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# How to Get Out of Jail

BY BRENTIN MOCK (AUTHORS/9954) 6:00 AM Dec 8th, 2011



ed, what are your rights? This guide will tell you

December 10<sup>th</sup> marks Human Right's Day and all week countries have announced ways to provide rights to all human beings regardless of race, class, gender or sexuality. Loop 21 spotlights three areas of debate within the fight for fair and equal human rights: [LGBT rights](#) (<http://www.loop21.com/life/should-one%E2%80%99s-sexuality-outweigh-their-human-rights>), [women's Rights](#) (<http://www.loop21.com/life/stopping-rape-congos-women-should-be-top-priority>) and the rights of prisoners.

Mumia Abu-Jamal supporters are still celebrating Wednesday's news that the Philadelphia district attorney's office will no longer pursue the death (<http://www.loop21.com/politics/why-mumia-abu-jamal-must-be-set-free>) against the political activist. It was December 9, 30 years ago, that Abu-Jamal was arrested (<http://www.loop21.com/politics/mumia-abu-jamal-supporter-pam-africa-talks-his-freedom-fight>) for the shooting death of a police officer. He'll now spend his life in prison, with no parole, but it took 30 years for him to get to that point. His supporters won't rest until he's completely out of prison.

But what does it take exactly for someone to get out of prison, especially for the 1.6 million people incarcerated in federal or state prisons? What are your rights once you've been convicted, sentenced and thrown behind bars?

The answers differ in each state, and whether or not you go to a state prison or federal penitentiary. But no matter what, the roadmap to getting out of jail, especially by having your conviction overturned, is lengthy and difficult. Once you get out, it gets no less easy having the conviction taken off of your record, even if you had it overturned.

As a case study, we'll look at Louisiana. The state [incarcerates more people \(http://www.lasc.org/press\\_room/press\\_releases/2011/2011-07.asp\)](http://www.lasc.org/press_room/press_releases/2011/2011-07.asp) than any state in the country, with one out of every 865 people for every 100,000 who are under federal or state supervision per – compare that with 509 per 100,000 for the nation.

So, it's Day One in Louisiana's Angola state prison. How are you going to get out? Here is a step-by-step guide, with notes of what your rights are and aren't along the way:

**You appeal, and quick.** -- Your number one right is to appeal your case. If you've plead guilty, you've waived that right, but you can still pursue a way out through a post conviction relief application. If you didn't waive your right by pleading guilty, then your lawyer should immediately file a motion to appeal – they have 10 days. After 10 days, the right to appeal is lost. If you successfully appeal to the state intermediary courts it can take up to a year to hear your case. In Louisiana, the [Louisiana Appellate Project \(http://appellateproject.org/\)](http://appellateproject.org/) helps indigent prisoners with their appeals.

**Post-conviction relief.** – Let's say you've plead guilty but felt hoodwinked into that; or, your lawyer didn't file an appeal motion within the 10-day window. All is not lost for you. You still have the right to file for post-conviction relief, which can be a pathway to an appeal. If you missed the 10-day window, you can file for an “out-of-time” motion, which providing you have a legitimate excuse for why you missed the appeals deadline, the courts will grant you a new right to file for an appeal. If denied, you go for post-conviction relief, which you have two years to file. The state circuit court votes up or down on whether they'll grant you that post-conviction motion. While in post-conviction, you've lost your right to a lawyer, and most go through this process “pro se,” which means representing themselves.

**No lawyer? How can I get out then?** – If you're in a state prison like Angola, then there are law libraries where you need to study up and figure out your path to having your conviction overturned. Inside, you might run into an inmate counsel substitute aka a “jailhouse lawyer” who's been through the ropes, knows the law pretty well and can help you with your case. Volunteer lawyers from outside the prison come in to do seminars to help prisoners learn about how to fight their cases. You might get helped by someone like Norris Henderson, executive director of [Voice Of The Offender \(VOTE\) \(http://vote-nola.org/staffandboard\)](http://vote-nola.org/staffandboard) who was wrongfully locked up for 27 years, but taught himself criminal law and became a jailhouse lawyer for others. These people will help you prepare your post-conviction case. And this is where you are most in need. “Guys go from going before the judge at 9 a.m. with their lawyer, and then they plead guilty and their whole circumstances change,” says Henderson. “By 9 p.m. that evening they no longer have a lawyer because they lost their right to one in post-conviction. At that point, you probably don't have a clue what your next step is.”

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**Lost post-conviction case: Now what?** – You may have lost your post-conviction relief case, but you didn't lose your right to continue appealing. First, note that the day the clock started ticking on your two-year window to file for post-conviction relief is also the day the clock started for filing a federal habeas writ appeal, which you might need later down the road. You have one year to file that and that year runs concurrently with the two-year window for filing with state courts. The state judge will not tell you this, nor is it your right that they tell you.

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If your case is denied by the state circuit court then you have 30 days to appeal to the state supreme court. If state supreme denies you, then you make good on that federal habeas motion you filed in a federal district court, if and only if you're still within the one-year window. Before the federal court, you are still likely pro se, unless you can manage to afford a lawyer. But the federal magistrate judge can appoint a lawyer to help you with your case, though only at her or his discretion. If they deny your case, you can appeal to the federal circuit court of appeals, and you have 45 days to do that. If they deny, you take it to the Supreme Court of the United States and hope for the best.

**Expungement time! Or not.** – If at any point in that appeals process, a court overturns your conviction and you're free to go – and a district attorney won't try to re-indict you – then more fun awaits you. You're released to society during the worst job market in decades and you have a criminal stain, a felony, on your record. You need to get it expunged so you at least have a chance at grabbing a job. Universities sometimes have law clinics to help with these, or maybe you're helped by the [Justice & Accountability Center of Louisiana](http://jaclouisiana.org/?page_id=34) ([http://jaclouisiana.org/?page\\_id=34](http://jaclouisiana.org/?page_id=34)), a non-profit that brings a team of lawyers via their Mobile Expungement Clinic to come help you. If you're out of jail because you were exonerated, then you have the right to have your record expunged – which just means sealed, not erased. If you served your full sentence, and didn't have your conviction overturned, then your right to expungement is a mystery in Louisiana. "People know that [expungement laws] are badly written and they're not servicing those in need," says Adrienne Wheeler, co-founder of the Justice & Accountability Center. "The laws could stand to be a lot

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clearer.” Nevertheless, an expungement is gonna cost you: at least \$250, but could be upwards of \$750 ... per offense. And then you have to hope that the state police actually expunge it once paid for and the courts command it. That can take up to a year, if it happens at all in Louisiana. “There’s no process for rejecting an expungement,” says Wheeler, “it’s a court order. But the police do it anyway.”

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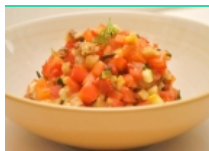


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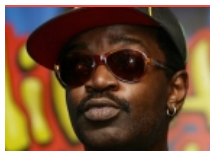


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