

# Overturing Sex Crime Convictions in New York

*A Comprehensive Guide to CPL 440 Motions, Post-Conviction Relief, and Wrongful Conviction Remedies*

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## 1. Introduction

Every year in New York, people are convicted of sex crimes they did not commit. Others plead guilty under pressure, without understanding the lifelong consequences, or after receiving deficient legal advice. Still others are convicted based on forensic evidence that has since been discredited, or after trials in which prosecutors withheld critical information from the defense. These convictions carry some of the most severe consequences in the criminal justice system: lengthy prison sentences, mandatory sex offender registration under SORA, the possibility of indefinite civil confinement under Article 10 of the Mental Hygiene Law, and social stigma that follows a person for life.

But a conviction is not necessarily the end of the road. New York law provides several mechanisms for challenging and overturning criminal convictions, even years or decades after the original judgment. The most important of these is Article 440 of the New York Criminal Procedure Law (CPL), which authorizes post-conviction motions to vacate judgments and set aside sentences. For individuals convicted of sex offenses, these provisions offer a structured legal pathway to present new evidence, raise constitutional violations, challenge the adequacy of prior legal representation, and seek DNA testing that may establish innocence. In recent years, legislative reforms have further expanded access to post-conviction relief, including a landmark change that resolved a longstanding procedural catch-22 preventing defendants from raising ineffective assistance of counsel claims in either appellate or post-conviction proceedings.

This guide explains those mechanisms in practical terms. It covers the primary vehicle for post-conviction relief (CPL 440.10, the motion to vacate a judgment), the procedural rules governing how and where such motions are filed, the specific grounds most commonly raised in sex crime cases, and the specialized DNA testing provisions that New York enacted as the first state in the nation to grant defendants access to post-conviction forensic testing. Later sections address the role of newly discovered evidence, ineffective assistance of counsel claims, the impact of sex offender registration and civil commitment on post-conviction strategy, and the recent legislative reforms that have expanded access to relief.

The guide is written by Greg Salmon of Criminal Appeals Advocates (CAA), which has represented defendants across the country in post-conviction proceedings, including cases involving sex offense convictions. CAA's practice focuses on identifying legal errors, developing post-conviction strategies, and litigating the motions and appeals necessary to correct unjust outcomes. The information presented here reflects both the statutory framework and the practical realities of litigating these cases in New York courts. It is intended for a broad audience, including individuals who are currently incarcerated, family members seeking to understand what options may exist, and attorneys who are newer to post-conviction practice and want a practical overview of the landscape.

Two important clarifications at the outset. First, this guide addresses the legal mechanisms available to challenge sex crime convictions. It does not minimize the seriousness of sex offenses or the harm they cause to victims. The legal system provides post-conviction remedies precisely because the stakes are so high on both sides: convicting the wrong person not only destroys an innocent life but also means the actual perpetrator remains unaccountable. Second, this guide is educational in nature and does not constitute legal advice. Every case involves unique facts, procedural history, and strategic

considerations that require the analysis of a qualified attorney. If you believe you have grounds to challenge a sex crime conviction, consult with an experienced post-conviction lawyer before taking any action, particularly before filing any papers with the court. As this guide will explain, a poorly prepared or premature filing can permanently foreclose claims that might otherwise have succeeded.

## 2. Understanding Your Conviction: The Starting Point

Before exploring the specific legal tools available for challenging a sex crime conviction in New York, it is essential to understand several foundational concepts that will determine which remedies apply, what standards the court will use, and what strategic choices must be made. The most important of these is the distinction between trial convictions and guilty plea convictions, followed by the difference between direct appeals and collateral attacks.

### Trial Convictions vs. Guilty Pleas

The way a conviction was obtained fundamentally shapes the post-conviction landscape.

**Trial convictions** occur when a defendant exercises the right to a jury trial (or, less commonly, a bench trial) and is found guilty based on the evidence presented. When challenging a trial conviction, the defendant can point to errors that occurred during the trial itself: improper admission of evidence, prosecutorial misconduct, ineffective cross-examination by defense counsel, failure to call witnesses, and similar issues. The universe of potential claims is broad, and the standards for relief tend to be more favorable. For example, when seeking DNA testing under CPL 440.30, a defendant convicted after trial need only show a "reasonable probability" that the verdict would have been more favorable had the DNA results been available. That is a lower bar than the standard applied to guilty pleas.

**Guilty plea convictions** present a different set of challenges. When a defendant pleads guilty, that plea generally waives most claims related to what happened before the plea. The defendant cannot typically argue on appeal that the evidence was insufficient or that the trial court made erroneous rulings, because there was no trial. The claims available after a guilty plea are narrower and generally focus on whether the plea itself was knowing, voluntary, and intelligent; whether defense counsel provided effective assistance in advising the defendant to plead guilty; and whether the court fulfilled its obligation to ensure the defendant understood the consequences of the plea.

This distinction is particularly significant in sex crime cases for two reasons. First, a substantial percentage of sex offense convictions in New York result from guilty pleas, often negotiated under the pressure of severe potential sentences and the threat of mandatory sex offender registration. Second, the post-conviction DNA testing standard for guilty plea cases is significantly higher: the defendant must show a "substantial probability" of "actual innocence," rather than merely a "reasonable probability" of a more favorable verdict. This higher standard reflects the legal system's reluctance to disturb a plea that the defendant voluntarily entered, but it also creates a more difficult path for defendants who may have pleaded guilty despite their innocence.

### Direct Appeal vs. Collateral Attack

After a conviction (whether by trial or plea), two distinct categories of legal challenge are available, and understanding the difference is critical.

A **direct appeal** is the immediate challenge to a conviction filed in the Appellate Division (one of New York's four intermediate appellate courts). On direct appeal, the court reviews the existing trial record (transcripts, exhibits, motions, and rulings) to determine whether legal errors occurred. The appeal is limited to issues that appear in the record. If a problem is not documented in the transcripts or filed papers, the Appellate Division generally cannot consider it. Direct appeals must be filed within specific time limits after sentencing, and the defendant has a right to appointed counsel if indigent.

A **collateral attack**, by contrast, is a separate proceeding filed in the original trial court, asking that court to reexamine the conviction based on information that goes beyond the trial record. In New York, the primary vehicle for collateral attack is the CPL 440.10 motion to vacate judgment. Unlike a

direct appeal, a 440 motion allows the defendant to introduce new evidence: affidavits from witnesses who were never called, expert reports on forensic evidence, documentation of prosecutorial misconduct that was concealed from the defense, and other materials that never appeared in the trial transcript.

### **The Concept of "The Record" and Why 440 Motions Matter**

The distinction between the record and matters outside the record is not merely academic. It goes to the heart of why CPL 440 motions are so important in sex crime cases.

Consider these common scenarios: a defense attorney fails to retain a forensic expert to challenge DNA evidence or medical testimony; the prosecution possesses exculpatory evidence (such as a complainant's prior inconsistent statements or evidence suggesting a different perpetrator) but never discloses it to the defense; a jailhouse informant provides fabricated testimony after being promised leniency that the jury never learns about; the defendant's trial attorney has a conflict of interest or is impaired. None of these problems would appear in the trial transcript. The jury never heard the missing expert testimony. The suppressed evidence, by definition, was never produced. The informant's deal was never disclosed on the record. The attorney's impairment was hidden.

For each of these scenarios, the direct appeal provides no remedy because the appellate court would have no basis to identify the error. A CPL 440 motion is the only mechanism that allows the defendant to bring these facts before a court, supported by sworn affidavits and documentary evidence. This is why experienced post-conviction attorneys often describe the 440 motion as the more powerful tool, particularly in cases where the most serious problems occurred behind the scenes.

### **Why Timing Matters**

Timing is a recurring theme throughout this guide, and understanding its importance from the outset will help you make better decisions.

CPL 440.10 itself contains no general statute of limitations. The statute permits a motion "at any time after the entry of a judgment." However, timing affects post-conviction litigation in several practical ways.

First, DNA testing motions under CPL 440.30 are subject to a five-year limitation from the date of judgment, with limited tolling provisions for extraordinary circumstances, previously unknown facts, or the interests of justice. Missing this deadline can permanently foreclose a DNA-based challenge.

Second, the mandatory and permissive denial provisions of CPL 440.10 create procedural bars that are directly tied to timing. If a defendant fails to take a direct appeal when one was available, the court must deny a subsequent 440 motion on any issue that could have been raised on that appeal (CPL 440.10(2)(c)). If a defendant files one 440 motion and omits a claim that could have been raised, the court may deny a later motion raising that omitted claim (CPL 440.10(3)(c)). These rules mean that decisions made early in the post-conviction process, or failures to act, can permanently eliminate legal options.

Third, for defendants who may eventually seek federal habeas corpus relief under 28 U.S.C. 2254, the federal statute of limitations is one year from the date the conviction becomes final, with tolling during properly filed state post-conviction proceedings. A CPL 440 motion is a critical prerequisite for federal habeas review, and delays in filing state-level motions can jeopardize federal remedies.

Fourth, as a practical matter, delay degrades evidence. Witnesses relocate or pass away. Memories fade. Physical evidence is lost or destroyed. Biological evidence in rape kits can degrade over time. The sooner post-conviction investigation begins, the more likely it is that relevant evidence can be located and preserved.

For all of these reasons, anyone considering a challenge to a sex crime conviction in New York should begin consulting with a qualified post-conviction attorney as early as possible.

### 3. CPL 440.10: The Primary Vehicle for Post-Conviction Relief

CPL 440.10 is the most important section of Article 440 and the statute most commonly invoked by defendants seeking to overturn sex crime convictions in New York. It authorizes the court in which a judgment was entered to vacate that judgment, upon motion of the defendant, based on a defined set of statutory grounds. A successful CPL 440.10 motion can result in the conviction being overturned entirely, the charges being dismissed, or the case being remanded for a new trial.

The statute opens with the following provision: "At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment" on enumerated grounds. Those grounds are set out in subdivision 1, paragraphs (a) through (k). Not all of these grounds are equally relevant to sex crime cases. What follows is a detailed discussion of the grounds most commonly raised, along with the procedural framework for filing and litigating a CPL 440 motion.

#### The Statutory Grounds Most Relevant to Sex Crime Cases

**Fraud by the Court or Prosecution (CPL 440.10(1)(b)).** A conviction may be vacated if "the judgment was procured by duress, misrepresentation, or fraud on the part of the court or a prosecutor or a person acting for or on behalf of a court or a prosecutor." This ground applies when the prosecution or the court engaged in affirmative misconduct that tainted the outcome. In sex crime cases, this can include situations where a prosecutor made misrepresentations during plea negotiations, such as mischaracterizing the evidence, overstating the strength of forensic results, or concealing the existence of exculpatory information to pressure a guilty plea.

**Prosecution Fraud and Misconduct (CPL 440.10(1)(c)).** A conviction may be vacated when "material evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false." This ground addresses the prosecution's knowing use of false testimony or fabricated evidence. In sex crime cases, this has been invoked where prosecutors knowingly presented false forensic testimony, relied on testimony from jailhouse informants who fabricated their accounts, or allowed complainants to testify falsely about material facts while aware of the falsity.

**Improper and Prejudicial Conduct Not in the Record (CPL 440.10(1)(f)).** This ground permits vacatur when "there was improper and prejudicial conduct not appearing in the record" that, if it had appeared in the record, would have required reversal on appeal. This is a particularly valuable provision in sex crime cases because it captures off-the-record misconduct. Examples include undisclosed Brady violations (where the prosecution suppresses evidence favorable to the defense), jury tampering, ex parte communications between the prosecution and the court, and other forms of misconduct that leave no trace in the trial transcript.

**Newly Discovered Evidence (CPL 440.10(1)(g)).** A conviction may be vacated when "new evidence has been discovered since the entry of the judgment" that "could not have been produced by the defendant at the trial even with due diligence" and "is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant." New York courts evaluate newly discovered evidence claims under the six-factor test established in *People v. Salemi*, 309 N.Y. 208 (1955), which requires the defendant to show that the evidence would probably change the result, was discovered after trial, could not have been discovered earlier with due diligence, is material, is not cumulative, and does not merely impeach or contradict prior testimony. In sex crime cases, newly discovered evidence often takes the form of victim recantations, although courts approach recantation testimony with significant skepticism and require strong corroboration.

**DNA Evidence (CPL 440.10(1)(g-1)).** This ground addresses convictions where "forensic DNA testing of evidence performed since the entry of a judgment of conviction" produces results that undermine the conviction. For trial convictions, the defendant must show a "reasonable probability" that the verdict would have been more favorable. For guilty plea convictions involving sex offenses, the standard is higher: a "substantial probability" that the defendant was "actually innocent." New York was the first state in the nation to create a statutory right to post-conviction DNA testing, and this ground is

among the most significant for sex crime defendants, given the frequent presence of biological evidence in sexual assault investigations. DNA testing can identify alternate perpetrators, exclude the convicted defendant as the source of biological material, or through CODIS database comparisons, link the crime to an individual already in the system.

**Constitutional Violation (CPL 440.10(1)(h)).** The broadest ground for vacatur provides that a conviction may be overturned when "the judgment was obtained in violation of a right of the defendant under the Constitution of this state or of the United States." This is the ground under which ineffective assistance of counsel (IAC) claims are raised, as well as Brady violations that affected the outcome and other deprivations of constitutional rights. In sex crime cases, IAC claims frequently focus on defense counsel's failure to investigate or call alibi witnesses, failure to retain forensic experts to challenge DNA or medical evidence, failure to advise the defendant of the consequences of SORA registration, and failure to advise of potential civil commitment under Article 10 of the Mental Hygiene Law. The constitutional violation ground is the most commonly litigated basis for CPL 440.10 motions in sex crime cases.

**Trafficking Victim (CPL 440.10(1)(i)).** A conviction may be vacated when the defendant's "participation in the offense was a result of having been a victim of sex trafficking" under Penal Law 230.34, sex trafficking of a child under PL 230.34-a, labor trafficking under PL 135.35, aggravated labor trafficking under PL 135.37, compelling prostitution under PL 230.33, or trafficking as defined under federal law (22 U.S.C. chapter 78). Originally enacted in 2010 and limited to prostitution-related offenses, this provision was significantly expanded in 2021 to cover any criminal offense resulting from trafficking victimization. While this ground most commonly applies to prostitution and related charges, it could be relevant in sex crime cases where the defendant was coerced into criminal conduct by a trafficker.

### **Procedural Overview: Filing a CPL 440.10 Motion**

A CPL 440.10 motion is filed in the court in which the judgment was originally entered. For felony sex offense convictions, this is typically the Supreme Court (in New York City) or the County Court (outside New York City). The motion is heard by a trial-level judge, not by the Appellate Division.

The motion must be in writing and served upon the District Attorney's office with reasonable notice. The papers must include a notice of motion, a supporting affirmation or affidavit setting forth specific factual and legal grounds, and sworn allegations of the essential facts. Factual allegations may be based on personal knowledge or on information and belief, provided that in the latter case, the sources of information are identified. Supporting documentary evidence (expert reports, witness affidavits, investigative records) should be attached as exhibits.

The prosecution may file a written response denying or admitting the allegations and may submit its own documentary evidence. While the DA's office is not required to respond, in sex crime cases it virtually always does.

After receiving the papers, the court follows a structured decision-making process under CPL 440.30. The court may grant the motion without a hearing if the facts are conceded or established beyond question by documentary proof. The court may deny the motion without a hearing if the papers fail to allege a legal basis for relief, if the factual allegations are not supported by sworn statements, if the allegations are conclusively refuted by documentary proof, or if the claim rests solely on the defendant's own uncorroborated affidavit and there is no reasonable possibility the allegation is true. If the motion cannot be resolved on the papers alone, the court must conduct a hearing, at which the defendant has the right to be present and to present evidence.

### **The Burden of Proof**

At a hearing on a CPL 440.10 motion, the defendant bears the burden of proving every essential fact by a preponderance of the evidence (CPL 440.30(6)). This means the defendant must show that it is more likely than not that the alleged facts are true. While this is a lower standard than the "beyond a reasonable doubt" standard the prosecution must meet at trial, it still requires affirmative proof. The defendant's own testimony, unsupported by corroborating evidence, is rarely sufficient.

## **Mandatory Denial Provisions and the IAC Exception**

CPL 440.10 contains mandatory denial provisions in subdivision 2 that can procedurally bar certain claims regardless of their merit.

Under CPL 440.10(2)(a), the court must deny the motion if the issue was previously decided on the merits in a direct appeal, unless there has been a retroactive change in the controlling law. Under CPL 440.10(2)(b), the court must deny the motion if the conviction is currently appealable or pending on appeal and the record contains sufficient facts to permit appellate review of the issue. Under CPL 440.10(2)(c), the court must deny the motion if the defendant unjustifiably failed to take a direct appeal and the record contained sufficient facts for appellate review.

A critical reform enacted around 2021 added an exception to subdivision 2(b) for claims of ineffective assistance of counsel. Previously, New York courts applied a restrictive rule that trapped many IAC claims: if the facts of the claim appeared on the trial record, the 440 court would deny the motion because the issue could be raised on appeal; but if the defendant raised it on appeal, the appellate court would often find the record insufficient to evaluate counsel's strategy. The 2021 reform resolved this catch-22 by providing that the mandatory denial under 2(b) does not apply "where the issue raised upon such motion is ineffective assistance of counsel." This means IAC claims can now be raised via CPL 440.10 regardless of whether the underlying facts appear on the record, which is a significant expansion of post-conviction rights for defendants convicted of sex offenses.

### **The "One Shot" Problem: CPL 440.10(3)(c)**

One of the most dangerous procedural traps in post-conviction litigation is found in CPL 440.10(3)(c), which provides that the court may deny a motion when the defendant "had the opportunity to raise" the ground "upon a prior motion" under section 440.10 "but failed to do so." While this is a permissive rather than mandatory denial provision (meaning the court has discretion), courts frequently exercise that discretion to bar claims that were omitted from earlier filings.

The practical consequence is that a defendant's first CPL 440.10 motion should be as comprehensive as possible, raising every known ground for relief. Claims omitted from the first motion may be treated as waived in subsequent filings. This creates a particular risk for incarcerated defendants who file pro se motions without the assistance of counsel. A hastily prepared or incomplete pro se motion, raising only one or two grounds while neglecting others, can permanently foreclose claims that a competent attorney would have identified and preserved.

For defendants convicted of sex offenses, this risk is especially acute because CPL 440.10 claims in sex crime cases often involve multiple overlapping grounds: ineffective assistance of counsel, DNA evidence, newly discovered evidence, and constitutional violations may all be present in the same case. Filing a motion that addresses only one of these grounds, while failing to preserve the others, can be an irreversible strategic error.

The statute does include a safety valve: even when a permissive denial ground applies, the court may grant the motion "in the interest of justice and for good cause shown" if the motion is "otherwise meritorious." But reliance on judicial discretion is inherently uncertain, and the better practice is to raise all available grounds in the initial filing. This is one of the strongest reasons to retain experienced post-conviction counsel before filing any CPL 440 motion challenging a sex crime conviction in New York.

## **4. Ineffective Assistance of Counsel**

Of all the grounds for post-conviction relief in sex crime cases, ineffective assistance of counsel (IAC) is the most commonly raised. The reason is straightforward: sex crime prosecutions are among the most complex and high-stakes proceedings in the criminal justice system, demanding a level of preparation, investigation, and legal expertise that not every defense attorney provides. When that representation falls short, the consequences can be devastating and permanent. A conviction for a sex offense carries not only a prison sentence, but also mandatory sex offender registration under SORA,

potential civil commitment under the Sex Offender Management and Treatment Act (SOMTA), and lifelong collateral consequences that touch every aspect of a person's life.

If your trial attorney failed to mount the kind of defense your case demanded, you may have grounds to challenge your conviction through a CPL 440.10 motion.

### **New York's Standard: The People v. Baldi "Meaningful Representation" Test**

New York applies its own constitutional standard for evaluating IAC claims, and that standard is more protective of defendants than the federal test used in most other contexts. The governing case is *People v. Baldi*, 54 N.Y.2d 137 (1981), in which the New York Court of Appeals held that the constitutional right to counsel is satisfied so long as "the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation."

This is a holistic inquiry. Courts do not look at a single error in isolation. They examine the entire course of representation, asking whether the defense, taken as a whole, gave the defendant a fair chance. The standard accounts for the reality that some tactical choices that look questionable in hindsight were reasonable at the time, and it avoids penalizing attorneys for strategies that simply did not succeed. But when counsel's failings are serious enough that the proceedings were fundamentally unfair, relief is warranted.

Importantly, New York courts have recognized a cumulative error principle: even where counsel's individual mistakes might not each rise to the level of ineffective assistance, the cumulative effect of multiple errors can deprive a defendant of meaningful representation. See *People v. Benevento*, 91 N.Y.2d 708 (1998) (applying the totality-of-the-circumstances approach under *Baldi*).

### **The Federal Strickland Standard**

The federal standard, established by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), requires defendants to prove two elements: (1) that counsel's performance was objectively deficient, falling below an objective standard of reasonableness; and (2) that the deficient performance caused prejudice, meaning there is a reasonable probability the result would have been different.

New York's *Baldi* standard is broader. As the Court of Appeals later 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 means that even when a defendant cannot demonstrate that the outcome would probably have changed, reversal may still be warranted if counsel's failings were severe enough to compromise the integrity of the proceedings. The focus is on the fairness of the process as a whole, not just the end result.

This distinction matters enormously in sex crime cases. Many of these cases turn on credibility contests between the complainant and the defendant, with limited physical evidence. In that environment, an attorney's failure to investigate, prepare, or challenge the prosecution's narrative can undermine the entire defense without producing a single quantifiable "but for" moment that satisfies the Strickland prejudice prong. Under New York's broader standard, such failures may still warrant relief.

### **Common IAC Issues in Sex Crime Cases**

Certain patterns of attorney failure appear again and again in sex crime convictions that are later challenged on IAC grounds.

#### ***Failure to Retain Forensic Experts***

Sex crime cases frequently involve forensic evidence, including DNA analysis, medical examination findings, and sometimes older methodologies like hair comparison or bite mark analysis. When the prosecution presents expert testimony connecting the defendant to the crime, competent defense counsel must evaluate that evidence and, where appropriate, retain an independent expert to challenge it.

An attorney who passively accepts forensic conclusions without seeking independent review may be denying the client a critical defense.

The case of Anthony Broadwater illustrates the stakes. Broadwater was convicted in 1982 of raping writer Alice Sebold, based in part on microscopic hair analysis that the U.S. Department of Justice has since classified as unreliable. His conviction stood for nearly four decades. A New York Supreme Court Justice vacated the conviction in November 2021 after the Onondaga County District Attorney joined a motion acknowledging that the case was "deeply flawed." Broadwater had served 16 years in prison and was required to register as a sex offender until his exoneration. Had his original attorney challenged the hair analysis with a qualified forensic expert, the outcome might have been very different.

### ***Failure to Investigate Alibi or Alternative Suspects***

A defense attorney who does not investigate potential alibi witnesses or explore whether another person may have committed the offense is failing in a basic obligation. Investigation is the foundation of competent advocacy. In sex crime cases, where the prosecution often relies heavily on a single complainant's account, the failure to develop alternative theories of the case can leave the defendant without any meaningful defense.

### ***Failure to Impeach the Complainant's Credibility***

In cases that depend on the complainant's testimony, thorough cross-examination is essential. This means investigating the complainant's background, prior statements, potential motives to fabricate, and any inconsistencies between what the complainant told different people at different times. An attorney who does not pursue these avenues may be providing constitutionally inadequate representation.

This is an area where New York's Rosario rule (discussed further in Section 6) can intersect with IAC claims: if the prosecution turned over the complainant's prior statements but defense counsel failed to use them effectively, the failure rests with counsel rather than the prosecution.

### ***Failure to Challenge Forensic Evidence***

Beyond retaining experts, competent counsel must challenge the admissibility and reliability of forensic evidence presented by the prosecution. Hair analysis, bite mark comparisons, and other forensic methodologies have come under significant scientific scrutiny in recent years. The U.S. Department of Justice and the FBI have acknowledged that microscopic hair analysis testimony, once presented as reliable in thousands of prosecutions across the country, was often overstated or scientifically unsupported. Attorneys who accepted such evidence without challenge may have provided constitutionally deficient representation.

### ***Failure to Advise About SORA Consequences and Article 10 Civil Commitment***

Sex crime convictions carry unique collateral consequences that competent counsel must explain to the client. The Sex Offender Registration Act (SORA) requires anyone convicted of a qualifying sex offense to register with law enforcement, potentially for life. A level-three designation means lifetime registration with community notification. The Sex Offender Management and Treatment Act (SOMTA, also known as Article 10) authorizes civil commitment or intensive supervision even after the prison sentence has been served.

In *People v. Gravino*, 14 N.Y.3d 546 (2010), the Court of Appeals held that SORA registration is a collateral consequence of a guilty plea, meaning the court is not required to mention it during the plea colloquy. *People v. Harnett*, 16 N.Y.3d 200 (2011), extended this principle to SOMTA, holding that the potential for civil confinement is also a collateral consequence. However, the fact that these are classified as collateral consequences does not insulate defense counsel from an IAC claim. If an attorney failed to advise the client about SORA or SOMTA, and the client can demonstrate that knowledge of these consequences would have changed the decision to plead guilty, that failure may support vacatur of the plea.

### ***Bad Plea Advice***

Under both state and federal law, the right to effective assistance extends to the plea-bargaining process. If your attorney gave inaccurate advice about the potential sentence, the likelihood of conviction at trial, or the consequences of a plea (including SORA registration, SOMTA proceedings, or immigration consequences), that advice may have rendered the plea involuntary.

*People v. Peque*, 22 N.Y.3d 168 (2013), is a particularly instructive case. Although it primarily addressed the court's obligation to warn non-citizen defendants about deportation, *Peque* also examined the intersection of plea advice and IAC claims in the context of a first-degree rape charge. The Court of Appeals held that a defendant who can show a "reasonable probability" that proper advice would have changed the decision to plead guilty may obtain vacatur.

### **The 2021 Reform: Record-Based IAC Claims via CPL 440.10**

Before 2021, New York law created a frustrating procedural trap for defendants raising IAC claims. If the factual basis for the claim appeared on the trial record (for example, counsel's failure to object to obviously inadmissible evidence), the defendant was generally required to raise it on direct appeal rather than in a CPL 440 motion. But if the claim required facts outside the record (such as evidence of what counsel failed to investigate), it had to go through the 440 process. This bifurcated system caused confusion and often left defendants unable to present a complete picture of counsel's failures in any single proceeding.

In 2021, Governor Hochul signed legislation repealing the procedural bars that had prevented courts from considering record-based IAC claims in CPL 440.10 motions. The reform amended subdivisions 2(b) and 2(c) of CPL 440.10, aligning New York with the federal system and the majority of other states. Defendants may now bring IAC claims in a CPL 440 motion regardless of whether the supporting evidence appears on the trial record. This change is especially significant for sex crime cases, where IAC claims frequently involve a combination of record-based and off-record failures.

### **Practical Note: Strengthening an IAC Claim**

If you are raising an IAC claim, one of the most valuable pieces of evidence you can obtain is a supporting affidavit from your trial attorney. While attorneys are understandably reluctant to acknowledge their own shortcomings, an affidavit explaining the reasoning (or lack of reasoning) behind specific decisions can be decisive. If trial counsel acknowledges that a failure was not strategic, or that they were unaware of critical evidence or legal issues, that candor can eliminate the presumption of reasonable strategy that courts otherwise apply.

Affidavits from uncalled witnesses, reports from forensic experts who can demonstrate what a competent investigation would have revealed, and documentation of what counsel did and did not do during pretrial preparation all strengthen a 440 motion. The goal is to show the court, concretely and specifically, that the representation you received was not meaningful in the context of your case.

## **5. Newly Discovered Evidence**

The discovery of new evidence after a conviction is one of the most powerful grounds for post-conviction relief, and it carries particular significance in sex crime cases. Over the past several decades, advances in DNA technology, the discrediting of once-accepted forensic methodologies, and the willingness of witnesses to come forward with new information have collectively led to the overturning of numerous sex crime convictions in New York. If evidence exists today that was not available at the time of your trial, and that evidence is strong enough to have changed the outcome, the law provides a path to challenge your conviction.

### **The Statutory Framework: CPL 440.10(1)(g)**

Under CPL 440.10(1)(g), a court may vacate a judgment of conviction when "new evidence has been discovered since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such

character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant."

This provision applies to convictions after trial. For DNA-specific claims, CPL 440.10(1)(g-1) provides an additional, specialized ground that applies to both trial convictions and guilty pleas, with slightly different standards for each.

### **The Six-Factor Salemi Test**

The New York Court of Appeals established the framework for evaluating newly discovered evidence claims in *People v. Salemi*, 309 N.Y. 208 (1955). Under the Salemi test, to obtain a new trial based on newly discovered evidence, the defendant must demonstrate that the evidence:

1. Would probably change the result if a new trial were granted;
2. Was discovered since the trial;
3. Could not have been discovered before trial through the exercise of reasonable diligence;
4. Is material to the issues in the case;
5. Is not merely cumulative of evidence already presented at trial; and
6. Does not merely impeach or contradict the testimony of a prior witness.

Each factor must be satisfied. The sixth requirement, the bar on purely impeaching evidence, has been the subject of significant litigation, particularly in the context of evidence that discredits prosecution witnesses or forensic testimony. Courts have recognized exceptions where impeachment evidence goes to the core of the prosecution's case rather than merely attacking peripheral credibility. In *People v. Hargrove*, 162 A.D.3d 25 (2d Dep't 2018), the Appellate Division affirmed vacatur of a conviction based on newly discovered evidence of systemic police investigative misconduct, holding that evidence of detectives engaging in a pattern of "illegally suggesting identifications, manufacturing confessions and other accusatory testimony" qualified as newly discovered evidence even though it was, in form, impeachment material.

### **What Qualifies as "Newly Discovered" in Sex Crime Cases**

In the sex crime context, newly discovered evidence can take many forms:

**New forensic evidence.** DNA testing that was unavailable or not performed at the time of trial is the most common example. Advances in DNA technology have made it possible to obtain results from smaller, more degraded samples than was previously possible. Evidence that was tested using older methods may yield different results with current techniques.

**Discredited forensic methodologies.** Evidence that the forensic science used at trial has been debunked or significantly questioned since the conviction constitutes newly discovered evidence. This includes microscopic hair analysis (which the FBI acknowledged in 2015 had been overstated in thousands of cases), bite mark analysis, and certain forms of blood spatter interpretation.

**New witnesses.** Individuals who come forward after the trial with relevant information, such as witnesses who can provide an alibi, witnesses who observed the complainant making inconsistent statements, or individuals who can identify the actual perpetrator.

**Digital evidence.** Text messages, social media posts, GPS data, or other electronic records that were not obtained during the original investigation but have since become available.

### **Recantation by the Complainant**

Few issues in post-conviction litigation are as legally complex as recantation by the complaining witness. New York courts treat recantation evidence with significant skepticism. The standard view traces back to *People v. Shilitano*, 218 N.Y. 161 (1916), in which the Court of Appeals observed that "there is no form of proof so unreliable as recanting testimony." Courts recognize that recantations can be

motivated by external pressures, family relationships, fatigue with the legal process, or other factors unrelated to truth.

That said, 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 recanted, admitting he had lied. The County Court granted the CPL 440.10 motion following a hearing, and the People chose not to re-prosecute; the indictment was ultimately dismissed. The case demonstrates that when a court finds the recantation credible and consistent with other evidence, it can lead to vacatur.

However, the Tuckett case also illustrates the limits of recantation. When Tuckett later filed a claim for monetary compensation, both the Appellate Division, Fourth Department, and the Court of Appeals held that he failed to prove actual innocence by clear and convincing evidence, even though his criminal conviction had been vacated. The lesson is that recantation may be sufficient to vacate a conviction (which requires only a probability of a more favorable verdict), but proving actual innocence for other purposes requires a higher evidentiary standard.

For anyone considering a claim based on recantation, the practical challenge is corroboration. A bare recantation, standing alone, is unlikely to succeed. Courts want to see independent evidence that supports the recantation, such as inconsistencies in the original testimony, evidence of motive to fabricate the original accusation, physical evidence that contradicts the original account, or other witnesses who can provide context.

## **Illustrative Cases**

Two New York exoneration cases powerfully illustrate how newly discovered evidence can overturn sex crime convictions, even after decades.

**Anthony Broadwater (Onondaga County, exonerated 2021).** Broadwater was convicted in 1982 of raping Alice Sebold, who later wrote about the assault in her memoir "Lucky." The conviction rested on two pillars: Sebold's cross-racial eyewitness identification and microscopic hair analysis linking Broadwater to the crime. Both pillars eventually crumbled. At the lineup, Sebold had actually identified a different man as her attacker; the prosecutor then told her she had picked the wrong person. The hair analysis relied on methodology the U.S. Department of Justice later deemed unreliable. In November 2021, a New York Supreme Court Justice vacated the conviction on motion of the Onondaga County District Attorney, finding that the case was "deeply flawed." Broadwater had served 16 years in prison and was required to register as a sex offender for more than two decades after his release. New York State later settled his wrongful conviction claim for \$5.5 million.

**Rafael Ruiz (New York County, exonerated 2020).** Ruiz was convicted of sexual assault in 1985 in East Harlem and sentenced to a lengthy prison term. He served 25 years. Throughout that time, a rape kit collected from the complainant sat untested in storage. Through a joint investigation by the Innocence Project and the Manhattan District Attorney's Conviction Integrity Program, the kit was finally submitted for DNA analysis. Every sample excluded Ruiz. On January 28, 2020, the Supreme Court granted a joint motion to vacate the conviction, and all charges were dismissed. The Ruiz case is a stark reminder that untested evidence can hold the key to proving innocence, and that the failure to test available evidence at the time of trial does not prevent a defendant from seeking testing decades later.

These cases, while exceptional in their outcomes, reflect patterns that appear throughout wrongful sex crime convictions: overreliance on eyewitness identification (which research has shown to be especially unreliable in cross-racial identifications), uncritical acceptance of forensic methodologies that have since been discredited, and the failure to test available physical evidence.

## **DNA-Specific Claims: CPL 440.10(1)(g-1)**

New York law provides a dedicated ground for post-conviction relief based on DNA evidence under CPL 440.10(1)(g-1). For trial convictions, the defendant must show a "reasonable probability" that the verdict would have been more favorable. For guilty plea convictions, the standard is higher: the defendant must demonstrate a "substantial probability" of actual innocence.

CPL 440.30 also authorizes post-conviction DNA testing itself. A defendant convicted of certain serious offenses, including sex offenses, may move for forensic DNA testing of evidence secured during the investigation or prosecution. If testing was not available at the time of trial, or if advances in DNA technology could yield results that were not previously obtainable, the court may order testing and comparison of DNA profiles against the Combined DNA Index System (CODIS) database. This mechanism has been instrumental in New York's DNA exonerations.

## **6. Prosecutorial Misconduct and Brady Violations**

The prosecution in a criminal case holds a dual role: it must vigorously pursue convictions, but it must also ensure that justice is done. This obligation includes a constitutional duty to disclose evidence favorable to the defense. When prosecutors withhold such evidence, present testimony they know to be false, or otherwise engage in misconduct, the integrity of the conviction is compromised. In sex crime cases, where the evidence is often limited and the stakes are extraordinarily high, prosecutorial misconduct can be the difference between a just outcome and a wrongful conviction.

### **Brady v. Maryland: The Duty to Disclose Exculpatory Evidence**

The foundation of the prosecution's disclosure obligation is *Brady v. Maryland*, 373 U.S. 83 (1963), in which the U.S. Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

A Brady violation has three elements. First, the evidence must be favorable to the defendant, either because it is exculpatory (tending to show innocence) or because it could be used for impeachment (undermining a prosecution witness's credibility). Second, the evidence must have been suppressed by the prosecution, whether willfully or inadvertently. Third, the suppression must have been material, meaning there is a reasonable probability that the outcome would have been different had the evidence been disclosed.

Brady violations are, by their nature, hidden from the defense at the time of trial. They typically come to light later through post-conviction investigation, cooperation from prosecution witnesses who disclose what was concealed, Freedom of Information Law (FOIL) requests, or review by Conviction Integrity Units.

### **New York's Rosario Rule: A Broader Disclosure Obligation**

New York provides an additional layer of protection beyond Brady through the Rosario rule, established in *People v. Rosario*, 9 N.Y.2d 286 (1961) and codified in CPL 240.45(1)(a). Unlike Brady, which requires the prosecution to disclose only material that is favorable to the defense, the Rosario rule requires disclosure of all prior recorded statements of prosecution witnesses, regardless of whether those statements are favorable, unfavorable, or neutral.

The Court of Appeals explained the rationale in Rosario itself: a pretrial statement is valuable "not just as a source of contradictions." Even statements that appear to be consistent with trial testimony "may contain matter which will prove helpful on cross-examination. They may reflect a witness' bias, for instance, or otherwise supply the defendant with knowledge essential to the neutralization of the damaging testimony of the witness which, on their face, the statements might appear to support."

The Rosario rule must be satisfied before the prosecution's opening statement in a jury trial. Failure to disclose Rosario material is treated as a per se violation, meaning it can result in automatic reversal without requiring the defendant to demonstrate prejudice. This makes Rosario violations a powerful ground for post-conviction relief when they are discovered.

### **Types of Evidence Commonly Withheld in Sex Crime Cases**

In sex crime prosecutions, certain categories of evidence are particularly susceptible to nondisclosure.

### ***Complainant's Prior Inconsistent Statements***

If the complainant told a different story to police, to a hospital nurse, to a friend, or to a family member than what was presented at trial, those prior statements are both Brady material (if favorable to the defense) and Rosario material (if the complainant testified). Inconsistencies in the complainant's account go directly to credibility, which in many sex crime cases is the central issue.

### ***Psychiatric and Mental Health Records***

The case of *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016), illustrates this category vividly. Jose Alex Fuentes was convicted of first-degree rape and sodomy. The prosecution intentionally withheld a psychiatric consultation report from Woodhull Hospital documenting the complainant's mental health evaluation, which noted family problems, feelings of being mistreated, drug use, depression, and hallucinations. The prosecutor admitted she intentionally withheld the report, claiming concern for psychiatrist-patient privilege. The Second Circuit reversed the conviction, holding that the psychiatric report was "the only evidence by which the defense could have impeached [the complainant's] credibility as to her mental state" and that the complainant "provided the only evidence that what occurred was a crime." The court rejected the prosecution's argument that the error was harmless.

This case underscores an important principle: prosecutorial claims of privilege or sensitivity do not override the Brady obligation. When psychiatric records bear on a complainant's credibility or mental state in a way that is material to the defense, they must be disclosed.

### ***Prior False Accusations by the Complainant***

Evidence that the complainant has previously made false allegations of sexual assault is highly relevant to the defense and must be disclosed under Brady. Such evidence goes beyond ordinary impeachment because it directly addresses the specific type of accusation at issue. While courts impose limitations on introducing evidence of a complainant's sexual history under New York's rape shield law (CPL 60.42), prior false accusations are generally treated as a separate category subject to disclosure and admissible for impeachment purposes.

### ***Exculpatory Forensic Results***

If forensic testing conducted by the prosecution yielded results favorable to the defendant (such as DNA that excluded the defendant, or medical examinations inconsistent with the alleged assault), those results must be disclosed. The failure to disclose exculpatory forensic results is one of the most egregious forms of Brady violations.

In *People v. Wright*, 86 N.Y.2d 591 (1995), the Court of Appeals addressed a related issue: the prosecution's failure to disclose that the complainant had previously operated as an informant for local police. The Court held that this relationship was relevant to the complainant's credibility and reversed the conviction, finding that the People were required to disclose the information under Brady.

### ***Raising Brady Claims Through CPL 440.10***

Brady claims are typically raised under CPL 440.10(1)(f), which provides for vacatur where there was "improper and prejudicial conduct not appearing on the record" that would have required reversal on appeal, or under CPL 440.10(1)(h), which addresses constitutional violations more broadly.

Because Brady violations involve evidence that was, by definition, concealed from the defense, these claims cannot be raised on direct appeal (where the record would contain no indication that evidence was withheld). The CPL 440 motion is often the only available vehicle. The motion must be supported by specific evidence of what was withheld, how the defendant learned of the withheld material, and why the material was material to the defense.

To succeed, the defendant must establish all three Brady elements: favorable evidence, suppression, and materiality. The materiality standard does not require proof that disclosure would have guaranteed a different outcome, only that there is a reasonable probability the result would have been different. In cases where the prosecution's case depended heavily on the complainant's credibility, as is

common in sex crime cases, even a single piece of suppressed impeachment evidence can satisfy the materiality threshold.

### **Conviction Integrity Units: A Resource for Post-Conviction Review**

In recent years, several District Attorney's offices in New York have established Conviction Integrity Units (CIUs) dedicated to reviewing claims of wrongful conviction. These units operate independently from the trial divisions that obtained the original convictions, and they have the authority to investigate claims, review evidence, and, where warranted, join in motions to vacate convictions.

**The Brooklyn District Attorney's Post-Conviction Justice Bureau** is one of the most active CIUs in the country. Under the leadership of successive Brooklyn District Attorneys, this unit has supported hundreds of exonerations, including many arising from cases tainted by police and prosecutorial misconduct. It reviews cases involving credible claims of innocence or serious legal error, including Brady violations and prosecutorial misconduct. Individuals with Brooklyn convictions who believe evidence was withheld or that their case involved prosecutorial error should consider submitting an application to this unit.

**The Manhattan District Attorney's Post-Conviction Justice Unit** has similarly played a significant role in reviewing and correcting wrongful convictions. The Manhattan unit was instrumental in the exoneration of Rafael Ruiz, whose 1985 sexual assault conviction was vacated in 2020 after the unit collaborated with the Innocence Project to test a previously untested rape kit that excluded Ruiz. The Manhattan unit has also supported exonerations in cases involving Brady violations, false confessions, and unreliable forensic evidence.

Other New York City boroughs, including Queens and the Bronx, also maintain conviction integrity units with meaningful track records. Outside New York City, several counties have established their own CIUs, though these units have collectively handled fewer cases.

It is important to understand what CIUs can and cannot do. They are not defense attorneys, and they do not advocate for the defendant. Their function is to investigate claims and determine whether the conviction can still be considered reliable. If the unit concludes that a conviction is unsound, it may recommend that the District Attorney join a motion to vacate, which courts typically grant. If the unit concludes the conviction is sound, the defendant retains the right to pursue a CPL 440 motion independently.

For anyone whose sex crime conviction may have involved prosecutorial misconduct, Brady violations, or withheld evidence, reaching out to the relevant Conviction Integrity Unit is a worthwhile step. These units have access to prosecution files that are otherwise unavailable to the defense, and their willingness to reexamine old cases has proven to be a meaningful avenue for justice.

## **7. False Confessions and Coerced Guilty Pleas**

Few things seem more counterintuitive than confessing to a crime you did not commit. Yet false confessions are one of the leading causes of wrongful convictions in the United States, and they occur with disproportionate frequency in sex crime cases. When the crime alleged is sexual in nature, the pressure to confess can be overwhelming: interrogators exploit the shame and stigma surrounding the accusation, isolation wears down resistance, and the threat of decades in prison, combined with lifetime sex offender registration, drives some defendants to accept plea deals for crimes they never committed.

According to the Innocence Project, false confessions contributed to approximately 29% of all DNA exonerations nationwide. In New York specifically, false confessions were a factor in 10 of the state's 24 DNA exonerations, a rate of 42% that is notably higher than the national average. Nearly half of all false confessors were 21 years old or younger at the time of their interrogation.

### **The Exonerated Five: A Landmark Case**

No case better illustrates the problem of false confessions in New York sex crime prosecutions than that of the Central Park Five, now known as the Exonerated Five. In 1989, five Black and Latino

teenagers (Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana, and Korey Wise) were convicted of the brutal rape and assault of a jogger in Central Park. The convictions rested primarily on confessions obtained after prolonged police interrogation of minors, some as young as 14. The confessions differed from one another in significant ways, including the time, location, and details of the alleged attack.

In 2002, serial rapist Matias Reyes confessed to the crime. DNA testing confirmed that Reyes alone was the source of the biological evidence recovered from the victim. On December 19, 2002, the Manhattan District Attorney moved to vacate all five convictions. The five exonerees later settled a federal lawsuit against New York City for \$41 million.

The case exposed critical flaws in how police interrogate young suspects: prolonged questioning without adequate parental presence, psychologically coercive techniques, and a willingness to accept confessions that contradicted the physical evidence.

### **Why False Confessions Are Common in Sex Crime Cases**

Several factors make sex crime cases particularly vulnerable to false confessions:

- **Stigma and shame.** The accusation itself carries extraordinary social consequences. Interrogators can exploit the suspect's desperation to end a humiliating process, leading to admissions made under extreme emotional duress.
- **Youth and intellectual disability.** Young people and individuals with intellectual disabilities are significantly more susceptible to coercive interrogation techniques. They are more likely to comply with authority figures, more likely to make impulsive decisions to end the immediate discomfort of questioning, and less likely to understand the long-term consequences of a confession.
- **Extended interrogations.** Many false confessions in sex crime cases follow hours of continuous questioning. Jeffrey Deskovic, who was wrongfully convicted in Westchester County in 1990 of raping and murdering a 15-year-old classmate, confessed after an extended interrogation. DNA testing later excluded him and identified the actual perpetrator, and Deskovic was exonerated after serving nearly 16 years.
- **Maximization and minimization.** Interrogators may overstate the strength of the evidence against a suspect (maximization) or suggest that confessing will lead to leniency (minimization). In sex crime cases, they may tell a suspect that DNA evidence has already linked them to the crime, or suggest that admitting to a less serious version of events will make things easier.

### **Coerced Guilty Pleas**

False confessions during interrogation are only part of the problem. Many defendants plead guilty under pressure even when they maintain their innocence, particularly in sex crime cases where the collateral consequences of conviction are severe and often poorly explained by defense counsel.

Under CPL 440.10(1)(h), a conviction may be vacated when the judgment was obtained in violation of the defendant's constitutional rights. An involuntary guilty plea, one entered without a full understanding of its consequences or under coercive circumstances, qualifies as such a constitutional violation.

In sex crime cases, the consequences that defendants are most often uninformed about include:

- **Sex Offender Registration Act (SORA) obligations.** Lifetime registration, community notification, residency restrictions, and the stigma of being publicly listed as a sex offender are consequences many defendants do not fully understand when entering a plea. In *People v. Gravino*, 14 N.Y.3d 546 (2010), the Court of Appeals held that SORA registration is a collateral consequence, meaning the trial court is not required to advise the defendant about it before accepting a guilty plea. However, the defendant may still seek vacatur if the failure to disclose

SORA consequences was so material that they would have made a different decision had they known.

- **Civil commitment.** Under the Sex Offender Management and Treatment Act (SOMTA), individuals convicted of sex offenses may face civil confinement or intensive supervision after their prison sentence ends. In *People v. Harnett*, 16 N.Y.3d 200 (2011), the Court held that SOMTA consequences are also collateral, and courts have no obligation to mention them during the plea allocution.
- **Padilla-type claims.** Under *Padilla v. Kentucky*, 559 U.S. 356 (2010), defense counsel must advise noncitizen clients about the immigration consequences of a guilty plea. For non-citizen defendants, the consequences of a sex crime guilty plea are particularly devastating. Sex offense convictions almost invariably trigger mandatory deportation as an "aggravated felony" under federal immigration law. Under *People v. Peque*, 22 N.Y.3d 168 (2013), a court must advise a non-citizen defendant that a guilty plea may result in deportation. Failure to provide this warning can support a motion to vacate, though the defendant must establish a "reasonable probability" that, had the warning been given, they would have rejected the plea.

### **The Tiger Limitation**

One significant limitation applies to defendants who pleaded guilty: in *People v. Tiger*, 32 N.Y.3d 91 (2018), the Court of Appeals held that a freestanding claim of actual innocence under CPL 440.10(1)(h) is not available to a defendant convicted upon a guilty plea. The court reasoned that a guilty plea represents a voluntary waiver of the right to trial, and the constitutional framework recognizing actual innocence claims does not extend to that context.

This ruling has drawn criticism from innocence advocates, who point out that innocent people do plead guilty, especially when facing the combination of severe sentences and devastating collateral consequences that characterize sex crime prosecutions. However, the Tiger decision does not close every door. Defendants who pleaded guilty can still pursue other CPL 440.10 grounds, including claims that the plea was involuntary, that defense counsel was ineffective, or that the prosecution withheld exculpatory evidence. They can also seek post-conviction DNA testing under CPL 440.30, which operates under its own separate framework discussed in the next section.

## **8. DNA Evidence Motions (CPL 440.30)**

DNA evidence has transformed criminal justice, serving both as a tool for solving crimes and as the most powerful mechanism available for exonerating the wrongly convicted. In sex crime cases, where biological evidence is frequently collected during forensic examinations, DNA testing has an unmatched capacity to identify or exclude suspects with near-certainty. New York law provides a specific statutory procedure for post-conviction DNA testing under CPL 440.30(1-a), and understanding this procedure is essential for anyone seeking to challenge a sex crime conviction.

### **The Power of DNA in Sex Crime Cases**

Sex crimes are the category of offense where DNA evidence has historically been most impactful. Biological evidence (semen, saliva, skin cells, blood) is routinely collected during forensic medical examinations of complainants and from crime scenes. When this evidence is subjected to modern DNA analysis, it can definitively determine whether a specific individual was the source.

Nationally, the vast majority of DNA exonerations have involved sexual assault or murder convictions. In New York alone, 24 individuals have been exonerated through DNA evidence as of 2023, and a disproportionate share of those cases involved sex crime convictions. The Innocence Project has documented that the exonerees served a combined 277 years in prison, averaging 11 years each.

## How CPL 440.30 DNA Testing Works

Any person convicted of a crime in New York may file a motion under CPL 440.30(1-a) requesting forensic DNA testing of evidence that was secured during the investigation or prosecution of their case. The motion is filed in the court that entered the judgment of conviction.

To obtain testing, the movant must establish three things:

1. **Testable evidence exists.** Biological evidence was collected in connection with the case and remains in a condition that permits DNA analysis.
2. **Testing was not previously conducted, or better methods now exist.** Either the evidence was never subjected to DNA testing, or advances in technology now allow testing methods that were unavailable at the time of trial.
3. **The results would be material.** The movant must demonstrate a connection between the requested testing and a theory of the case that, if confirmed by the DNA results, would have affected the outcome.

## Two Different Standards

CPL 440.30 applies different evidentiary standards depending on how the conviction was obtained:

**After trial:** For defendants convicted after a jury or bench trial, the court must grant the testing motion if it finds "a reasonable probability that the verdict would have been more favorable to the defendant" had the DNA results been available and admitted at trial. This does not require the defendant to prove innocence. It requires only a showing that there is a reasonable probability (more than a mere possibility, but less than a certainty) that the DNA results would have changed the outcome. Courts evaluate this by examining the overall strength of the prosecution's case: if the case relied heavily on physical evidence or identification evidence that DNA could undermine, the standard is more easily met.

**After a guilty plea (for sex offenses and certain other crimes):** For defendants who pleaded guilty to a felony sex offense, a homicide offense, a violent felony offense, or any other felony charged alongside one of these offenses, a higher standard applies. The court must find "a substantial probability supporting the defendant's actual innocence." This elevated standard reflects the stronger procedural finality courts attach to guilty pleas. The movant must essentially show that the DNA results would prove actual innocence, not merely that they might have been helpful at trial.

This distinction is significant. It is harder to obtain DNA testing after a guilty plea, but it is not impossible, and the statute explicitly preserves this pathway even for defendants whose guilty pleas would otherwise foreclose a freestanding innocence claim under *People v. Tiger*.

## The Five-Year Filing Limitation

CPL 440.30 imposes a five-year limitation period from the entry of judgment. However, the statute provides generous tolling provisions:

- **Extraordinary circumstances.** If the defendant has diligently pursued their rights and some extraordinary circumstance prevented timely filing, the deadline may be extended.
- **Unknown facts.** If the factual basis for the motion was unknown and could not have been discovered through due diligence before the deadline expired, the limitation period is tolled.
- **Interests of justice.** The court may consider the totality of the circumstances, including the strength of the evidence of guilt, the potential impact on public confidence in the justice system, community safety, and the defendant's diligence.
- **Incarceration tolling.** The limitation period is tolled for five years for defendants who remain in custody in connection with the conviction. For sex crime defendants serving lengthy sentences, this provision is particularly important.

## New York's Rape Kit Backlog

The history of untested rape kits in New York underscores why post-conviction DNA testing remains so critical. Between 2000 and 2003, New York City accumulated a backlog of approximately 17,000 untested sexual assault evidence collection kits. When the city finally adopted a policy of testing every kit for DNA, the results were striking: the testing produced roughly 200 prosecutions, and the arrest rate for reported rapes jumped from 40% to 70%.

Despite the city's efforts, statewide compliance lagged. A 2020 audit by the New York State Comptroller found that as of October 2019, only 21% of rape kits (356 of 1,656) were processed within the time frames prescribed by law.

New York has since enacted several legislative reforms to address the backlog:

- **2016-2017 Executive Law amendments** required all law enforcement agencies to submit untested rape kits to forensic laboratories by December 28, 2017. Kits received before February 2017 had to be processed within 210 days; kits received after that date, within 90 days.
- **Governor Hochul signed legislation in December 2022** establishing a statewide electronic tracking system for rape kits, allowing survivors to anonymously track the status and location of their evidence collection kits.
- **2025 legislation** expanded the system to require hospital participation and prescribed timeframes within which police departments must retrieve kits from hospitals and deliver them to laboratories.

These reforms matter for post-conviction cases because previously untested kits, once finally analyzed, can produce results that either exclude the convicted defendant, identify the actual perpetrator through database matches, or both.

## Case Examples: DNA Exonerations in New York Sex Crime Cases

Several New York exonerations illustrate the transformative power of DNA testing:

**Rafael Ruiz (2020).** Ruiz was convicted of sexual assault in 1985 in East Harlem and served 25 years in prison. His rape kit had sat untested for decades. Through a joint investigation by the Innocence Project and the Manhattan District Attorney's Conviction Integrity Program, the kit was finally tested. Every DNA sample excluded Ruiz. On January 28, 2020, a joint motion to vacate was granted and all charges were dismissed.

**Leonard Mack (2023).** Mack was convicted in 1976 of raping a 17-year-old in Greenburgh, New York. Lab tests at the time had actually excluded Mack as the source of the semen, but the analyst deliberately misrepresented her findings. Nearly five decades later, the Innocence Project and the Westchester County DA's Conviction Review Unit arranged new DNA testing. The results matched a Westchester man already convicted of a separate rape in 1975 and another sex crime in 2004. That man confessed. Mack's conviction was vacated on September 5, 2023, after what is believed to be the longest wrongful conviction (47 years) ever overturned by DNA evidence in United States history.

**Scott Fappiano (2006).** Fappiano was convicted of rape, sodomy, and burglary in 1985 and served 21 years before DNA testing established his innocence.

**Alan Newton (2006).** Newton was convicted of rape, robbery, and assault in 1985 and served 21 years. His exoneration was delayed for years because the biological evidence had been misplaced in an NYPD warehouse. Once located and tested, the DNA excluded Newton.

**Anthony Capozzi (2007).** Capozzi was convicted of two rapes in 1987 and served 20 years. DNA evidence recovered from a hospital drawer matched serial rapist Altemio Sanchez, not Capozzi. Sanchez was subsequently convicted of multiple rapes and murders.

## Advances in DNA Technology

Evolving DNA science continues to create new opportunities for post-conviction relief:

- **Touch DNA.** Also known as trace DNA or low copy number DNA, this technique allows analysts to develop DNA profiles from skin cells left through casual contact with a surface. In sexual assault cases, touch DNA was first applied to groping cases in 2011, and research found that about 32% of groping cases produced probative DNA profiles. This technology is particularly significant for cases involving non-penetrative offenses where traditional biological evidence may not be present.
- **Y-STR testing.** Y-chromosome short tandem repeat testing analyzes markers on the Y chromosome, which passes from father to son. This method is especially valuable in sexual assault cases involving mixtures of male and female DNA (such as vaginal swabs) where standard autosomal DNA testing fails to separate the profiles. Y-STR testing can detect male DNA even in highly degraded or mixed samples.
- **Investigative genetic genealogy.** Since 2018, forensic genetic genealogy has been used to solve hundreds of cold cases by uploading unknown DNA profiles to genealogy databases to identify potential relatives, then using traditional genealogical research to narrow leads. This technique was instrumental in the Leonard Mack case, where the actual perpetrator was identified through database matching.

## Discredited Forensic Methods

DNA evidence has also exposed the unreliability of older forensic techniques that contributed to wrongful convictions:

- **Microscopic hair comparison.** In 2015, the FBI acknowledged that its hair comparison analysts had given flawed testimony in at least 90% of the approximately 500 cases reviewed at that time, out of nearly 3,000 total cases identified for review. Hair microscopy cannot uniquely identify an individual, yet analysts routinely testified that hairs "matched" or were "consistent with" a specific suspect. Anthony Broadwater's 1982 rape conviction in Onondaga County was vacated in 2021 after the prosecution's reliance on discredited hair analysis was exposed.
- **Bite mark analysis.** The National Academies of Sciences and the President's Council of Advisors on Science and Technology have concluded that bite mark analysis lacks a reliable scientific foundation. At least 36 people have been exonerated after wrongful convictions based on bite mark comparisons. Studies have shown that forensic dentists cannot reliably determine whether a mark on skin was made by a specific set of teeth, or even whether a mark is a bite mark at all.

When a conviction was obtained in whole or in part through forensic methods that have since been discredited, the defendant may have grounds for a CPL 440.10 motion based on newly discovered evidence under subsection (1)(g) or based on the specific DNA testing provisions of subsection (1)(g-1).

## 9. Challenging SORA Classification

For individuals convicted of sex offenses in New York, the conviction itself is often only the beginning of a lifelong burden. The Sex Offender Registration Act (SORA), codified at Correction Law Article 6-C, imposes registration and community notification requirements that affect where a person can live, work, and exist in public. For many defendants and their families, SORA classification carries consequences that rival or even exceed the prison sentence.

### How SORA Classification Works

After conviction for a designated sex offense, the Board of Examiners of Sex Offenders evaluates the individual using a Risk Assessment Instrument (RAI), a point-based scoring system that assigns values across 15 categories. These categories cover factors such as the use of force, sexual contact with

the victim, number of victims, the victim's age, prior criminal history, substance abuse, acceptance of responsibility, and post-release plans.

The total point score determines the presumptive risk level:

- **Level 1 (Low Risk): 70 points or fewer.** Registration lasts 20 years. The individual must verify their address by mail annually and appear in person every three years.
- **Level 2 (Moderate Risk): 75 to 105 points.** Registration is for life. The individual must verify by mail annually and appear in person every three years. The registrant's information is available to the public.
- **Level 3 (High Risk): 110 points or more.** Registration is for life. The individual must appear in person every 90 days. Full public notification, including posting on the state's online registry, applies.

Additional designations (sexual predator, sexually violent offender, or predicate sex offender) can trigger lifetime registration regardless of the point score.

The Board of Examiners makes a recommendation, but the sentencing court makes the final determination at a SORA hearing. Courts may depart upward or downward from the presumptive level based on aggravating or mitigating factors not adequately captured by the RAI, but they must state their reasons on the record.

## Why SORA Matters

SORA classification affects virtually every aspect of a person's life after conviction. Level 2 and Level 3 registrants face lifetime obligations. Their information is publicly accessible, which affects housing, employment, relationships, and community standing. Residency restrictions limit where registrants can live, and violations of registration requirements carry criminal penalties. For family members, the consequences are felt acutely as well: public notification can subject spouses, children, and other relatives to harassment and social isolation.

## Motions for Modification Under Correction Law 168-o

Correction Law Section 168-o provides two primary avenues for seeking a change in SORA classification:

**Downward Modification of Risk Level (Section 168-o(2)).** Any registered sex offender may petition once per year for a reduction in their assigned risk level. The petition is filed with the sentencing court or the court that made the original SORA determination. The court forwards the petition to the Board of Examiners, which has 30 days to provide an updated recommendation, and provides a copy to the district attorney. A hearing is then held.

The petitioner bears the burden of proving, by clear and convincing evidence, that (1) the current and future risk of reoffense has decreased, and (2) the threat to public safety is less than previously determined.

**Relief from Registration (Section 168-o(1)).** This more limited pathway is available only to Level 2 registrants who have not been designated as a sexual predator, sexually violent offender, or predicate sex offender, and who have been registered for a minimum of 30 years. The petitioner must prove by clear and convincing evidence that the risk of reoffense and threat to public safety no longer warrant registration. This petition may be filed no more than once every two years. If the petition is granted, the district attorney has a right to appeal.

For Level 3 registrants, or anyone with a special designation, there is currently no statutory mechanism to petition for complete removal from the registry. They face lifetime registration with no petition for relief.

## What Courts Look For

Based on case law and modification practice guides, the most persuasive factors in a downward modification petition include:

- **Extended time crime-free in the community.** This is the single most important factor. Successful petitions typically demonstrate approximately ten years without any criminal conduct while not under supervision.
- **Compliance with supervision.** Completing parole or probation without violations demonstrates reduced risk.
- **Completion of sex offense treatment.** Completion of, and meaningful engagement with, sex offense-specific treatment programs carries significant weight.
- **Stable life circumstances.** Maintaining stable housing, employment, and personal relationships supports the argument that risk has diminished.
- **Documentation.** Courts and the Board of Examiners expect concrete documentation, not merely assertions. Letters from treatment providers, employers, family members, and community members strengthen a petition considerably.

In *People v. Reyes*, 2024 NY Slip Op 51641(U) (Sup. Ct. 2024), the court denied a Level 2 offender's petition for downward modification despite crediting his early release from probation and mental health participation. The court agreed with the Board's recommendation that the petitioner had failed to provide sufficient supporting documentation, including treatment provider reports and community support letters, to meet the clear and convincing evidence standard. The case illustrates that even genuine rehabilitation must be thoroughly documented to satisfy the burden of proof.

## Constitutional Challenges: *People v. Brown*

In *People v. Brown*, 41 N.Y.3d 279 (2023), the Court of Appeals held that applying SORA to the defendant violated his due process rights. Brown had robbed his aunt at gunpoint while his 10-year-old cousin was present. He pleaded guilty to robbery and unlawful imprisonment. Despite the SORA court's finding that the offense involved "no sexual contact or motivation whatsoever," that he was "not a sex offender," and that he posed "no risk of sexual threat at all," SORA's statutory scheme required his registration because the unlawful imprisonment victim was under 17 and the offender was not the parent.

The Court of Appeals distinguished this from its earlier decision in *People v. Knox*, 12 N.Y.3d 60 (2009), which had upheld SORA against a facial constitutional challenge, by applying an as-applied due process analysis. The *Brown* decision opened the door to constitutional challenges in cases where the underlying offense lacked any sexual element but still triggered mandatory SORA registration under the statute's broad definitions.

## The Override Rule: *People v. Moss*

In *People v. Moss*, 2025 NY Slip Op 01673 (Court of Appeals, 2025), the Court addressed an important aspect of SORA's automatic override provisions. Under the RAI, a prior felony sex crime conviction triggers an automatic override to Level 3, regardless of the total point score. Moss argued that his prior sex crime conviction had been found "constitutionally infirm" by a sentencing court in a later, unrelated proceeding.

The Court of Appeals rejected this argument, holding that the automatic Level 3 override applies to any "undisturbed" prior conviction. Only a formal vacatur or reversal of the prior conviction through established criminal procedure can remove the override. Collateral findings in other proceedings are insufficient.

This ruling carries an important practical lesson: if a prior sex offense conviction is driving a Level 3 override, the only way to remove that trigger is to directly challenge and formally vacate the prior conviction through a CPL 440.10 motion or appeal. Indirect challenges will not suffice.

## **When the Underlying Conviction Is Vacated**

When the conviction supporting SORA registration is formally vacated (through a successful CPL 440.10 motion, direct appeal, or federal habeas corpus), the legal basis for registration is eliminated. However, removal from the registry is not entirely automatic.

After vacatur, the defendant or defense counsel should take affirmative steps:

- Notify the Division of Criminal Justice Services (DCJS) in writing that the conviction has been vacated.
- Notify the sentencing court that made the SORA determination.
- Notify the district attorney.
- If the charges are dismissed following vacatur (rather than a new trial being ordered), request a formal court order directing DCJS to remove the individual from the registry.

Exonerees have reported difficulties in being promptly removed from the registry even after their convictions were vacated. Prompt written notification to all relevant parties is advisable, and in some cases a formal court order may be necessary to ensure removal.

## **Criticism of the RAI**

The New York City Bar Association has repeatedly criticized the RAI as scientifically unvalidated. In reports issued in 2013, 2022, and most recently in a January 2026 supplemental report, the City Bar has urged the Legislature to replace the current RAI with empirically validated risk assessment tools (such as the Static-99R, STABLE, ACUTE, Risk Matrix 2000, or CPORT), to require periodic revalidation using DCJS data, and to assess the instrument's predictive accuracy across diverse populations.

The City Bar's criticism provides a foundation for arguments that SORA classifications based on an unvalidated instrument may not comport with due process. Legislation has been introduced (Assembly Bill A8930 / Senate Bill S3201) that would require the adoption of empirically validated risk assessment tools, though the bill has not yet been enacted.

For defendants and their families, the practical takeaway is this: SORA classification is not necessarily permanent, but changing it requires preparation, documentation, and persistence. Whether the strategy involves a downward modification petition, a constitutional challenge, or vacatur of the underlying conviction, experienced post-conviction counsel can evaluate which approach offers the strongest path forward.

## **10. Federal Habeas Corpus: When State Remedies Are Exhausted**

When every state court remedy has been pursued and denied, a final avenue remains: federal habeas corpus. Under 28 U.S.C. Section 2254, a person convicted in state court may petition a federal district court to review the constitutionality of their conviction. This is not a second appeal. It is a fundamentally different proceeding, governed by strict procedural requirements and an extremely deferential standard of review. For individuals convicted of sex offenses in New York, federal habeas represents both a last resort and, in the right circumstances, a meaningful opportunity to challenge a constitutionally defective conviction.

### **The Exhaustion Requirement**

Before a federal court will consider a habeas petition, you must first exhaust all available state court remedies. In New York, this means completing the full cycle of state proceedings: direct appeal through the Appellate Division, application for leave to appeal to the Court of Appeals, and (where applicable) post-conviction motions under CPL 440.10, along with appeals of any denials. Each federal constitutional claim raised in the habeas petition must have been "fairly presented" to the state courts. Simply citing state law without invoking the federal constitutional dimension is not enough. If a claim

was never raised in state court and no state remedy remains available, the claim is considered procedurally defaulted and generally cannot be heard in federal court.

There are narrow exceptions to this rule. A procedurally defaulted claim may still be reviewed if the petitioner can demonstrate "cause" for the default and "actual prejudice," or if refusing to hear the claim would result in a fundamental miscarriage of justice (typically, the imprisonment of someone who is actually innocent).

### **AEDPA: The One-Year Filing Deadline**

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) imposed a strict one-year statute of limitations on federal habeas petitions. The clock begins running from the latest of four possible dates: (1) the date on which the state court judgment became final (including the expiration of the 90-day period to petition the U.S. Supreme Court for certiorari after direct appeal concludes); (2) the date a state-created impediment to filing is removed; (3) the date the U.S. Supreme Court recognizes a new constitutional right and makes it retroactively applicable; or (4) the date the factual predicate of the claim could have been discovered through due diligence.

The one-year clock is paused ("tolled") while a properly filed state post-conviction motion is pending. Equitable tolling may apply in extraordinary circumstances where a petitioner has been pursuing rights diligently but some exceptional obstacle prevented timely filing. The Second Circuit has also held that the statute of limitations requires a claim-by-claim approach, meaning each claim in the petition must be analyzed separately for timeliness.

Missing the one-year deadline is one of the most common reasons habeas petitions are dismissed. Anyone considering federal habeas relief should begin tracking the timeline immediately after state remedies conclude.

### **The Deferential Standard of Review**

Even when a habeas petition is timely and properly exhausted, AEDPA imposes a formidable standard of review. Under 28 U.S.C. Section 2254(d), a federal court may not grant relief on any claim that was adjudicated on the merits in state court unless the state court's decision either: (1) was "contrary to, or involved an unreasonable application of, clearly established Federal law" as determined by the U.S. Supreme Court; or (2) was "based on an unreasonable determination of the facts" in light of the evidence presented in the state court proceeding.

This is not a de novo review. "Clearly established Federal law" means only holdings of the U.S. Supreme Court, not circuit court precedent. An "unreasonable application" requires more than an incorrect ruling; the state court's decision must be objectively unreasonable, not merely debatable. State court factual findings are presumed correct, and the petitioner bears the burden of rebutting that presumption by clear and convincing evidence. For claims like ineffective assistance of counsel, the review is "doubly deferential," because the federal court must defer both to trial counsel's strategic decisions under Strickland and to the state court's assessment of counsel's performance.

### **How to File: Choosing the Right District**

A Section 2254 petition may be filed in the federal district where the petitioner is in custody (the location of the state prison) or in the district where the state court conviction occurred. For New York convictions, this means: convictions from Manhattan, the Bronx, and surrounding counties are filed in the Southern District of New York (SDNY); convictions from Brooklyn, Queens, Staten Island, Nassau, and Suffolk counties are filed in the Eastern District of New York (EDNY); and convictions from upstate or western counties go to the Northern District (NDNY) or Western District (WDNY) respectively. If the prison is in a different district than the conviction, the petitioner may choose either one.

There is no constitutional right to appointed counsel in habeas proceedings, though federal courts have discretion to appoint an attorney under the Criminal Justice Act when the case involves complex legal issues or when an evidentiary hearing is ordered. In practice, most Section 2254 petitions are filed by individuals representing themselves, which contributes to the low success rate.

## Common Claims in Sex Crime Habeas Petitions

The claims most frequently raised in federal habeas petitions arising from sex crime convictions include:

**Due process violations.** These encompass challenges to the sufficiency of the evidence under *Jackson v. Virginia*, 443 U.S. 307 (1979), as well as claims that the prosecution knowingly used false testimony (*Napue v. Illinois*, 360 U.S. 264 (1959)) or relied on impermissibly suggestive identification procedures.

**Ineffective assistance of counsel.** Under *Strickland v. Washington*, 466 U.S. 668 (1984), a petitioner must show both that counsel's performance was objectively deficient and that there is a reasonable probability the result would have been different. In sex crime cases, common IAC arguments include failure to retain or challenge forensic experts, failure to investigate alibi witnesses or impeachment evidence, deficient cross-examination of the complainant, and failure to challenge questionable expert testimony on behavioral syndromes.

**Brady violations.** Under *Brady v. Maryland*, 373 U.S. 83 (1963), the prosecution must disclose material exculpatory or impeachment evidence. In sex crime cases, the suppression of a complainant's psychiatric records, prior false accusations, or undisclosed witness agreements can form the basis of a viable Brady claim.

**Confrontation Clause issues.** Following *Crawford v. Washington*, 541 U.S. 36 (2004), the admission of testimonial hearsay from an absent declarant without prior cross-examination violates the Sixth Amendment. This is particularly significant in child sex abuse cases, where statements made during forensic interviews are frequently challenged. In *Hemphill v. New York*, 595 U.S. 140 (2022), the U.S. Supreme Court reversed New York courts and reaffirmed that cross-examination cannot be replaced by judicial balancing tests.

## Actual Innocence: A Gateway Through Procedural Bars

Two landmark Supreme Court decisions provide a pathway for petitioners who can demonstrate actual innocence.

In *Schlup v. Delo*, 513 U.S. 298 (1995), the Court held that a credible showing of actual innocence can serve as a "gateway" to overcome procedural bars and allow federal review of otherwise defaulted constitutional claims. To meet the Schlup standard, the petitioner must present new reliable evidence (exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence not presented at trial) and show that, considering all the evidence both old and new, it is more likely than not that no reasonable juror would have convicted.

In *McQuiggin v. Perkins*, 569 U.S. 383 (2013), the Court confirmed that a credible showing of actual innocence under Schlup can also overcome AEDPA's one-year time bar. This is critical for individuals who discover exculpatory evidence years after the filing deadline has passed.

For sex crime cases, Schlup gateway claims may be supported by post-conviction DNA testing that excludes the defendant, discovery that prosecution witnesses committed perjury, recantation by the complainant (though courts view recantations with skepticism), or new digital and forensic evidence.

## Key Second Circuit Cases

Two Second Circuit decisions are particularly relevant to sex crime habeas petitions from New York:

**Fuentes v. Griffin, 829 F.3d 233 (2d Cir. 2016).** The Second Circuit reversed the denial of habeas relief for a state inmate convicted of first-degree rape. The court found that the prosecution's suppression of the complainant's psychiatric evaluation violated Brady and that the state court unreasonably applied the materiality standard. This remains one of the most significant Second Circuit decisions granting habeas relief in a sex crime case.

**McCray v. Capra, 45 F.4th 634 (2d Cir. 2022).** Terrance McCray sought habeas relief arguing that the trial court denied him access to the victim-witness's mental health records (over 5,000 pages, with only 28 pages disclosed). The panel majority denied relief, but a vigorous dissent argued that the non-disclosure was an unreasonable application of Brady. This case highlights the ongoing tension in the Second Circuit regarding the disclosure of complainant mental health records in sex crime prosecutions.

### **A Realistic Assessment**

Honesty requires acknowledging the difficulty of federal habeas. Approximately 3.2% of habeas petitions are granted in whole or in part, and only about 1.8% result in any form of release. Roughly 63% of petitions are dismissed on procedural grounds before the merits are ever reached. The AEDPA standard of review is deliberately designed to preserve state court judgments except in the most egregious cases.

### **The Certificate of Appealability**

If the district court denies the petition, the petitioner cannot simply appeal. Under 28 U.S.C. Section 2253(c), a Certificate of Appealability (COA) must be obtained from either the district judge or a circuit judge. The COA will issue only if the petitioner makes "a substantial showing of the denial of a constitutional right," meaning that reasonable jurists could debate whether the petition should have been resolved differently. Without a COA, the case ends at the district court level.

None of this means federal habeas is futile. For individuals with strong constitutional claims, particularly those involving suppressed evidence, demonstrably deficient counsel, or credible new evidence of innocence, federal habeas can be the mechanism that finally brings justice. The key is preparation, precision, and experienced counsel.

## **11. Recent Legal Developments (2024-2026)**

The legal landscape affecting sex crime convictions in New York has shifted in several important ways over the past two years. Some changes expand the tools available to individuals seeking post-conviction relief. Others highlight gaps in the law that remain stubbornly resistant to reform. Understanding these developments is essential for anyone evaluating the current state of their case.

### **The Clean Slate Act (2024)**

New York's Clean Slate Act, signed into law on November 16, 2023, and effective November 16, 2024, is one of the most significant criminal records reforms in the state's history. The law provides for automatic sealing of eligible conviction records after specified waiting periods: three years after sentencing or release for misdemeanors, and eight years for felonies. No application is required.

However, the Act contains a critical exclusion for sex offenses. Any conviction requiring registration under the Sex Offender Registration Act (SORA) is explicitly excluded from automatic sealing. This means that for the vast majority of individuals convicted of sex crimes in New York, the Clean Slate Act provides no direct benefit. The exclusion applies regardless of how much time has passed or how strong the individual's rehabilitation record may be.

The Office of Court Administration has until November 16, 2027, to fully implement the automatic sealing process. For individuals who have successfully vacated a sex crime conviction through a CPL 440 motion or other post-conviction proceeding and had the charges dismissed or reduced to a non-SORA offense, the Clean Slate Act may eventually facilitate the sealing of the modified record. But the Act does not itself provide a pathway to challenge or overturn a conviction.

### **The Adult Survivors Act (2022)**

The Adult Survivors Act created a one-year lookback window allowing adult survivors of sexual assault to file civil lawsuits regardless of when the underlying conduct occurred. The window opened in November 2022 and closed on November 24, 2023. More than 3,000 civil lawsuits were filed during this period, including several high-profile cases.

It is important to understand that this was a civil remedy only. The Adult Survivors Act did not expand criminal post-conviction relief or create new grounds for challenging a conviction. Nor did it reopen criminal statutes of limitations. For individuals convicted of sex offenses, the Act's primary significance is contextual: it reflects the continuing evolution of how New York law treats allegations of sexual misconduct, and some of the civil proceedings may generate evidence or testimony relevant to pending or future criminal post-conviction claims.

### **Governor Hochul's Veto of the Actual Innocence Bill (December 2023)**

In December 2023, Governor Hochul vetoed Assembly Bill A2878, which would have made it substantially easier for people who pleaded guilty to challenge their convictions based on claims of actual innocence. Under existing law, defendants who enter guilty pleas are generally barred from reopening their cases on innocence grounds except in narrow circumstances involving new DNA evidence. The vetoed bill would have expanded the types of evidence that could support an innocence claim, including video footage, evidence of another person confessing to the crime, and arguments that the defendant was coerced into a false guilty plea.

In her veto message, Governor Hochul stated that the bill's "sweeping expansion of eligibility for post-conviction relief" would "up-end the judicial system and create an unjustifiable risk of flooding the courts with frivolous claims." The veto was celebrated by prosecutors and criticized by criminal justice reform organizations, defense attorneys, and wrongful conviction advocates. The bill's sponsor, Senator Zellnor Myrie, has indicated his intent to reintroduce the legislation.

This veto is particularly consequential for sex crime convictions, a substantial number of which result from guilty pleas rather than trials. Without the expanded innocence provisions, individuals who pleaded guilty continue to face severe limitations on their ability to challenge those convictions, even when compelling evidence of innocence emerges after the fact.

### **Pending Legislation**

Several bills introduced in the 2025-2026 legislative session could affect individuals convicted of sex offenses:

**S5370/A4440 (Wrongful Conviction Recovery Act).** This bill would expand and modernize New York's wrongful conviction compensation framework. It proposes amending the Court of Claims Act to give claimants three years after a pardon or dismissal to file for compensation, and would create wrongful conviction recovery scholarships and additional civil service credits for exonerees.

**S2696 (Actual Innocence Compensation).** This bill would amend the Court of Claims Act to allow claims for unjust conviction specifically based on actual innocence, authorizing compensation when a conviction was reversed or vacated on innocence grounds.

**S6319 (Decriminalization Vacatur).** This bill would create a new ground for vacating a conviction under CPL 440 when the underlying conduct has been subsequently decriminalized or when a change in law warrants retroactive application. While this may not directly affect most sex crime convictions, it reflects the broader legislative trend toward expanding post-conviction relief mechanisms.

None of these bills had been enacted as of early 2026. Their progress through the legislature will depend on political dynamics, including the balance of power between reform-oriented legislators and prosecutorial interests.

### **Evolving Science of Memory and Eyewitness Identification**

The scientific understanding of human memory continues to advance, with direct implications for sex crime convictions. Modern research has established that memory is an imprecise, interpretive reconstruction of events that is vulnerable to contamination in both its initial encoding and subsequent retrieval. Mistaken eyewitness identification is the leading contributing factor in wrongful sexual assault convictions, appearing in approximately 67% of sexual assault exonerations tracked by the National Registry of Exonerations.

The New York State Bar Association published an article in 2025 titled "Judicial Scrutiny of Eyewitness Evidence: Lessons From the 2024 Court of Appeals Decisions," reflecting a growing judicial awareness that eyewitness testimony, once treated as virtually unimpeachable, is far less reliable than previously assumed. This evolving framework may support post-conviction challenges in cases that relied heavily on identification evidence.

### **CSAAS Testimony Limitations**

Child Sexual Abuse Accommodation Syndrome (CSAAS) testimony has come under increasing scrutiny nationwide. In *People v. Williams*, 20 N.Y.3d 579 (2013), the New York Court of Appeals held that CSAAS expert testimony is permissible only when it is general in nature and offered to explain common behavioral patterns among child sex abuse victims. The prosecution may not use CSAAS testimony to bolster a specific complainant's credibility or to diagnose whether abuse actually occurred. The *Williams* court found that the prosecution exceeded these boundaries but deemed the error harmless in that particular case.

Other jurisdictions have gone further. In *State v. J.L.G.*, 234 N.J. 265 (2018), the New Jersey Supreme Court limited CSAAS testimony to the single component (delayed disclosure) that has adequate scientific support, barring testimony on the remaining elements. Scholars have argued that CSAAS is clinical rather than scientific in nature and that its use in criminal trials is inconsistent with the standards governing expert testimony under *Daubert* and *Frye*.

For individuals convicted in cases where CSAAS testimony was used to essentially diagnose abuse rather than merely explain behavioral patterns, these developments may support post-conviction claims under CPL 440.10 or, in federal habeas, as evidence that the trial court admitted unreliable expert testimony in violation of due process.

### **The Growing Role of Digital and Social Media Evidence**

Text messages, social media posts, location metadata, and other digital evidence are playing an increasingly prominent role in both prosecuting and challenging sex crime convictions. 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). The challenge lies in meeting the statutory requirements: the evidence must be material, it must not be cumulative of evidence already presented, and it must be evidence that could not have been discovered before trial through the exercise of due diligence. As digital communication becomes more pervasive and better preserved, the opportunities for post-conviction investigation in this area will continue to expand.

## **12. Practical Guide: Evaluating Your Case and Next Steps**

If you or someone you care about is serving a sentence for a sex crime conviction in New York, the information in this guide may feel overwhelming. The legal landscape is complex, the procedural requirements are strict, and the stakes are enormous. This section provides a practical framework for evaluating whether a case may have viable grounds for post-conviction relief, and concrete steps to take if you believe it does.

### **Key Questions to Ask About Your Case**

Not every conviction can be successfully challenged. The following questions are designed to help identify the types of issues that most commonly lead to post-conviction relief in sex crime cases. If you can answer "yes" to one or more of these questions, your case warrants a closer look by an experienced post-conviction attorney.

**Was there biological or DNA evidence, and was it properly tested?** In many sex crime cases, biological evidence (such as a rape kit or forensic swabs) was collected but never tested, or was tested using methods that have since been improved or superseded. Under CPL 440.30, you may be entitled to post-conviction DNA testing if the results could demonstrate innocence. Even in cases where DNA was tested at the time of trial, advances in forensic technology may allow for more precise analysis. If you are

unsure whether biological evidence exists or was tested, requesting your case file and contacting the evidence custodian is a critical first step.

**Did trial counsel investigate the case properly?** Effective legal representation requires thorough investigation. If your attorney failed to interview key witnesses, retain necessary experts (particularly in areas like forensic science, memory, or behavioral syndromes), investigate an alibi, or challenge the prosecution's evidence, you may have a claim for ineffective assistance of counsel. Think carefully about whether there were witnesses who could have supported your defense but were never contacted, or whether your attorney seemed unprepared on forensic or medical issues.

**Was evidence withheld by the prosecution?** Brady violations are among the strongest grounds for post-conviction relief, but they are by nature hidden at the time of trial. Consider whether the complainant had a history of making similar accusations, whether the complainant was receiving psychiatric treatment or had been diagnosed with conditions affecting credibility, whether any witnesses received benefits or leniency in exchange for testimony, or whether police reports or forensic results that might have been helpful were never disclosed. Freedom of Information requests and post-conviction investigation by new counsel can sometimes uncover evidence the prosecution failed to turn over.

**Has new evidence emerged since trial?** New evidence can take many forms: a recantation by the complainant, the emergence of digital communications that contradict trial testimony, the discovery that a prosecution witness lied, or new scientific findings that undermine forensic evidence relied upon at trial. Under CPL 440.10(1)(g), newly discovered evidence must be material, non-cumulative, and evidence that could not have been discovered earlier through due diligence.

**Were there forensic science issues?** Forensic disciplines have evolved substantially over the past two decades. Evidence that was presented as reliable at the time of trial, including bite mark analysis, hair microscopy, or certain serological methods, may have since been discredited or called into serious question. Expert testimony on behavioral syndromes like CSAAS may have exceeded the boundaries that courts now recognize. If your conviction relied on forensic evidence or expert testimony, it is worth having the scientific basis of that evidence reviewed by a qualified expert.

## Organizations That Can Help

Several organizations in New York provide free or reduced-cost legal assistance to individuals who may have been wrongfully convicted:

**Innocence Project.** Based in New York City and now partnered with NYU Law, the Innocence Project has achieved over 254 DNA-based exonerations nationwide. They accept cases where DNA evidence could prove innocence. Approximately 97% of their exonerees were convicted of sexual assault or murder, making their expertise directly relevant to sex crime cases.

**Exoneration Initiative (EXI).** This pioneering nonprofit provides free legal assistance to wrongfully convicted people in New York, with a focus on the more than 90% of cases that lack DNA evidence. EXI relies on investigation and litigation rather than forensic testing, making it an important resource for cases where biological evidence was not collected or is unavailable.

**Legal Aid Society Wrongful Conviction Unit.** Established in 2019 and now significantly expanded, this unit investigates, litigates, and advocates for exoneration of wrongfully convicted New Yorkers. The unit received a \$500,000 Department of Justice grant (in partnership with CUNY School of Law) to review wrongful conviction claims.

**Centurion.** Based in Princeton, New Jersey, Centurion works nationally and has secured the release of 67 wrongly convicted individuals. They take cases even when no DNA or scientific evidence is available.

**Deskovic Foundation.** Founded by Jeffrey Deskovic, who was wrongfully convicted of rape and murder at age 16 and exonerated after nearly 16 years of incarceration, the foundation works on exoneration, recovery, and systemic reform.

**District Attorney Conviction Integrity Units.** Several New York DA offices operate Conviction Integrity Units (CIUs) that review claims of wrongful conviction. The Brooklyn DA's Post-Conviction Justice Bureau is widely regarded as the national model and has vacated hundreds of convictions. The Manhattan DA's Post-Conviction Justice Unit accepts applications from individuals convicted in New York County who believe they are innocent. The Queens DA also maintains a Conviction Integrity Unit. Performance varies significantly across offices, and some CIUs have been criticized for inaction. But submitting an application costs nothing, and a favorable CIU review can be a powerful catalyst for vacating a conviction.

## **The Importance of Professional Legal Counsel**

Filing a CPL 440 motion or federal habeas petition without professional legal assistance is possible, but it comes with serious risks. Post-conviction proceedings are governed by strict procedural rules, and errors can permanently waive meritorious claims. A motion that is poorly drafted, procedurally defective, or that fails to raise all available grounds may not only be denied on its own terms but may also bar future motions on those issues.

This is sometimes called the "one shot" problem. Under CPL 440.10(3), courts may deny subsequent motions when an issue was previously decided or could have been raised earlier. In federal habeas, successive petitions face even stricter barriers under AEDPA. The first post-conviction filing is typically the most important opportunity, and getting it right requires legal expertise.

An experienced post-conviction attorney can evaluate the full record, identify the strongest claims, develop new evidence through investigation, retain appropriate experts, and present the case in a way that satisfies the demanding legal standards. Many wrongful conviction organizations provide pro bono representation, and some private attorneys handle post-conviction work on a case-by-case basis.

## **Timeline Expectations**

Post-conviction proceedings take time. A CPL 440 motion may take months from filing to a decision, and if a hearing is ordered, the timeline extends further. Federal habeas proceedings often take a year or more. Appeals of denied motions add additional time. Wrongful conviction organizations frequently have waitlists and cannot investigate every case they receive.

None of this should be a reason to delay. The passage of time generally works against post-conviction claims: evidence degrades, witnesses become unavailable, and statutory deadlines expire. Starting the process sooner, even if the path ahead is long, is almost always the right decision.

## **Evidence Preservation: Act Immediately**

If biological evidence exists in your case, preserving it is urgent. Rape kits and other forensic samples may be subject to destruction policies, and evidence storage practices vary by jurisdiction. Under New York law, biological evidence from certain sexual assault cases must be retained, but compliance with these requirements is not always consistent. If you believe biological evidence was collected in your case:

- Request information about the status of any rape kit or forensic evidence from the law enforcement agency and the prosecuting DA's office.
- If you learn that evidence is scheduled for destruction, take immediate steps to request preservation, and document those requests in writing.
- An attorney can file a formal motion to preserve evidence if necessary.

The loss of biological evidence can eliminate the possibility of DNA testing that might prove innocence. This is one area where delay can cause irreversible harm.

## Wrongful Conviction Compensation in New York

For individuals who succeed in overturning a wrongful conviction, New York law provides a path to financial compensation. Under Court of Claims Act Section 8-b, a person who demonstrates by clear and convincing evidence that they were unjustly convicted and imprisoned may recover damages against the state. The claim must be filed in the New York Court of Claims.

The existing framework has been criticized as inadequate, and several pending bills (S5370 and S2696) seek to expand and modernize compensation mechanisms. But even under current law, exonerees have recovered significant damages for the years they were wrongfully incarcerated.

Compensation proceedings are separate from the criminal case and require their own legal representation. Organizations like the Innocence Project and the Exoneration Initiative can often provide referrals to attorneys experienced in wrongful conviction compensation claims.

### Taking the First Step

If you believe your conviction may be subject to challenge, here is what you can do right now:

1. **Gather your records.** Obtain copies of your trial transcripts, sentencing minutes, appellate briefs and decisions, and any CPL 440 motion papers previously filed. If you are incarcerated, the prison law library staff may be able to assist.
2. **Write down your account.** Prepare a clear, detailed written statement of what you believe went wrong in your case. Include specific facts: names of witnesses who were not contacted, evidence you believe was withheld, problems with your attorney's representation, and any new evidence that has come to light.
3. **Contact an organization.** Reach out to one or more of the organizations listed above. Be prepared for the process to take time, and do not be discouraged if the first organization you contact is unable to take your case. Different organizations have different criteria and capacity.
4. **Consult an attorney.** If you have the ability to retain private counsel, seek out an attorney with specific experience in New York post-conviction litigation and sex crime cases.
5. **Preserve evidence.** If biological evidence may exist, take immediate steps to determine its status and request its preservation.

The path to overturning a wrongful conviction is neither quick nor easy. But for those with meritorious claims, the legal tools described in this guide provide real and meaningful avenues for relief. Knowledge of those tools is the first step.

## 13. About Greg Salmon and CAA

Greg Salmon is a post-conviction attorney who focuses his practice on challenging wrongful and constitutionally defective convictions in New York, with particular experience in sex crime cases. He understands the unique evidentiary, procedural, and personal challenges that these cases present, and he brings a combination of rigorous legal analysis and genuine compassion to every client he represents.

At Criminal Appeals Advocates (CAA), the approach to post-conviction work is grounded in thorough investigation and aggressive advocacy. Every case begins with a comprehensive review of the trial record, forensic evidence, and available witness testimony. CAA works with forensic experts, investigators, and other professionals to identify and develop the strongest possible grounds for relief, whether through CPL 440 motions, direct appeals, federal habeas corpus petitions, or applications to conviction integrity units.

CAA recognizes that behind every case file is a human being whose life, family, and future are at stake. The firm is committed to honest, transparent communication with clients and their families throughout the process. That means providing a realistic assessment of the strengths and challenges of each case, setting clear expectations about timelines and outcomes, and keeping clients informed at every stage.

If you or a loved one has been convicted of a sex offense in New York and you believe the conviction was wrongful or constitutionally flawed, CAA can evaluate your case and advise you on the options available.

### **Contact CAA for a consultation**

*This guide is provided for educational purposes only and does not constitute legal advice. Every case is unique, and the information presented here should not be used as a substitute for the advice of a qualified attorney. If you believe you have grounds for post-conviction relief, consult with an experienced post-conviction lawyer before taking any action.*

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