

## CHAPTER 5

### CHOOSING A COURT AND A LAWSUIT: AN OVERVIEW OF THE OPTIONS

#### A. Introduction

This Chapter will briefly explain the different lawsuits available to you, so that you can decide which type of lawsuit is best for you to bring.

The first step you should take when determining what suit to bring is to ask yourself: “Do I want to challenge my conviction or sentence, do I want to challenge the conditions I am enduring in prison, or do I want to challenge both?” If you think something unlawful *led to your imprisonment*, read **Part B** of this Chapter. If you think something unlawful and harmful has happened to you *while you have been in prison*—for example, the prison refuses to give you your mail—read **Part C**. If you are not sure, read both Part B and Part C for more information. Once you figure out which lawsuit you want to bring, there are other *JLM* chapters that cover that lawsuit in more detail. **Appendices A and B** at the end of this Chapter will help point you in the right direction.

For the best chance of winning your lawsuit, you must pay attention to the things the law requires you to do when bringing a specific type of lawsuit. Many lawsuits require you to do certain things before you even begin the lawsuit (such as pursue help within your prison). Some lawsuits also require you to do certain things when you begin the lawsuit (such as pay court fees, unless you can qualify for an exception).

Different types of lawsuits have different outcomes, or “remedies,” if you are successful. For example, some lawsuits allow you to demand that the opposing party pay you money, known as “monetary damages,” if you win. Other lawsuits do not result in monetary damages but may require the opposing party to do something (such as give you your mail) or stop doing something that is causing you harm. Some types of lawsuits may lead to the reversal of your conviction or sentence. Once you know what remedies each type of lawsuit can provide, you can decide which type of lawsuit, if any, is the right one for you to file.

#### B. Lawsuits to Challenge Your Conviction or Sentence

##### 1. Criminal Appeal

If a New York trial court convicted you of a crime, you have the right to appeal your conviction or sentence to a higher New York court, unless your conviction ended in a death penalty sentence that was not harsh or excessive.<sup>1</sup> Incarcerated people who were convicted of crimes in other states, and incarcerated people who were convicted of a crime in federal court, have similar rights to appeal their convictions.<sup>2</sup> On appeal, the higher, or “appellate,” court will examine the record of your trial to determine whether the judge or prosecutor committed any legal errors<sup>3</sup> in conducting your trial or sentencing. The appellate court may also consider whether the jury improperly weighed the evidence at your trial, or if your sentence was too harsh or longer than the maximum time allowed by law. *JLM*, Chapter 9, “Appealing Your Conviction or Sentence,” explains the process of appealing your conviction or sentence in detail.

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<sup>1</sup> N.Y. CRIM. PROC. LAW § 450.10 (McKinney 2023).

<sup>2</sup> FED. R. APP. P. 4(b).

<sup>3</sup> “Legal errors” are explained in different chapters of the *JLM*, including Chapter 9, “Appealing Your Conviction or Sentence;” Chapter 13, “Federal Habeas Corpus Petitions;” Chapter 20, “Using Article 440 of the New York Criminal Procedure Law to Attack Your Unfair Conviction or Illegal Sentence;” and Chapter 21, “State Habeas Corpus: Florida, New York, and Michigan.”

## 2. Post-Conviction Remedies

New York also has three other procedures you can use to challenge your sentence or conviction. These additional procedures are often called “post-conviction remedies,” because they let you ask the court to help you *after* you have been convicted. These procedures are different from an appeal, because during the appeal process, your conviction is not yet final. The three post-conviction remedies are: (1) an Article 440 motion, (2) a petition for state habeas corpus, and (3) a petition for federal habeas corpus.

These procedures do not exist only in New York. Chapter 20 of the *JLM* lists the procedures in other states that are similar to New York’s Article 440 motion.<sup>4</sup> Chapter 21 of the *JLM* covers state habeas corpus procedures for Florida, New York, and Michigan, and the habeas corpus procedures for other states are published in the *JLM* State Supplements. Finally, incarcerated people in every state have the same right to petition for federal habeas corpus. Federal habeas corpus is described in more detail in Chapter 13 of the *JLM*.

Although these three types of post-conviction remedies are available to you, keep in mind that filing an appeal is usually the best way to challenge your conviction or sentence. You should try to appeal your conviction or sentence before you pursue these post-conviction remedies.

### (a) Article 440 Motion<sup>5</sup>

In an Article 440 motion, you ask the trial court to review circumstances that made your conviction or sentence unfair. Examples of these circumstances are a change in the law, the discovery of new evidence, an unauthorized or illegal sentence, or misconduct by the prosecutor or judge that you did not and could not have known about at the time of your trial.<sup>6</sup> You may also make an Article 440 motion if your conviction and sentence violate your rights under the U.S. Constitution or New York State Constitution.<sup>7</sup> However, you cannot raise any claims in an Article 440 motion that you have already raised, or could have raised, in a criminal appeal. The remedy you get from winning an Article 440 motion is a new trial, appeal, or sentence. Keep in mind that, although there is no statute of limitations (time limit) for making an Article 440 motion, a court may choose not to grant your motion if you wait too long after your sentencing to file your motion.<sup>8</sup> *JLM*, Chapter 20, “Using Article 440 of the New York Criminal Procedure Law to Attack Your Unfair Conviction or Illegal Sentence,” discusses Article 440 in great detail, and you should read it before filing this motion.

### (b) State Habeas Corpus<sup>9</sup>

In a state habeas corpus petition, you challenge the government’s right to keep you in prison by asserting that your confinement is illegal. In general, however, New York courts require incarcerated people to file Article 440 motions instead of petitions for state habeas corpus unless they are challenging a parole or bail decision. New York habeas corpus petitions are often used to challenge bail determinations, revocations of your parole, extradition, arraignment and delay, misdemeanor complaint and delay, felony complaint and delay, and speedy trial issues. The remedy you get for filing a successful state habeas corpus petition is immediate release from custody. *JLM*, Chapter 21, “State Habeas Corpus: Florida, New York, and Michigan,” explains the New York habeas corpus process in

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<sup>4</sup> See *JLM*, Chapter 20, “Using Article 440 of the New York Criminal Procedure Law to Attack Your Conviction or Sentence,” Appendix A.

<sup>5</sup> N.Y. CRIM. PROC. LAW §§ 440.10–440.70 (McKinney 2023).

<sup>6</sup> N.Y. CRIM. PROC. LAW § 440.10(1)(a)–(g) (McKinney 2023).

<sup>7</sup> N.Y. CRIM. PROC. LAW § 440.10(1)(h) (McKinney 2023).

<sup>8</sup> See *People v. Byrdsong*, 161 Misc. 2d 232, 236, 613 N.Y.S.2d 543, 545 (Sup. Ct. Queens County 1994) (stating that a post-conviction motion that was filed nine years after the trial and seven years after all appeals had been exhausted was not permitted because “in the interest of finality, there comes a time in any case when further litigation should come to an end.”).

<sup>9</sup> N.Y. C.P.L.R. §§ 7001–7012 (McKinney 2013).

detail, as well as Florida's and Michigan's habeas corpus procedures. State-specific habeas corpus procedures are published in the *JLM* State Supplements.

(c) Federal Habeas Corpus<sup>10</sup>

In a federal habeas corpus petition, you ask a federal judge to review your claim that your conviction or sentence violates your rights under the U.S. Constitution. This is different from an Article 440 motion or a petition for state habeas corpus. Recently, federal judges have been more cautious about disrupting state criminal proceedings, so it has become more difficult for incarcerated people convicted in state courts to get federal courts to review their federal habeas corpus claims.<sup>11</sup> Also, federal laws now require incarcerated people to exhaust all forms of state relief (such as filing an Article 440 motion or petitioning for state habeas corpus), before they seek relief in federal court.<sup>12</sup> You also have only one year to make a federal habeas corpus claim from the time you were sentenced or re-sentenced to prison.<sup>13</sup> *JLM*, Chapter 13, "Federal Habeas Corpus Petitions," explains federal habeas corpus in detail, and you should read it carefully if you are thinking about making a federal habeas corpus claim.

**C. Lawsuits to Challenge the Conditions of Your Imprisonment**<sup>14</sup>

Before you decide to bring a lawsuit challenging your prison conditions, it is very important that you read *JLM*, Chapter 14, "The Prison Litigation Reform Act." The PLRA, as it is known, makes it harder for incarcerated people to bring lawsuits about prison conditions in federal court. The PLRA also sets harsh consequences if you bring your claim incorrectly. Though the PLRA only applies to federal court cases, many states have passed similar laws to reduce the number of lawsuits from incarcerated people. *JLM*, Chapter 2, "Introduction to Legal Research," will help you learn how to research whether your state has laws like the PLRA.

To bring a lawsuit in federal court, the PLRA requires you to pay the full court filing fee even if you proceed *in forma pauperis* (as a poor person). If you file as a poor person, however, your fees will be taken in installments from your prison account. This means that instead of having to pay the full fee upfront, you can pay a little bit at a time. However, if you file a federal lawsuit *in forma pauperis*, you risk receiving a "strike" under the "three strikes" provision of the PLRA. Under the "three strikes" provision, you get a strike if you file a lawsuit that gets dismissed for being frivolous, malicious, or for failing to make a valid legal claim. If you get three strikes, you will never be able to use the *in forma pauperis* procedure again in future lawsuits, so you will have to pay the full filing fee upfront. Also, if the court finds that you filed a lawsuit for a malicious or harassing purpose, you may lose good-time credit you have earned in prison.<sup>15</sup>

The PLRA also requires you to "exhaust" (use up) or attempt to exhaust all of your administrative remedies *before* you bring a claim in court.<sup>16</sup> To do this, you must pursue all of the administrative grievance procedures available to you before filing a federal lawsuit (this is described more in Section

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<sup>10</sup> 28 U.S.C. §§ 2241–2266.

<sup>11</sup> Eve Brensike Primus, *A Crisis in Federal Habeas Law*, 110 MICH. L. REV. 887, 887 (2012) (noting that "federal judges . . . dismiss the vast majority of [habeas petitions] . . . on procedural grounds") (reviewing NANCY J. KING & JOSEPH L. HOFMANN, *HABEAS FOR THE TWENTY-FIRST CENTURY: USES, ABUSES, AND THE FUTURE OF THE GREAT WRIT* (2011)). This concern will not apply to you if you are incarcerated in a federal institution.

<sup>12</sup> The Prison Litigation Reform Act is explained briefly in Part C below and in further detail in Chapter 14 of the *JLM*.

<sup>13</sup> 28 U.S.C. § 2244(d)(1) ("A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.")

<sup>14</sup> You can also file a complaint with the U.S. Department of Justice (DOJ), but this is not a lawsuit since the DOJ does not have to respond to your complaint. See Section C(7) below for more details on the DOJ process.

<sup>15</sup> 28 U.S.C. § 1932 (codified below heading "Revocation of earned relief credit").

<sup>16</sup> 42 U.S.C. § 1997e(a).

C(1) below). If you do not exhaust all your administrative remedies, your claim will be thrown out and you will not get your filing fee back. These are only a few of the restrictions imposed by the PLRA. You should read Chapter 14 of the *JLM* before you file any federal lawsuit challenging your prison conditions to make sure you know all the rules created by the PLRA.

### 1. Exhausting Administrative Grievances

The PLRA requires you to use all administrative grievance programs available to you—both state and federal—before filing a lawsuit in federal court. Many states also have this requirement. In New York, you must first file a complaint in the New York State Incarcerated Grievance Program before bringing a lawsuit. Read *JLM*, Chapter 15, “Incarcerated Grievance Procedures,” for more details about the New York program as well as some basic information about similar grievance programs in other states.

The New York State Incarcerated Grievance Program allows incarcerated people in any of the facilities of the Department of Corrections and Community Supervision (“DOCCS”) to file a complaint with “grievances” (something you think is wrong) about their prison conditions. Grievances must be about a DOCCS policy, rule, or regulation, either as it is written or as correction officials or officers have applied it to you personally. Issues and problems that do not relate to a DOCCS policy, rule, or regulation, or that do not involve you personally cannot be resolved through this program. For example, if your complaint involves a policy, rule, or action of an outside agency, DOCCS cannot help you.<sup>17</sup> Therefore, the PLRA does not require that you exhaust the DOCCS grievance procedure before you file a federal lawsuit *if your claim does not relate to a DOCCS policy, rule, or regulation*. However, you should be sure before proceeding, and it may still be a good idea to file a grievance just to be sure.

### 2. Lawsuits under 42 U.S.C. § 1983

A federal law, 42 U.S.C. § 1983 (“Section 1983”), allows you to sue state and city prison or jail officials and guards if they deprive you of your rights under the U.S. Constitution or other federal laws (such as your rights to adequate medical care, to be free from assault, and to have access to the courts and to legal materials). *You cannot use Section 1983 to attack your conviction or sentence.*

When you file a Section 1983 lawsuit, you must give a detailed description of the incident or practice that you want resolved. If the problem affects many other people in your prison, you might also be able to bring your lawsuit as a “class action.” A class action is a lawsuit brought on behalf of you and others who experience the same problem or have the same complaint.<sup>18</sup> You can also bring a state claim, together with your federal claim, if the state claim involves the same facts as your federal claim.<sup>19</sup>

Section 1983 has a statute of limitations, which prevents you from bringing a Section 1983 lawsuit if you do not file it quickly enough after you are harmed. Section 1983 lawsuits have the same statute of limitations as personal injury lawsuits in the state in which you file your Section 1983 lawsuit. The statute of limitations time period begins to run when you find out about (or should have found out about) the injury you suffered.

A federal judge who hears a Section 1983 claim may order any of the following remedies: (1) an “injunction” (an order to prison officials to stop denying you your rights or to take steps to allow you to exercise your rights); (2) money damages (to make up for your injuries); or (3) a “declaratory judgment” (a statement by the court about what your rights are, made before they have been violated).

After you decide which district court you will file your Section 1983 lawsuit in, you should write to the clerk of that court asking for the forms and information you need. You can complete the filing of

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<sup>17</sup> State of New York, Department of Corrections and Community Supervision, Directive No. 4040 § 701.3(f), Incarcerated Grievance Program (2016), *available at* <http://www.doccs.ny.gov/Directives/4040.pdf> (last visited Sept. 24, 2023).

<sup>18</sup> But keep in mind that you need a lawyer to file a class action. You cannot file one by yourself.

<sup>19</sup> See Subsection C(6)(b) of Chapter 16 of the *JLM*, “Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law,” for more information on supplementing your federal § 1983 case with state claims.

your Section 1983 lawsuit simply by mailing the appropriate documents to the clerk. Chapter 16 of the *JLM*, Chapter 16, “Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law,” discusses Section 1983 lawsuits in detail.

### 3. *Bivens* Actions<sup>20</sup> under 28 U.S.C. § 1331

There is no statute (law) similar to Section 1983 that allows you to sue *federal* officials who violate your federal rights. However, you can still sue federal officials who violate your constitutional rights by bringing a “*Bivens* action.”<sup>21</sup> A *Bivens* action is similar to a Section 1983 claim. Much of the information about Section 1983 lawsuits also applies to *Bivens* actions. For example, like a Section 1983 lawsuit, you may use a *Bivens* action to complain about prison conditions or treatment violating your constitutional rights. The PLRA also requires that you exhaust all available administrative remedies before filing your *Bivens* action, like you need to do in a Section 1983 lawsuit.

A *Bivens* action allows you to sue a federal officer who violated your rights. However, you can only sue a federal officer as an *individual*, not as an *official*. This means that you can sue the officer as a person, but not as a government employee, so your remedies are limited to what the individual can do to “make you whole” (make it up to you).<sup>22</sup> Additionally, you cannot bring a *Bivens* action against a federal agency or a private corporation that operates a federal prison facility.<sup>23</sup> If you want to sue a private corporation that operates prison facilities, you might be able to bring a tort claim in state court (this is described in more detail below). Federal courts also may not listen to your complaint if it sounds like you are suing for a harm that is relatively less serious, such as your personal items being taken from you.

If you bring a *Bivens* action, you must serve a copy of the summons and complaint on (1) the named defendants, (2) the U.S. Attorney for the district in which you bring your lawsuit, and (3) the U.S. Attorney General in Washington, D.C.<sup>24</sup> If you seek injunctive or declaratory relief (meaning you are asking the court to stop something being done to you, but you are not asking for money), you may file your lawsuit in the federal district where any defendant resides, where the events complained of occurred or are occurring, or where you presently reside.<sup>25</sup> If you are filing a *Bivens* action for money damages, you must file in (1) the federal district in which any of the defendants resides, so long as all the defendants live in the same state, or (2) the district in which your claim arose (that is, where the events you are complaining about occurred).<sup>26</sup> You can only use registered or certified mail to serve the U.S. Attorney and Attorney General with your summons and

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<sup>20</sup> For more information on *Bivens* actions, see Part E of Chapter 16 of the *JLM*, “Using 42 U.S.C. § 1983 & 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law.”

<sup>21</sup> The claim comes from the case *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389, 91 S. Ct. 1999, 2001, 29 L. Ed. 2d 619, 622 (1971), which allowed a lawsuit against federal agents claiming a Fourth Amendment violation.

<sup>22</sup> See *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 510 (2d Cir. 1994) (stating that a *Bivens* action “must be brought against the federal officers involved in their individual capacities”). This is because if you sue an officer in his “official capacity,” it is like suing the federal government. However, the federal government usually cannot be sued due to “sovereign immunity.” Sovereign immunity is the legal idea that a government may not be sued unless it specifically allows suits against it.

<sup>23</sup> See *Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 486, 114 S. Ct. 996, 1005–1006, 127 L. Ed. 2d 308, 323–324 (1994) (holding that *Bivens* suits cannot be brought against a federal agency); see also *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 63, 122 S. Ct. 515, 517, 151 L. Ed. 2d 456, 461 (2001) (refusing to extend *Bivens* to allow recovery against a private company operating a halfway house under contract with the Federal Bureau of Prisons).

<sup>24</sup> FED. R. CIV. P. 4(i)(3).

<sup>25</sup> 28 U.S.C. § 1391(e).

<sup>26</sup> 28 U.S.C. § 1391(b).

complaint.<sup>27</sup> All service to the named defendants must be by personal service, unless the defendants waive personal service under the Federal Rules of Civil Procedure.<sup>28</sup>

#### 4. Tort Actions in State Courts

As noted above, if you were injured by a state official or employee, *and* as a result, your constitutional rights were violated, you may file a Section 1983 suit. This is a claim under federal law even though the person who injured you is a state official or employee. You may also file a tort action under state law in state court against anyone who deliberately or carelessly injured you, or damaged or destroyed your property. You can file a state tort action regardless of whether they violated any of your constitutional rights, and regardless of whether you are also filing a Section 1983 federal lawsuit. It is a good idea to file a state tort lawsuit with a Section 1983 federal lawsuit in order to increase the possibility of collecting money damages.

In New York, if the person who injured you was a state official, state employee, or someone acting under the authority of the state (such as a private doctor the state hired), you may sue New York State. When suing the state in a tort action, you must do so in the Court of Claims.<sup>29</sup> The Court of Claims only hears such claims against the state and can only award money damages; it cannot issue an injunction. Also, before filing a lawsuit in the Court of Claims, you must exhaust administrative procedures, such as the Incarcerated Grievance Program, and you must pay the filing fee. Read *JLM*, Chapter 17, “The State’s Duty to Protect You and Your Property: Tort Actions,” for more information about tort lawsuits.

#### 5. Tort Actions in Federal Courts

If you are incarcerated in federal prison and want to file a tort lawsuit, you must sue using the Federal Tort Claims Act (“FTCA”)<sup>30</sup> instead of a *Bivens* action. The FTCA creates the procedures to sue the federal government for harm federal employees may have caused you or your property while they were doing their jobs. You must first send in a completed Form 95, “Claim for Damage, Injury, or Death,” and ask for damages from the federal agency that employs the person who harmed you.<sup>31</sup> Often, the agency settles FTCA claims. But if the agency refuses to resolve your claim, you may file suit in federal court. Remember, if you have not sought all of the possible administrative remedies before going to federal court, the judge will dismiss your case.

#### 6. Article 78 Proceedings

Article 78 of the New York Civil Practice Law allows you to go to court to challenge decisions made by New York State administrative bodies or officers.<sup>32</sup> Like the other lawsuits mentioned in Part C of this Chapter, you cannot use Article 78 to challenge your conviction or sentence. Article 78 is useful for challenging decisions made by administrative bodies like the Department of Corrections and Community Supervision, the Board of Parole, and the Temporary Release Committee, or decisions made by state employees such as prison guards and administrators. You may challenge these decisions when you think the people making the decision: (1) acted beyond their legal authority; (2) failed to do something required by law; (3) made an unreasonable or grossly unfair decision; or (4) made a decision

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<sup>27</sup> FED. R. CIV. P. 4(i)(1), (3).

<sup>28</sup> FED. R. CIV. P. 4(i)(3).

<sup>29</sup> Although the name is similar, this is not the same as Small Claims Court.

<sup>30</sup> Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1).

<sup>31</sup> 28 U.S.C. § 2675(a). You can get this form by writing to the clerk of the federal district court in which you plan to file your action. You may also download the form online via the General Services Administration Form Library. See Claim for Damage, Injury, or Death, GEN SERVS. ADMIN., available at <https://www.gsa.gov/reference/forms/claim-for-damage-injury-or-death> (last visited Sept. 24, 2023).

<sup>32</sup> N.Y. C.P.L.R. §§ 7801–7807 (McKinney 2008).

at a hearing without enough evidence to warrant such a decision.<sup>33</sup> Even though you cannot challenge your sentence or conviction under Article 78, you may challenge the Board of Parole’s decision to revoke your parole, which, if successful, would lead to your release from prison. *JLM*, Chapter 22, “How to Challenge Administrative Decisions Using Article 78 of the New York Civil Practice Law and Rules,” discusses Article 78 proceedings in greater detail.

## 7. Challenging Unconstitutional Prison Conditions Through the Department of Justice

The Special Litigation Section of the U.S. Department of Justice (“DOJ”) has authority under the Civil Rights of Institutionalized Persons Act to investigate state and local jails and prisons for unconstitutional conditions.<sup>34</sup> This section of the DOJ does not investigate federal prisons; you must use another agency like the Bureau of Prisons if you want to file a complaint about a federal prison.<sup>35</sup> The DOJ will only investigate allegations of widespread abuse—problems experienced by many people incarcerated at a particular prison or jail. If you think your prison suffers from widespread constitutional abuses, you might consider writing to the DOJ. *The DOJ cannot provide individual relief, nor can it bring a claim regarding your criminal sentence. For these matters, you should contact an attorney.*<sup>36</sup>

The Special Litigation Section of the DOJ protects the constitutional and federal statutory rights of people confined in certain institutions owned or operated by state and local governments. These institutions include facilities for individuals who are mentally ill or developmentally disabled, nursing homes, juvenile correctional facilities, and adult jails and prisons. Recently, the Special Litigation Section has focused on abuse in nursing homes, juvenile facilities, sexual victimization of women who are incarcerated, and the unmet medical needs of people serving criminal sentences and people detained before trial.

The Special Litigation Section enforces federal civil rights statutes in four major areas: (1) conditions of institutional confinement; (2) law enforcement misconduct; (3) access to reproductive health facilities and places of religious worship; and (4) protection of institutionalized people’s religious exercise rights. The DOJ receives a large number of claims every year and cannot investigate every claim. The DOJ also takes a long time to conduct an investigation, so it is important to be patient if you do bring a claim.

If you write to the DOJ, be as specific and clear as possible about the abuses you and other people in your prison or jail are experiencing. Your letter should include your name, prison ID number, race, the length of your sentence and how much of it you have served, and a description of what happened or the condition you believe to be unconstitutional. When you talk about what happened, be sure to include all relevant information, including how many times the abuse happened, the names and races of the people involved, and whether the abuse has happened to other people incarcerated at your facility. If you know of others who have had similar experiences, you should encourage them to also write letters.

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<sup>33</sup> N.Y. C.P.L.R. § 7803 (McKinney 2008).

<sup>34</sup> 42 U.S.C. § 1997a(a). Some federal courts in New York have held that, under the PLRA, incarcerated people must exhaust the DOJ’s disability complaint procedure, in addition to their prisons’ internal grievance procedures, before filing a disability-related complaint in federal court. Other courts have disagreed. For more information about whether your complaint would qualify as an “administrative remedy” under the PLRA, read Section E(1) of Chapter 14 of the *JLM*, “The Prison Litigation Reform Act.”

<sup>35</sup> For more information, see FED. BUREAU OF PRISONS, available at <https://www.bop.gov> (last visited Sept. 24, 2023).

<sup>36</sup> See *How to Report a Civil Rights Violation*, U.S. DEPT. OF JUST., available at <https://civilrights.justice.gov/> (last visited Sept. 24, 2023).

You can send the letter to:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Office of the Assistant Attorney General, Main  
Washington, D.C. 20530

Telephone: (877) 218-5228; (202) 514-6255; Fax: (202) 514-0212; (202) 514-6273

If you are filing a complaint under the Americans with Disabilities Act, you have to write to a different division of the DOJ. *JLM*, Chapter 28, “Rights of Incarcerated People with Disabilities,” explains how to file this complaint. A summary of the Special Litigation Section’s work is also available on the DOJ website.<sup>37</sup>

#### D. Conclusion

If you are thinking about bringing a lawsuit, you should start by determining the details of your problem. This will help you decide which laws or procedures are most appropriate for your situation. Then decide whether you are challenging your conviction or sentence, or whether you are challenging the conditions of your imprisonment. Read additional chapters of the *JLM* that relate to your issue to help you make a decision. Next, learn what you must do for different types of legal action. Review the different types of suits described above (and in the chart below) for each type of legal problem, and think about what is required to be successful. Finally, think back to what your problem is and who is responsible, and decide what your goals are for fixing that problem. Since different lawsuits provide different types of solutions (or “remedies”), you should decide what kind of legal action to take with your goal in mind. At that point, you will be in the best position to decide whether legal action is right for you, and if so, which type of lawsuit you should pursue.

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<sup>37</sup> *Special Litigation Section*, U.S. DEPT. OF JUST., available at <https://www.justice.gov/crt/special-litigation-section> (last visited Feb. 26, 2024).



## APPENDIX A

### LAWSUITS THAT CHALLENGE YOUR CONVICTION OR SENTENCE

Type of Suit	Characteristics of the Suit	Where Do I Bring My Claim: State or Federal Court?	Important Things to Remember	<i>JLM</i> Chapters You Should Consult
<b>Criminal Appeal</b>	A higher court looks at your case to see if the lower court, judge, or prosecutor committed any legal errors during the trial or sentencing.	It depends on where you were first convicted. If you were convicted in a state trial court, you would appeal to a higher state court. If you were convicted in a federal court, you would appeal to a higher federal court.	The higher court can only look for legal errors, not factual ones.	Chapter 9: “Appealing Your Sentence or Conviction”
<b>Article 440</b>	A trial court reviews circumstances that may have made your conviction or sentence unfair.	You can bring this claim only in the New York State courts. See <i>JLM</i> , Chapter 20, Appendix A for similar laws in other states.	You cannot raise any claims you have already raised or could have raised in a criminal appeal.	Chapter 20: “Using Article 440 of the New York Criminal Procedure Law to Attack Your Unfair Conviction or Illegal Sentence”
<b>Federal Habeas Corpus</b>	A federal judge reviews your claim that your rights were violated under the U.S. Constitution.	You may bring a federal habeas corpus claim only in federal court.	You must have tried to use all the relief that your state provides before seeking federal habeas corpus. <b>Remember that you have a one-year time limit to bring a federal habeas corpus action.</b> Judges do not often grant habeas relief.	Chapter 13: “Federal Habeas Corpus Petitions”
<b>State Habeas Corpus</b>	In New York, state habeas corpus is used mainly to challenge bail determinations and revocations of parole.	You may bring a state habeas corpus claim only in state court.	In New York, try Article 440 before you bring a state habeas petition. Courts will generally make you use Article 440 unless you are challenging bail or a parole decision.	Chapter 21: “State Habeas Corpus: Florida, New York, and Michigan”

## APPENDIX B

### LAWSUITS THAT CHALLENGE THE CONDITIONS OF YOUR IMPRISONMENT

Type of Suit	Characteristics of the Suit	Which Court: State or Federal?	Important Things to Know	<i>JLM</i> Chapters You Should Consult
<b>Administrative Grievance</b>	You may file a complaint to an administrative body. In prison, this means that you will first file a complaint with your prison.	An administrative grievance is not filed with a court, but rather with your prison.	Make sure you know about the Prison Litigation Reform Act (PLRA) and its requirements. See <i>JLM</i> , Chapter 14, "The Prison Litigation Reform Act."	Chapter 15: "Incarcerated Grievance Procedures"
<b>42 U.S.C. § 1983</b>	You may sue state or city prison officials if they violate your federal constitutional rights and federal statutory rights "under color" of state law.	Section 1983 claims are usually filed in federal court.	You cannot use a Section 1983 claim to challenge your conviction or sentence. You must follow the state statute of limitations (time limit) for personal injury suits and file your complaint by this deadline. Consider whether you might also bring your suit as a class action. You cannot use a Section 1983 claim if you are complaining about a <i>federal</i> official.	Chapter 16: "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law"
<b>28 U.S.C. § 1331 (Bivens Actions)</b>	You use this type of lawsuit to complain about <i>federal</i> officials who violate your federal constitutional rights. This is the equivalent to a Section 1983 lawsuit but applied to federal officials. Thus, a lot of the information about Section 1983 suits also applies to <i>Bivens</i> actions.	You may only bring a <i>Bivens</i> action in federal court.	You can sue a federal official only in his <i>individual</i> capacity, not in his <i>official</i> capacity. You cannot sue federal agencies through a <i>Bivens</i> action. You cannot use a <i>Bivens</i> action to sue private corporations that work with the federal government to operate your prison facility (use a tort action instead).	Chapter 16: "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law"

<b>Tort Actions</b>	<p>In addition to a Section 1983 suit or a <i>Bivens</i> action (above) you can file a tort action against anyone who deliberately or carelessly injured you or your property.</p> <p>You can also bring a tort claim by itself.</p>	<p>You may bring a tort action in federal or state court.</p>	<p>In New York, you can sue the State of New York in the Court of Claims if the person who injured you was a state official or employee.</p> <p>Remember, if you are a person incarcerated in a federal prison, you must first exhaust administrative remedies under the Federal Tort Claims Act and Prison Litigation Reform Act before bringing a claim in federal court.</p>	<p>Chapter 17: “The State’s Duty to Protect You and Your Property: Tort Actions”</p>
<b>Article 78</b>	<p>You may challenge decisions made by administrative bodies or officers in court (for example, the Board of Parole, or state-employed prison guards).</p> <p>You may challenge decisions that may be unlawful or actions that show the administrative bodies failed to follow the law.</p>	<p>You may bring an Article 78 suit only in New York State court.</p>	<p>You cannot use this type of lawsuit to challenge your conviction or sentence.</p>	<p>Chapter 22: “How to Challenge Administrative Decisions Using Article 78 of the New York Civil Practice Law and Rules”</p>
<b>U.S. Department of Justice (DOJ)</b>	<p>The DOJ will investigate only allegations of systemic abuse (continued unconstitutional behavior that harms everyone) in state and local institutions.</p>	<p>This type of action is initiated by writing to the DOJ.</p>	<p>The DOJ cannot provide individual relief—it will only look into problems that are experienced by many people incarcerated at a particular prison or jail.</p> <p>Also, the DOJ will not look into problems in federal institutions.</p> <p>If you decide to write to the DOJ Special Litigation Unit, make sure your letter is as clear and specific as possible.</p>	<p>There are no <i>JLM</i> Chapters on this subject.</p> <p>For more information, go to:  <a href="http://www.justice.gov/crt/complaint">http://www.justice.gov/crt/complaint</a></p>