teenagers were convicted of the rape and assault of a Central Park jogger, primarily on confessions obtained after prolonged interrogation of minors, some as young as 14, that contradicted one another on time, location, and detail. In 2002, serial rapist Matias Reyes confessed, and DNA confirmed he alone was the source of the biological evidence. The Manhattan District Attorney moved to vacate all five convictions, and the five later settled a federal suit against the City for \$41 million. The case exposed how coercive techniques, prolonged questioning of the young without adequate parental presence, and a willingness to accept confessions that contradicted the physical evidence can produce catastrophic error.

Why These Cases Are Vulnerable

- **Stigma and shame.** The accusation itself carries extraordinary social consequences, which interrogators can exploit to drive admissions made under emotional duress.
- **Youth and intellectual disability.** Young people and those with intellectual disabilities are far more susceptible to coercive techniques and less likely to grasp the long-term consequences of a confession.
- **Extended interrogations.** Many false confessions follow hours of continuous questioning. Jeffrey Deskovic, wrongly convicted in Westchester in 1990, confessed after an extended interrogation; DNA later excluded him after nearly 16 years.
- **Maximization and minimization.** Interrogators overstate the evidence or suggest that confessing brings leniency, sometimes falsely claiming DNA already links the suspect to the crime.

Coerced Guilty Pleas

Many defendants plead guilty under pressure while maintaining innocence, particularly where the collateral consequences are severe and poorly explained. Under CPL 440.10(1)(h), an involuntary plea, entered without a full understanding of its consequences or under coercion, is a constitutional violation supporting vacatur. The consequences most often left unexplained are SORA obligations, SOMTA civil commitment, and, for non-citizens, mandatory deportation. Under *Padilla v. Kentucky*, 559 U.S. 356 (2010), and *People v. Peque*, 22 N.Y.3d 168 (2013), counsel and the court must warn a non-citizen that a plea may result in deportation, and a sex offense plea almost always triggers removal as an aggravated felony.

The Tiger Limitation

In *People v. Tiger*, 32 N.Y.3d 91 (2018), the Court of Appeals held that a freestanding actual innocence claim under CPL 440.10(1)(h) is unavailable to a defendant who pleaded guilty, reasoning that the plea waived the right to trial. Innocence advocates criticize the holding, noting that innocent people do plead guilty under the combination of severe sentences and devastating collateral consequences common to these cases. But *Tiger* does not close every door: a defendant who pleaded guilty may still argue the plea was involuntary, that counsel was ineffective, or that the prosecution withheld evidence, and may still seek DNA testing under CPL 440.30.

8. DNA Evidence Motions (CPL 440.30)

DNA evidence is the most powerful mechanism available for exonerating the wrongly convicted, and sex crimes are the category where it has been most impactful, because biological evidence is routinely collected during forensic examinations. Nationally, the vast majority of DNA exonerations involved sexual assault or murder convictions. New York provides a specific procedure for post-conviction testing under CPL 440.30(1-a).

How It Works

Any convicted person may move in the court of conviction for forensic DNA testing of evidence secured during the investigation or prosecution. The movant must show that testable biological evidence exists, that testing was not previously conducted or that better methods now exist, and that the results would be material to a theory that, if confirmed, would have affected the outcome.

Two Standards

After trial, the court must grant testing where there is a reasonable probability that the verdict would have been more favorable had the results been available and admitted, which does not require proving innocence. After a guilty plea to a felony sex offense, a homicide, a violent felony, or a felony charged alongside one of these, a higher standard applies: a substantial probability supporting actual innocence. Testing after a plea is harder to obtain but not impossible, and the statute preserves this pathway even for defendants whose pleas would foreclose a freestanding innocence claim.

The Five-Year Limitation and Its Tolling

CPL 440.30 imposes a five-year limitation from judgment, with generous tolling for extraordinary circumstances that prevented timely filing, for a factual basis that was unknown and not discoverable with due diligence, for the interests of justice on the totality of the circumstances, and, importantly for people serving long sentences, a five-year tolling for defendants who remain in custody in connection with the conviction.

The Rape Kit Backlog

The history of untested kits underscores why this remedy matters. New York City once carried a backlog of roughly 17,000 untested kits; when the city adopted a policy of testing every kit, the results produced roughly 200 prosecutions and lifted the arrest rate for reported rapes from 40% to 70%. Statewide compliance lagged, and a 2020 Comptroller audit found only 21% of kits processed within statutory timeframes. Subsequent reforms, including a statewide electronic tracking system signed into law in December 2022 and 2025 legislation requiring hospital participation and set retrieval timeframes, matter for post-conviction cases because a previously untested kit, once analyzed, can exclude the convicted defendant, identify the actual perpetrator, or both.

Named Exonerations

Leonard Mack (2023). Convicted in 1976 of raping a 17-year-old in Greenburgh, Mack was excluded by lab tests at the time, but the analyst misrepresented the findings. Nearly five decades later, new DNA testing by the Innocence Project and the Westchester Conviction Review Unit matched a man already convicted of other sex crimes, who confessed. Mack's conviction was vacated on September 5, 2023, believed to be the longest wrongful conviction, at 47 years, ever overturned by DNA evidence in the United States.

Other New York DNA exonerations include Scott Fappiano (2006, 21 years served), Alan Newton (2006, 21 years, whose evidence had been misplaced in an NYPD warehouse), and Anthony Capozzi (2007, 20 years, where the DNA matched serial rapist Altemio Sanchez).

Advancing Technology and Discredited Methods

Evolving science keeps opening doors. Touch DNA can develop profiles from skin cells left through casual contact, significant for non-penetrative offenses. Y-STR testing analyzes the Y chromosome and is especially valuable in mixtures of male and female DNA where standard testing fails to separate the profiles. Investigative genetic genealogy, used since 2018, identified the actual perpetrator in the Mack case. At the same time, DNA has exposed the unreliability of older methods: in 2015 the FBI acknowledged flawed hair-comparison testimony in at least 90% of the cases it had then reviewed, and bite mark analysis has been rejected by the National Academies of Sciences as lacking a reliable scientific foundation, with at least 36 people exonerated

after convictions resting on it. A conviction obtained through a since-discredited method may support a 440.10 motion under subsection (1)(g) or (1)(g-1).

9. Challenging SORA Classification

For a person convicted of a sex offense, the conviction is often only the beginning. The Sex Offender Registration Act, codified at Correction Law Article 6-C, imposes registration and community notification that dictate where a person can live, work, and appear in public. For many, the classification carries consequences that rival the prison sentence.

How Classification Works

The Board of Examiners of Sex Offenders scores the individual on a point-based Risk Assessment Instrument across 15 categories, including use of force, number of victims, victim age, criminal history, and acceptance of responsibility. The score sets the presumptive level: Level 1 (70 points or fewer, 20-year registration), Level 2 (75 to 105 points, lifetime registration with public access), and Level 3 (110 points or more, lifetime registration with 90-day in-person verification and full public notification). Special designations as a sexual predator, sexually violent offender, or predicate sex offender trigger lifetime registration regardless of score. The Board recommends, but the court decides at a SORA hearing and may depart from the presumptive level for reasons stated on the record.

Modification Under Correction Law 168-o

Section 168-o provides two avenues. A downward modification of risk level under 168-o(2) may be sought once per year; the petitioner must prove by clear and convincing evidence that the current and future risk of reoffense has decreased and that the threat to public safety is lower than previously determined. Relief from registration under 168-o(1) is narrower, available only to a Level 2 registrant without a special designation who has registered at least 30 years, filed no more than once every two years, on the same clear and convincing standard. For a Level 3 registrant or anyone with a special designation, there is currently no statutory path to removal.

What Courts Look For

The most persuasive factors in a modification petition are extended time crime-free in the community, typically around ten years without supervision, compliance with supervision, completion of and meaningful engagement with sex offense treatment, stable housing and employment, and thorough documentation. In *People v. Reyes*, 2024 NY Slip Op 51641(U) (Sup. Ct. 2024), the court denied a Level 2 petition despite crediting early release from probation and mental health participation, because the petitioner failed to supply the treatment and community-support documentation needed to meet the burden. Even genuine rehabilitation must be documented to prevail.

Constitutional and Override Issues

In *People v. Brown*, 41 N.Y.3d 279 (2023), the Court of Appeals held that applying SORA to the defendant violated due process where the SORA court itself found no sexual contact or motivation, yet the statute required registration because an unlawful-imprisonment victim was under 17. The decision opened the door to as-applied challenges where the underlying offense lacked any sexual element. In *People v. Moss*, 2025 NY

Slip Op 01673 (2025), the Court addressed the automatic Level 3 override triggered by a prior felony sex crime conviction, holding that only a formal vacatur or reversal of the prior conviction removes the override; a collateral finding of infirmity in another proceeding is not enough. The practical lesson is direct: if a prior sex offense conviction is driving a Level 3 override, the only way to remove it is to vacate that prior conviction through a 440.10 motion or appeal.

When the Underlying Conviction Is Vacated

When the conviction supporting registration is formally vacated, the legal basis for registration is eliminated, but removal is not automatic. Counsel should notify the Division of Criminal Justice Services, the sentencing court, and the District Attorney in writing, and where charges are dismissed rather than retried, request a formal court order directing DCJS to remove the individual from the registry. Exonerees have reported delays even after vacatur, so prompt written notice to all parties, and sometimes a court order, is advisable.

An instrument under challenge: The New York City Bar Association has repeatedly criticized the Risk Assessment Instrument as scientifically unvalidated, most recently in a January 2026 supplemental report, urging adoption of empirically validated tools such as the Static-99R. Pending legislation would require validated instruments. This provides a foundation for arguing that a classification resting on an unvalidated instrument may not comport with due process.

10. Federal Habeas Corpus

When every state remedy has been pursued and denied, a final avenue remains. Under 28 U.S.C. 2254, a person convicted in state court may petition a federal district court to review the constitutionality of the conviction. This is not a second appeal. It is a different proceeding, governed by strict procedure and an extremely deferential standard, and for the right case it can be the mechanism that finally corrects a constitutionally defective conviction.

Exhaustion

A federal court will not hear a petition until the petitioner has exhausted all available state remedies: direct appeal through the Appellate Division, leave to the Court of Appeals, and any applicable 440 motions with appeals of their denials. Each federal claim must have been fairly presented to the state courts, invoking the federal constitutional dimension and not merely state law. A claim never raised, with no state remedy remaining, is procedurally defaulted and generally cannot be heard, subject to narrow exceptions for cause and actual prejudice or a fundamental miscarriage of justice.

The One-Year AEDPA Deadline

The Antiterrorism and Effective Death Penalty Act imposes a one-year limitation, running from the latest of four dates, most commonly finality of the state judgment, including the 90-day certiorari window. The clock is tolled while a properly filed state post-conviction motion is pending, and equitable tolling may apply in extraordinary circumstances. Missing the deadline is among the most common reasons petitions are dismissed, so the timeline should be tracked the moment state remedies conclude.

The Deferential Standard

Under 28 U.S.C. 2254(d), relief is unavailable on a claim adjudicated on the merits in state court unless the decision was contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court, or rested on an unreasonable determination of the facts. Clearly established federal law means Supreme Court holdings only, not circuit precedent, and an unreasonable application requires more than error: the decision must be objectively unreasonable. For ineffectiveness claims the review is doubly deferential, to counsel under *Strickland* and to the state court's assessment of counsel.

Common Claims and the Innocence Gateway

The claims most often raised include due process challenges to sufficiency under *Jackson v. Virginia*, 443 U.S. 307 (1979), and to known false testimony under *Napue v. Illinois*, 360 U.S. 264 (1959); ineffective assistance under *Strickland*; Brady violations; and Confrontation Clause claims under *Crawford v. Washington*, 541 U.S. 36 (2004), reaffirmed as to New York in *Hemphill v. New York*, 595 U.S. 140 (2022). A credible showing of actual innocence can serve as a gateway past procedural bars under *Schlup v. Delo*, 513 U.S. 298 (1995), and past the one-year time bar under *McQuiggin v. Perkins*, 569 U.S. 383 (2013), on new reliable evidence showing that more likely than not no reasonable juror would have convicted.

Second Circuit Cases and a Realistic Assessment

Fuentes v. Griffin, 829 F.3d 233 (2d Cir. 2016), granted relief where the prosecution suppressed the complainant's psychiatric evaluation in violation of Brady, and remains one of the most significant Second Circuit grants in a sex crime case. *McCray v. Capra*, 45 F.4th 634 (2d Cir. 2022), denied relief over a vigorous dissent on the non-disclosure of a complainant's mental health records, highlighting the ongoing tension in the Circuit over those records. Honesty requires acknowledging the odds: roughly 3.2% of habeas petitions are granted in whole or in part, only about 1.8% result in any release, and around 63% are dismissed on procedural grounds before the merits. A denial cannot be appealed without a Certificate of Appealability under 28 U.S.C. 2253(c). None of this makes habeas futile. For a petitioner with a strong constitutional claim, particularly one involving suppressed evidence, demonstrably deficient counsel, or credible new evidence of innocence, it can deliver the relief the state courts withheld.

11. Recent Developments

The landscape affecting sex crime convictions in New York has shifted meaningfully in recent years. Some changes expand the tools available; others expose gaps that remain.

The Clean Slate Act and Its Sex Offense Exclusion

The Clean Slate Act, effective November 16, 2024, provides automatic sealing of eligible convictions after fixed waiting periods, with full implementation proceeding toward November 16, 2027. It carries a critical exclusion: any conviction requiring SORA registration is excluded from automatic sealing. For most people convicted of sex crimes, the Act therefore provides no direct benefit, regardless of time passed or rehabilitation. It may eventually help a person who vacated a conviction through a 440 motion and had the charge dismissed or reduced to a non-SORA offense, but the Act itself provides no pathway to overturn a conviction.

The Adult Survivors Act

The Adult Survivors Act opened a one-year civil lookback window, from November 2022 to November 24, 2023, during which more than 3,000 civil suits were filed. It was a civil remedy only. It did not expand criminal post-conviction relief or reopen criminal limitations periods, though some of the civil proceedings may generate evidence relevant to a post-conviction claim.

The Actual Innocence Veto

In December 2023, the Governor vetoed legislation that would have made it substantially easier for people who pleaded guilty to challenge convictions on actual innocence grounds, expanding the evidence that could support such a claim to include video footage, a third party's confession, and coercion into a false plea. The veto is particularly consequential for sex crime convictions, a substantial share of which come from pleas, leaving those defendants under severe limits even where compelling evidence of innocence later emerges. The bill's sponsor has signaled an intent to reintroduce it.

Pending Legislation

- **Wrongful Conviction Recovery Act (S5370/A4440).** Would modernize the compensation framework, giving claimants three years after a pardon or dismissal to file and creating exoneree scholarships and civil service credits.
- **Actual Innocence Compensation (S2696).** Would allow Court of Claims claims specifically for unjust conviction based on actual innocence.
- **Decriminalization Vacatur (S6319).** Would create a new 440 ground to vacate where the underlying conduct has been decriminalized or a change in law warrants retroactive application.

Evolving Science: Memory, Eyewitnesses, and CSAAS

Research continues to establish that memory is an interpretive reconstruction vulnerable to contamination, and mistaken identification is the leading contributor to wrongful sexual assault convictions, appearing in roughly 67% of sexual assault exonerations tracked nationally. Courts are increasingly receptive. Separately, Child Sexual Abuse Accommodation Syndrome testimony has come under scrutiny. In *People v. Williams*, 20 N.Y.3d 579 (2013), the Court of Appeals held that CSAAS testimony is permissible only to explain general behavioral patterns, not to bolster a specific complainant's credibility or to diagnose abuse. Where CSAAS testimony was used to diagnose rather than explain, these developments may support a 440.10 claim or, in federal habeas, a due process challenge to the admission of unreliable expert testimony.

Digital Evidence

Text messages, social media, and location metadata play a growing role on both sides. Post-conviction discovery of digital communications that contradict a complainant's testimony, establish an alibi, or reveal fabrication may constitute newly discovered evidence under CPL 440.10(1)(g), provided it is material, non-cumulative, and could not have been found earlier with due diligence. As digital communication becomes more pervasive and better preserved, the opportunities in this area will continue to expand.

12. Evaluating Your Case and Next Steps

Not every conviction can be successfully challenged. The questions below identify the issues that most commonly lead to relief. A yes to one or more warrants a closer look by experienced post-conviction counsel.

- **Was there biological or DNA evidence, and was it properly tested?** Evidence is often collected but never tested, or tested by methods since superseded. Requesting the case file and contacting the evidence custodian is a critical first step.
- **Did trial counsel investigate properly?** Consider uninterviewed witnesses, experts never retained, an uninvestigated alibi, or an attorney who seemed unprepared on the forensic or medical issues.
- **Was evidence withheld?** Consider prior similar accusations, undisclosed psychiatric treatment bearing on credibility, benefits given to witnesses, or undisclosed reports and forensic results.
- **Has new evidence emerged?** A recantation, digital communications contradicting the testimony, proof a witness lied, or new science undermining the forensic evidence.
- **Were there forensic science issues?** Bite mark analysis, hair microscopy, certain serology, or CSAAS testimony that exceeded its proper bounds may since have been discredited.

Organizations That Can Help

Several organizations provide free or reduced-cost assistance. The Innocence Project, now partnered with NYU Law, takes cases where DNA could prove innocence, and roughly 97% of its exonerees were convicted of sexual assault or murder. The Exoneration Initiative focuses on the more than 90% of cases that lack DNA evidence, relying on investigation rather than testing. The Legal Aid Society's Wrongful Conviction Unit investigates and litigates exonerations statewide. Centurion takes cases without DNA or scientific evidence. The Deskovic Foundation, founded by an exoneree, works on exoneration and reform. District Attorney Conviction Integrity Units review wrongful-conviction claims at no cost, and a favorable review can be a powerful catalyst for vacatur, though performance varies across offices.

Preserve Evidence, and Act Now

If biological evidence exists, preserving it is urgent, because rape kits and forensic samples can be subject to destruction policies. Request the status of any kit or forensic evidence from the law enforcement agency and the District Attorney; if destruction is scheduled, request preservation in writing immediately; and have counsel file a formal motion to preserve if necessary. The loss of biological evidence can eliminate the DNA testing that might prove innocence, and it is one area where delay causes irreversible harm.

Compensation for the Wrongfully Convicted

For those who succeed, Court of Claims Act Section 8-b allows a person who proves by clear and convincing evidence that they were unjustly convicted and imprisoned to recover damages against the State, in a proceeding separate from the criminal case. The framework has been criticized as inadequate, and pending bills seek to modernize it, but even under current law exonerees have recovered significant damages for the years they lost.

Taking the First Step

- 1. Gather your records.** Trial transcripts, sentencing minutes, appellate briefs and decisions, and any prior 440 papers.
- 2. Write down your account.** A clear, detailed statement of what went wrong, with names of uncontacted witnesses, evidence you believe was withheld, problems with representation, and any new evidence.
- 3. Contact an organization.** Reach out to one or more of those above, and do not be discouraged if the first cannot take the case; criteria and capacity differ.
- 4. Consult an attorney.** Seek counsel with specific experience in New York post-conviction litigation and sex crime cases.
- 5. Preserve evidence.** If biological evidence may exist, determine its status and request preservation at once.

The path to overturning a wrongful conviction is neither quick nor easy. But for those with meritorious claims, the tools described here provide real avenues for relief, and knowledge of them is the first step.

CRIMINAL APPEALS ATTORNEYS

Post-Conviction Relief and Appellate Advocacy

A sex crime conviction carries consequences that outlast the sentence, and challenging one demands a command of the evidence, the forensic science, and the procedural traps that end most motions before they are heard. The reversal of such a conviction in New York is rare. It goes to the advocate who finds the error others missed, develops the proof the trial never had, and frames the claim in the exact terms the statute requires.

The firm's practice is confined to appeals and post-conviction litigation. Every matter begins with a rigorous review of the record, the forensic evidence, and the available testimony, and an honest assessment of whether a viable ground exists and what it would take to prevail. The worst outcome is a premature or incomplete filing that forecloses a claim proper preparation could have won, which is why the first motion is treated as the one that counts.

This guide is educational and does not constitute legal advice. Reading it creates no attorney-client relationship.

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