

The 2026 Guide to NY CPL 440 Motions

*A Comprehensive Guide to Post-Conviction Relief
in New York State*

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February 2026

This guide is for informational purposes only and does not constitute legal advice. Every case is different, and the law is subject to change. If you are considering filing a CPL 440 motion, consult with a qualified attorney who can evaluate your specific circumstances.

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1. Introduction: What Is a CPL 440 Motion?

If you or someone you care about has a criminal conviction in New York State, you may feel that the case is over. That is not necessarily true. New York law provides a powerful mechanism for challenging convictions and sentences even after a case has concluded: the CPL 440 motion.

Article 440 of the New York Criminal Procedure Law (CPL) authorizes “post-conviction motions,” which are written applications filed in the original trial court asking a judge to vacate (overturn) a conviction or set aside (modify or eliminate) a sentence. Unlike a direct appeal, which is limited to errors visible in the existing court record, a CPL 440 motion allows you to present new facts, new evidence, and new legal arguments that never appeared at trial or during sentencing.

This distinction matters enormously. Many of the most serious problems in criminal cases never make it onto the record. A defense attorney’s failure to investigate a critical alibi witness, the prosecution’s concealment of favorable evidence, a coerced guilty plea, forensic evidence that has since been discredited: none of these would appear in the trial transcript. A CPL 440 motion is often the only legal vehicle that can bring these issues before a court.

Article 440 also contains specialized resentencing provisions enacted in recent years, reflecting a growing recognition that some sentences imposed decades ago no longer reflect current law or current values. These include resentencing for people convicted under the old Rockefeller drug laws, resentencing for marijuana-related offenses following legalization, and resentencing for survivors of domestic violence whose abuse contributed to their offenses.

This guide walks through every essential provision of Article 440 in practical terms. It is written for people living with the consequences of a criminal conviction (whether currently incarcerated, on parole or probation, or long since finished with a sentence), as well as family members, loved ones, and advocates. The law in this area is complex, and a guide cannot substitute for the advice of a qualified attorney. But knowledge is a necessary first step.

2. CPL 440 vs. Direct Appeal

To understand why CPL 440 motions exist and when they are appropriate, it helps to understand how they differ from a direct appeal.

Direct Appeals: Reviewing the Record

After a conviction, a defendant in New York has the right to file a direct appeal, typically in the Appellate Division. The appeal asks a panel of judges to review the trial record (transcripts, exhibits, and written decisions) to determine whether legal errors occurred that affected the outcome. Common issues include improper evidentiary rulings, erroneous jury instructions, insufficient evidence, and constitutional violations apparent from the record. The critical limitation is that appellate courts generally consider only what is already in the record.

CPL 440 Motions: Going Beyond the Record

A CPL 440 motion fills this gap. Filed in the original trial court, it allows the defendant to submit new evidence through affidavits (sworn written statements), exhibits, and other documentation that was never part of the trial record. For example, if a defense attorney failed to interview a key alibi witness, that failure would not appear in the transcript. A CPL 440 motion, supported by an affidavit from the witness and the defendant, is often the only way to bring such issues before a court.

When to Use Each Remedy

The general principle is straightforward:

- If the error appears in the trial record, raise it on **direct appeal**.
- If the error requires facts from outside the record, raise it in a **CPL 440 motion**.

Some claims, such as ineffective assistance of counsel, can involve both. New York courts have acknowledged that ineffective assistance claims frequently require CPL 440 proceedings because the full picture cannot be assembled from the transcript alone. See *People v. Love*, 57 N.Y.2d 998 (1982).

Exhaustion and Procedural Bars

Under CPL 440.10(2)(b), a court must deny a 440 motion if the judgment is currently appealable or pending on appeal and the issue could be adequately reviewed on that appeal. Under CPL 440.10(2)(c), a court must deny the motion if the issue could have been raised on direct appeal but the defendant unjustifiably failed to do so. However,

these bars apply only when the record contains sufficient facts to permit appellate review. When the claim depends on information outside the record, the procedural bar does not apply.

One additional point: a CPL 440 motion denial is not automatically appealable. The defendant must apply to the Appellate Division for “leave to appeal” (permission to appeal) under CPL 460.15, within 30 days. Missing this deadline can result in the permanent loss of appellate review.

3. Overview of Article 440 Sections

Article 440 contains several distinct provisions, each serving a different purpose. The most important are:

- **CPL 440.10** (Motion to Vacate a Judgment): The central provision allowing a defendant to overturn a conviction on grounds including lack of jurisdiction, fraud, false evidence, constitutional violations, newly discovered evidence, and ineffective assistance of counsel. Covered in detail in Section 4.
- **CPL 440.20** (Motion to Set Aside a Sentence): Targets the sentence rather than the conviction, permitting a challenge when the sentence was unauthorized, illegally imposed, or otherwise invalid. Covered in Section 5.
- **CPL 440.30** (Procedure and DNA Testing): Governs the procedural rules for 440 motions and authorizes post-conviction forensic DNA testing. Covered in Section 10.
- **CPL 440.46** (Drug Offense Resentencing): Allows resentencing for individuals sentenced under the old Rockefeller drug laws. Covered in Section 11.
- **CPL 440.46-a** (Marijuana Resentencing under the MRTA): Provides vacatur or resentencing for marijuana-related convictions following legalization. Covered in Section 11.
- **CPL 440.47** (DVSJA Resentencing): Allows resentencing for domestic violence survivors whose abuse contributed to their offenses. Covered in Section 11.

Additional provisions include CPL 440.40 (motions by the People to set aside a sentence), CPL 440.50 (notice to crime victims of case disposition), CPL 440.55 (notice to Education Department upon felony conviction of a licensed professional), and CPL 440.65 (notice to child protective agency upon conviction for certain crimes against a child).

4. Grounds for Vacating a Conviction (CPL 440.10)

CPL 440.10 is the most important and most frequently litigated section of Article 440. Subdivision 1 lists the specific grounds on which a court may vacate a judgment of conviction.

(a) Lack of Jurisdiction

The court may vacate a conviction if it lacked jurisdiction over the action or the person. Jurisdictional challenges are uncommon, but when they succeed, they are absolute: a court without jurisdiction has no power to enter a valid judgment.

(b) Fraud, Duress, or Misrepresentation

The court may vacate a conviction procured by duress, misrepresentation, or fraud on the part of the court or prosecutor. This ground targets situations where the conviction was obtained through fundamentally unfair means attributable to the government, such as a prosecutor knowingly making false representations to secure a plea deal.

(c) False Evidence Known to the Prosecution

Vacatur is available when material trial evidence was false and the prosecutor or court knew it was false before judgment was entered. For example, if a key witness lied about receiving a deal in exchange for testimony, and the prosecutor knew about the deal, this would constitute a basis for vacatur.

(d) Evidence Obtained in Violation of Constitutional Rights

A conviction may be vacated when material trial evidence was procured through unconstitutional means, such as an illegal search and seizure, a coerced confession, or a denial of the right to counsel. This ground typically applies when the violation was not litigated at trial and cannot be adequately reviewed on the existing record.

(e) Defendant’s Incapacity Due to Mental Disease or Defect

If the defendant was mentally incapable of understanding or participating in the proceedings, the conviction may be vacated. A successful motion typically requires supporting psychiatric or psychological evidence demonstrating incapacity at the relevant time.

(f) Improper and Prejudicial Conduct Not Appearing in the Record

This broad provision captures misconduct and error that occurred during trial but were never documented in the transcript. Its most common application is to Brady violations (see Section 7), where the prosecution fails to disclose evidence favorable to the defense. Other examples include improper ex parte communications and jury tampering.

(g) Newly Discovered Evidence

A conviction may be vacated when significant new evidence comes to light after conviction. Under *People v. Salemi*, 309 N.Y. 208 (1955), the defendant must show the evidence: (1) will probably change the result at a new trial; (2) was discovered since trial; (3) could not have been discovered earlier with due diligence; (4) is material; (5) is not cumulative; and (6) does not merely impeach record evidence. This ground is covered in depth in Section 8.

(g-1) DNA Evidence Demonstrating Innocence

This provision specifically addresses post-conviction DNA evidence, permitting vacatur when forensic testing performed after judgment establishes a substantial probability that the defendant was actually innocent (in guilty plea cases) or raises a reasonable probability the verdict would have been more favorable (in trial cases). See Section 10.

(h) Conviction Obtained in Violation of Constitutional Rights

This sweeping provision encompasses any constitutional violation that affected the judgment. Its most frequent application is to claims of ineffective assistance of counsel, evaluated under both the federal standard (*Strickland v. Washington*, 466 U.S. 668 (1984)) and New York’s broader standard (*People v. Baldi*, 54 N.Y.2d 137 (1981)). IAC claims under this subdivision are among the most commonly filed CPL 440 motions,

encompassing failures to investigate, to file motions, to advise about immigration consequences (*Padilla v. Kentucky*, 559 U.S. 356 (2010)), and to communicate plea offers. See Section 6.

The Appellate Division, Second Department, in *People v. Hamilton*, 115 A.D.3d 12 (2014), recognized that a freestanding claim of actual innocence may also be cognizable under this subdivision. However, the Court of Appeals in *People v. Tiger*, 32 N.Y.3d 91 (2018), held that freestanding actual innocence claims are not available to defendants who pleaded guilty. See Section 9.

(i) Conviction Resulting from Being a Trafficking Victim

Vacatur is available when the defendant's participation in the offense resulted from being a victim of sex trafficking, labor trafficking, or trafficking in persons. If granted, the court must vacate the judgment and dismiss the charges entirely.

(j) Immigration Consequences of Certain Misdemeanor Convictions

A conviction for a class A or unclassified misdemeanor entered before this provision's effective date may be vacated where the conviction has severe or ongoing collateral consequences, including immigration consequences. The statute creates rebuttable presumptions that the plea was not knowing, voluntary, and intelligent.

(k) Prior Marijuana Convictions

Similar to subdivision (j), this provision permits vacatur of marijuana-related offenses committed before the 2021 changes to New York's controlled substances laws, with rebuttable presumptions favoring the defendant.

Which Grounds Are Most Commonly Raised?

In practice, the vast majority of CPL 440.10 motions rely on:

- **Ineffective assistance of counsel** under subdivision (h)
- **Newly discovered evidence** under subdivision (g)
- **Brady violations and off-record prosecutorial misconduct** under subdivision (f)

- **Trafficking victim status** under subdivision (i)
- **Immigration-related challenges** under subdivisions (h), (j), and (k)

5. Grounds for Setting Aside a Sentence (CPL 440.20)

While CPL 440.10 targets the conviction, CPL 440.20 targets the sentence. A successful 440.20 motion does not disturb the conviction; the defendant remains convicted but receives a new, lawful sentence.

The Standard: Unauthorized, Illegally Imposed, or Otherwise Invalid

CPL 440.20(1) allows the court to set aside a sentence “upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law.”

Unauthorized sentence. A sentence exceeding what the law permits. For example, a sentence exceeding the statutory maximum for the offense of conviction, or a post-release supervision term beyond what the statute allows.

Illegally imposed sentence. A sentence imposed through a procedure that violated the defendant’s rights, even if the sentence falls within the statutory range. Examples include failure to order a required pre-sentence investigation or denial of the right of allocution.

Otherwise invalid as a matter of law. This catch-all covers sentencing errors such as those based on materially inaccurate information or rendered invalid by a retroactive change in the law.

Procedural Bars

Under 440.20(2), the court must deny the motion if the issue was previously determined on the merits on appeal, unless there has been a retroactively effective change in the law. Under 440.20(3), the court may deny the motion if the issue was previously determined on a prior motion, but retains discretion to grant the motion “in the interest of justice and for good cause shown.” These bars are somewhat less restrictive than those applicable to 440.10 motions, reflecting the principle that an illegal sentence should not stand because of a procedural technicality.

Relationship to the Resentencing Statutes

CPL 440.20 is not the only avenue for challenging a sentence under Article 440. The specialized resentencing provisions (440.46 for drug offenses, 440.46-a for marijuana offenses, and 440.47 for domestic violence survivors) provide their own criteria and often more favorable standards. If you may be eligible under one of those statutes, explore that option in addition to, or instead of, a general 440.20 motion. See Section 11.

6. Ineffective Assistance of Counsel

The Sixth Amendment guarantees every criminal defendant the right to effective legal representation. In New York, ineffective assistance of counsel (IAC) is one of the most frequently raised grounds in CPL 440.10 motions, and for good reason: it is often the only way to challenge what went wrong inside the attorney-client relationship.

The New York Standard: Meaningful Representation

New York applies its own constitutional standard, established in *People v. Baldi*, 54 N.Y.2d 137 (1981). The question is whether the defendant received “meaningful representation.” Courts examine the evidence, the law, and the circumstances of the case in their totality and as of the time of the representation. A single tactical misstep does not automatically establish ineffectiveness; the focus is on the overall quality of the defense, not on isolated decisions that look questionable only in hindsight.

How New York Differs from the Federal Standard

The federal standard under *Strickland v. Washington*, 466 U.S. 668 (1984), requires proof of both deficient performance and prejudice (a reasonable probability the outcome would have been different). New York’s standard is broader: as the Court of Appeals later explained in *People v. Benevento*, 91 N.Y.2d 708 (1998), interpreting the Baldi standard, whether a defendant would have been acquitted but for counsel’s errors is “relevant, but not dispositive” under the state constitutional guarantee. This means reversal is still warranted when the defendant was deprived of a fair process, even without a clear showing that the verdict would have changed. Claims that might fail under the federal two-prong test can succeed in New York state court.

Common Examples of Ineffective Assistance

- **Failure to investigate.** Not interviewing witnesses, reviewing forensic evidence, or exploring possible defenses.
- **Failure to call witnesses.** Inexplicably declining to present witnesses with direct knowledge of relevant facts.
- **Bad advice on plea deals.** Providing inaccurate advice about consequences of a plea, including potential sentences, immigration consequences, or sex offender registration, or failing to convey a favorable plea offer.
- **Failure to file motions.** Neglecting to file a suppression motion when the evidence was obtained through an arguably unconstitutional search.
- **Failure to object.** Remaining silent while inadmissible evidence is presented or the prosecution makes improper arguments.

The 2021 Reform: Record-Based IAC Claims

Before 2021, New York law created a procedural trap for IAC claims. If the basis appeared on the trial record, the defendant was generally required to raise it on direct appeal, not in a 440 motion. In 2021, the Legislature amended CPL 440.10 subdivisions 2(b) and 2(c) to remove this procedural bar. Defendants can now bring IAC claims in a CPL 440 motion regardless of whether the evidence appears on the trial record, aligning New York with the federal system and the majority of other states.

Building a Strong IAC Claim

Gather any available evidence of what counsel did or failed to do, including notes, correspondence, and recollections from family members. Affidavits from witnesses who were never contacted can be powerful. Expert opinions showing what a competent investigation would have revealed can strengthen the claim further. Under New York's Baldi standard, you do not need to prove that a different outcome was probable, but you do need to show that the representation was not meaningful in the context of your case.

7. Prosecutorial Misconduct and Brady Violations

The prosecutor holds enormous power in the criminal justice system. With that power comes a constitutional obligation to play fair. When prosecutors suppress favorable evidence, present known false testimony, or engage in other misconduct, the resulting conviction may be challenged through a CPL 440.10 motion.

Brady v. Maryland: The Duty to Disclose

In *Brady v. Maryland*, 373 U.S. 83 (1963), the U.S. Supreme Court held that suppression of evidence favorable to the accused violates due process where the evidence is material to guilt or punishment. A Brady violation has three elements: (1) the evidence is favorable to the defendant (exculpatory or useful for impeachment); (2) the prosecution suppressed it, whether willfully or inadvertently; and (3) the suppression was material, meaning there is a reasonable probability the outcome would have been different.

How Brady Violations Come to Light

These violations are hidden at trial by definition. They typically emerge through Freedom of Information requests, post-conviction investigation by new counsel or innocence organizations, revelations about prosecution witnesses (such as undisclosed cooperation agreements), or disciplinary proceedings involving the same prosecutor's office.

New York's Approach

A Brady violation is typically raised under CPL 440.10(1)(f) (improper and prejudicial conduct not appearing in the record), CPL 440.10(1)(b) (fraud or misrepresentation by the prosecutor), or CPL 440.10(1)(h) (constitutional violation). A CPL 440 motion is the proper vehicle because the evidence of the violation was not part of the trial record. Notably, New York applies a slightly different materiality threshold depending on whether the defense made a specific request for the evidence; when a specific request was made and ignored, the standard is somewhat easier for the defendant to satisfy.

Prosecutorial Misconduct Beyond Brady

Other forms of misconduct that can support a 440 motion include knowing use of false testimony under CPL 440.10(1)(c), improper arguments to the jury in extreme cases, and coercion of witnesses. Brady and misconduct claims can be among the most powerful grounds for a 440 motion, but they require substantial investigation. Working with experienced post-conviction counsel is critical.

8. Newly Discovered Evidence

Sometimes, evidence that would have changed the outcome of a trial does not surface until after the conviction. CPL 440.10(1)(g) provides a mechanism for defendants to seek a new trial when genuinely new evidence comes to light.

The Legal Standard: The Six-Factor Test

New York courts apply a rigorous six-factor test rooted in *People v. Salemi*, 309 N.Y. 208 (1955) and reaffirmed in *People v. Hartle*, 2023 NY Slip Op 02029 (2023). The defendant must establish all six by a preponderance of the evidence:

1. The evidence must be such as will probably change the result at a new trial.
2. The evidence must have been discovered since trial.
3. The evidence could not have been discovered before trial by the exercise of due diligence.
4. The evidence must be material to the issue.
5. The evidence must not be cumulative to the former evidence.
6. The evidence must not be merely impeaching or contradicting the former evidence (though courts recognize exceptions for powerful impeachment evidence).

The Due Diligence Requirement

The third factor is often where these claims succeed or fail. In *Hartle*, the Court of Appeals held that evidence the defendant knew about, was involved in creating, and had deliberately destroyed before trial could not qualify as “newly discovered,” regardless of the technology used to recover it. The evidence must be genuinely new, not merely newly obtained.

What Qualifies

Successful claims most commonly involve recanting witnesses (treated with caution, as recantations are notoriously unreliable), new forensic evidence resulting from scientific advances, previously unknown witnesses, and evidence of third-party guilt.

Remedy

If a court grants the motion, the typical remedy is a new trial. In rare cases where the new evidence is so overwhelming that no reasonable jury could convict, the court may dismiss the charges entirely.

9. Actual Innocence Claims

An actual innocence claim asserts not merely that the trial was unfair, but that the person convicted is simply not guilty.

The Framework: *People v. Hamilton*

In *People v. Hamilton*, 115 A.D.3d 12 (2014), the Appellate Division, Second Department, recognized a freestanding claim of actual innocence as a basis for vacating a conviction under CPL 440.10(1)(h). The court held that the conviction or continued incarceration of a guiltless person violates the Due Process Clause of the New York State Constitution.

The Standard: Clear and Convincing Evidence

The defendant must present clear and convincing evidence of actual innocence. As the court explained, if the trial court determines after considering all reliable evidence that no juror, acting reasonably, would find the defendant guilty beyond a reasonable doubt, dismissal of the accusatory instrument is appropriate, because retrial of a person shown to be actually innocent would serve no legitimate purpose.

The Guilty Plea Limitation: People v. Tiger

In *People v. Tiger*, 32 N.Y.3d 91 (2018), the Court of Appeals held that a freestanding actual innocence claim 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. This ruling has been widely criticized by innocence advocates, who note that innocent people do plead guilty, particularly under pressure, with inadequate legal advice, or when facing far harsher sentences if convicted at trial. It remains good law as of this writing. Importantly, the *Tiger* decision does not bar defendants who pleaded guilty from seeking DNA testing under CPL 440.30 (see Section 10).

Evidence Supporting Innocence Claims

These claims are typically supported by DNA evidence excluding the defendant, identification evidence showing misidentification, confessions or admissions by the actual perpetrator, and expert testimony rebutting forensic evidence used at trial. Actual innocence claims often overlap with other CPL 440 grounds, and defendants frequently raise multiple grounds in the same motion.

10. DNA Testing Motions (CPL 440.30)

DNA evidence has transformed the criminal justice system. New York law provides a specific procedure under CPL 440.30(1-a) for defendants to request forensic DNA testing of evidence not tested at trial or now subject to more advanced methods.

Who Can File and When

Any convicted person may move for DNA testing, filed in the court that entered the judgment. For defendants convicted by guilty plea, the motion must generally be filed within five years of the entry of judgment. Three exceptions may extend this deadline: (1) diligence and extraordinary circumstances that prevented timely filing; (2) factual basis unknown to the defendant and not discoverable through due diligence before the deadline; and (3) the interests of justice, considering the totality of the circumstances.

What the Movant Must Show

For defendants convicted at trial, the movant must demonstrate that evidence containing DNA was secured in connection with the trial, and that if DNA testing had been conducted and admitted, there is a reasonable probability the verdict would have been more favorable. For defendants convicted by guilty plea, the standard is higher: the movant must show a substantial probability that the defendant was actually innocent.

What Happens If Results Are Favorable

Favorable DNA results can support a motion to vacate the conviction under CPL 440.10 as actual innocence evidence, newly discovered evidence, or evidence of a constitutional violation. Importantly, DNA testing under CPL 440.30 is available even to defendants who pleaded guilty, providing a critical pathway for individuals convicted by plea who may have biological evidence establishing their innocence.

11. Resentencing Provisions

Several provisions within Article 440 allow individuals to seek reduced sentences based on changes in the law. These mechanisms can be life-changing for individuals serving lengthy terms under sentencing regimes that have since been reformed.

Drug Offense Resentencing (CPL 440.46)

New York's Rockefeller Drug Laws, enacted in 1973, imposed some of the harshest drug sentences in the nation, including mandatory minimums of fifteen years to life for possession of relatively small quantities. The Drug Law Reform Act of 2009 (DLRA), codified in part at CPL 440.46, allows individuals sentenced under the old laws to apply for resentencing.

To qualify, an individual must: (1) be in the custody of DOCCS (whether incarcerated or on parole); (2) have been convicted of a class B felony drug offense under Penal Law Article 220; (3) have committed the offense before January 13, 2005; and (4) be serving an indeterminate sentence with a maximum exceeding three years. Individuals convicted of "exclusion offenses" under Correction Law Section 803 are ineligible. If the court finds the eligibility criteria are met, it must resentence the defendant to a determinate sentence under the reformed provisions, unless it determines that "substantial justice dictates" denial of the application, considering factors including the individual's institutional record and participation in programming.

Marijuana Resentencing (CPL 440.46-a)

The Marijuana Regulation and Taxation Act (MRTA), enacted in 2021, legalized recreational marijuana and addressed the legacy of prohibition.

Automatic expungement. For many individuals, relief is automatic. The Chief Administrative Judge was required to automatically vacate, dismiss, and expunge convictions for conduct no longer criminal under Article 222 of the Penal Law, with the process to be completed by March 31, 2023.

Resentencing motions. For convictions involving conduct that would still be an offense under Article 222 but would carry a lesser penalty, the defendant may file a motion for resentencing. The court can vacate the conviction, substitute a lesser offense, or reduce the sentence.

DVSJA Resentencing (CPL 440.47)

The Domestic Violence Survivors Justice Act (DVSJA), enacted in 2019, recognizes that many incarcerated individuals committed offenses while suffering domestic violence, and that the abuse was a significant contributing factor.

Eligibility. The applicant must: (1) be currently incarcerated and serving a sentence of at least eight years; (2) have committed the offense before August 12, 2019; (3) not have been sentenced as a second violent felony offender, persistent felony offender, or persistent violent felony offender; and (4) not have been convicted of certain excluded offenses, including first-degree murder (PL 125.27), second-degree murder only where the victim was a child under fourteen during a sexual act (PL 125.25(5)), aggravated murder (PL 125.26), terrorism offenses (PL Article 490), offenses requiring sex offender registration, or an attempt or conspiracy to commit any of these crimes.

Documentation. At least two pieces of evidence corroborating the domestic violence are required, with at least one from a specified list including court records, pre-sentence reports, social services records, hospital records, sworn witness statements, law enforcement records, orders of protection, or domestic incident reports.

The process. Resentencing follows three steps: (1) the applicant files a request establishing threshold eligibility and requesting assignment of counsel; (2) if the court finds preliminary eligibility, counsel is appointed and a full motion is prepared; (3) the court holds a hearing where the applicant must prove by a preponderance of the evidence that they were a victim of substantial abuse, that the abuse was a significant contributing factor to the criminal conduct, and that a standard sentence would be unduly harsh. If granted, the court may impose a significantly shorter sentence under Penal Law section 60.12.

12. Recent Legal Developments (2024-2026)

The landscape of post-conviction relief in New York continues to evolve. Several significant developments have expanded or may soon expand the options available.

The Clean Slate Act

New York's Clean Slate Act, signed into law in November 2023, provides for automatic sealing of eligible criminal convictions after specified waiting periods, with no application required. The Act became effective November 16, 2024, with full implementation expected by November 16, 2027. Misdemeanor convictions become eligible three years after sentencing or release (whichever is later); felony convictions become eligible after eight years. Excluded convictions include sex offenses and non-drug Class A felonies.

Drug-related convictions, even Class A felonies, are eligible. Sealed records remain accessible to law enforcement in defined circumstances but will not appear on standard background checks. For further details, see Section 17.

Pending Legislation: The Second Look Act

This bill would allow individuals who have served ten years or half of their sentence (whichever is less) to petition the sentencing court for a reduction. The court would consider the individual's age, maturity, rehabilitation, and the impact of continued incarceration. Although not included in the omnibus prison reform package Governor Hochul signed in 2025, a limited expansion of the merit time credit program was enacted, and the bill has been reintroduced for the 2025-2026 session.

Pending Legislation: Elder Parole

The Elder Parole bill (Senate Bill S454, introduced January 2025) would require the Board of Parole to interview any incarcerated person aged 55 or older who has served at least 15 years. (This bill is distinct from the Fair and Timely Parole Act, a separate proposal addressing broader parole reform.) Like the Second Look Act, Elder Parole was excluded from the 2025 omnibus legislation but remains a priority for criminal justice reform organizations.

Proposed Decriminalization-Based Vacatur

Senate Bill S6319, introduced in March 2025, would amend CPL 440 to create a new ground for vacating a conviction when the underlying conduct has been decriminalized or when a change in law calls for retroactive application. If enacted, this would provide a streamlined mechanism going beyond the automatic expungement provisions of the MRTA and Clean Slate Act.

The Broader Trend

The trajectory in New York is clearly toward expanding access to post-conviction relief. The 2021 amendment opening CPL 440.10 to record-based IAC claims, the DVSJA's retroactive resentencing provisions, the Clean Slate Act, and ongoing legislative proposals all reflect a growing recognition that justice does not end with the original verdict or sentence.

13. How to File a CPL 440 Motion: Step by Step

Where to File

A CPL 440 motion must be filed in the trial court that entered the judgment of conviction, typically a County Court or Supreme Court. It is not filed in the Appellate Division.

Written Motion with Sworn Allegations

The motion must be in writing. If based on facts, it must contain “sworn allegations” made under oath by you or another person with knowledge of the relevant events. These may be based on personal knowledge or on “information and belief,” but the affiant must identify sources and grounds for belief. A motion that lacks sworn allegations of essential facts can be denied without a hearing under CPL 440.30(4)(b).

Supporting Documents

A well-prepared motion typically includes: affidavits (sworn, notarized statements), exhibits (forensic reports, newly discovered records, expert analyses), and a legal memorandum citing the applicable CPL subdivision and controlling case law.

Service and Timing

You must serve a complete copy on the District Attorney’s office and file proof of service with the court. There is no fixed statute of limitations, but unexplained delay can weigh against you. Filing sooner is almost always better.

Successive Motions

There is no absolute prohibition on filing more than one CPL 440 motion, but successive motions are heavily restricted under CPL 440.10(3). The most significant exception is newly discovered evidence unavailable despite due diligence. Your first motion is your best opportunity, so raise every available ground.

Pro Se vs. Attorney

You may file pro se (on your own behalf), and there is no filing fee. Courts afford pro se filings some leniency on formatting, but the substantive requirements are identical. An experienced post-conviction attorney can identify the strongest grounds, avoid procedural pitfalls, and present the motion persuasively.

14. What Happens After You File

The People's Response

After you file and serve your motion, the DA's office may file an answer with its own affidavits, exhibits, and legal argument. The court then reviews the record and decides what happens next.

Three Possible Outcomes

1. Summary denial without a hearing. Under CPL 440.30, the court can deny the motion on the papers if the allegations fail to state a legal basis for relief, lack sworn allegations of essential facts, are conclusively refuted by documentary proof, or if an essential allegation is made solely by the defendant with no corroborating evidence and no reasonable possibility it is true. This last standard is why corroborating affidavits from other witnesses are so important.

2. Evidentiary hearing. If the motion raises factual questions that cannot be resolved on the papers, the court must hold a hearing (CPL 440.30(5)). You present witnesses and evidence; the DA cross-examines and presents its own evidence. The judge presides without a jury. You bear the burden of proof by a preponderance of the evidence.

3. Grant of the motion. The court must grant the motion without a hearing if the papers allege a legally sufficient ground supported by sworn allegations, and the facts are not disputed or refuted. This is rare but does occur, particularly when the prosecution concedes.

Timeline

There is no fixed timeline. Some courts decide within months; others take over a year. An evidentiary hearing functions like a mini-trial, and the court may request post-hearing briefs before issuing a decision.

15. If Your Motion Is Denied

Procedural Bars

Mandatory denial (CPL 440.10(2)). The court must deny the motion when the issue appears on the record and was, or could have been, raised on direct appeal. However, claims of ineffective assistance of counsel are expressly excluded from this bar following the 2021 amendment.

Discretionary denial (CPL 440.10(3)). The court may deny a motion when the issue was previously determined on the merits upon a prior motion or proceeding (other than an appeal), or could have been raised in a prior 440 motion.

The Interest-of-Justice Exception

When a discretionary bar applies, the court retains authority to grant the motion “in the interest of justice and for good cause shown.” In *People v. Phelps*, 2025 NY Slip Op 01680 (3d Dep’t 2025), the Appellate Division invoked this exception where there were irregularities in a prior denial order and new witness affidavits about counsel’s misadvice on parole eligibility supported the claim. Procedural bars are significant hurdles but not always insurmountable.

Appealing a Denial

You do not have an automatic right to appeal. You must apply for leave to appeal from the Appellate Division under CPL 460.15, within 30 days of being served with the denial order. This deadline is strict; a motion for reargument does not pause it. If the Appellate Division denies leave, you may seek further leave from the Court of Appeals.

Federal Habeas Corpus (28 U.S.C. Section 2254)

After exhausting all state remedies, you may file a federal habeas petition. Key rules: you must exhaust state remedies first; you must file within one year of when your conviction becomes final under AEDPA (the Antiterrorism and Effective Death Penalty Act), though the clock is tolled while a properly filed CPL 440 motion is pending; and federal courts apply strict deference to state court decisions, granting relief only if the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."

16. If Your Motion Is Granted

Possible Outcomes

New trial ordered. The conviction is vacated and the case returns to its pre-trial posture. You are presumed innocent, and the prosecution must prove guilt beyond a reasonable doubt.

Conviction vacated and charges dismissed. This occurs when retrial would be inappropriate or the prosecution concedes it can no longer prove the case.

Resentencing. If the court grants a CPL 440.20 motion, the conviction remains intact but a new sentencing proceeding is held.

Reduction to a lesser offense. With the prosecution's consent, the court may modify the judgment by reducing the conviction to a lesser included offense.

After a Grant

When a conviction is vacated, the DA may retry the case, offer a plea bargain, or dismiss the charges. If you are incarcerated, you may be released pending retrial, though the court may set bail. Consulting with your attorney about next steps is essential.

17. Alternatives to a CPL 440 Motion

Record Sealing Under CPL 160.59

You may apply to seal your record if you have no more than two criminal convictions (no more than one felony), at least ten years have passed since your most recent sentence or release, and you have no pending charges. Sex offenses, violent felonies, and Class A felonies are ineligible. Sealing makes the conviction non-public but does not vacate it.

The Clean Slate Act

New York's Clean Slate Act, effective November 16, 2024, creates automatic sealing of eligible convictions without an application. Full implementation is expected by November 16, 2027. Misdemeanors become eligible three years after sentencing or release; felonies after eight years. Excluded convictions include sex offenses, non-drug Class A felonies, and certain other serious offenses. The Act does not vacate convictions or correct legal errors. For individuals who have successfully vacated a conviction through a 440 motion and been resentenced or had charges dismissed, the Act may accelerate the practical benefits by ensuring sealed records do not continue to create collateral consequences.

Executive Clemency

The Governor may grant a pardon (relieving consequences of a conviction) or a commutation (reducing a sentence). Applications are submitted to the Executive Clemency Bureau within the Department of Corrections and Community Supervision. Commutation applicants must generally have served at least half of their minimum term. As of early 2026, over 1,100 commutation and 600 pardon applications remain pending.

Other Remedies

A **writ of error coram nobis** challenges ineffective assistance of appellate counsel and is filed directly with the Appellate Division. An **Article 78 proceeding** challenges administrative decisions by government agencies (such as parole board determinations) but cannot be used to challenge a conviction or sentence.

18. Frequently Asked Questions

How much does it cost to file a CPL 440 motion? There is no filing fee for criminal motions in New York. If you file pro se, costs are limited to photocopying, postage, and notarization. Legal aid organizations and law school clinics may provide assistance at no cost.

Can I file a CPL 440 motion if I pleaded guilty? Yes. Common grounds include ineffective assistance of counsel (particularly failure to advise about immigration or other collateral consequences), newly discovered evidence, coercion, and prosecutorial fraud. However, a freestanding actual innocence claim unrelated to new DNA evidence is generally not available after a voluntary guilty plea. See Section 9.

Is there a deadline to file? There is no fixed statute of limitations, but delay can work against you. Evidence deteriorates, and courts may view unexplained delay skeptically. If you plan to seek federal habeas relief, note that the one-year AEDPA clock begins running when your conviction becomes final. See Section 15.

Do I need a lawyer? No, but an experienced post-conviction attorney can significantly improve your chances. See Section 13.

Can I file more than one CPL 440 motion? Yes, but subsequent motions face procedural restrictions. The court may deny claims that were, or could have been, raised earlier. Newly discovered evidence is the primary exception. See Section 13.

How long does the process take? There is no standard timeline. Resolution may take anywhere from a few months to well over a year, longer if an evidentiary hearing is held or a denial is appealed. See Section 14.

Will I get out of prison if my motion is granted? Not necessarily. If your conviction is vacated and a new trial ordered, you may be released or the court may set bail. If charges are dismissed, you should be released. If only your sentence is set aside, you will be resentenced. See Section 16.

Can I file a CPL 440 motion while my direct appeal is pending? Yes, and it is sometimes strategically advisable when your claims depend on facts outside the trial record. The court may hold the 440 motion in abeyance until the appeal is decided. However, an issue raised and decided on appeal cannot be raised again in a 440 motion. See Section 2.

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