



Arizona

Post-Conviction Case Activity & Victims' Rights

Post-Sentencing Review

After an individual has been convicted and sentenced, they may file motions in the trial court to challenge their conviction or sentence. For example, they may file:

- A motion for an acquittal
- A motion for a new trial based on new evidence, jury misconduct, legal errors at trial, or other problems with the proceedings
- A motion to vacate the conviction
- A motion to modify their sentence
- A motion to withdraw their plea

Victims' Rights

Victims have the right to be treated with fairness, respect, and dignity. This right extends throughout all stages of the post-conviction process.

If requested, victims have a right to notice of and to be present at all criminal proceedings where the convicted person has the right to be present.

Victims have the right to request notice of all post-conviction review and appellate proceedings, post-conviction release proceedings, and any decisions that arise out of these proceedings. Prosecutors are required to inform victims about this right.

Victims have the right to the return of property taken during the investigation.

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Direct Appeal

After the court decides on any post-trial motions (or if no post-trial motions are filed), the individual convicted of a crime may ask a higher court to review the trial court's or jury's decisions. This is called a "direct appeal." On appeal, the court does not admit new evidence or call witnesses. Instead, it reviews what happened at trial (called the trial record) and written briefs filed by both sides describing their positions.

If an individual convicted of a crime requests an appeal, they may ask the court to release them while the appeal is ongoing. The convicted individual is more likely to be released in misdemeanor cases than in felony cases.

The individual convicted of a crime generally has 20 days after sentencing to decide whether to appeal. If the convicted person appeals, the state Attorney General's Office assigns a lawyer for the state to oppose the appeal. The state's lawyer and the convicted individual's lawyer then prepare written briefs for the judges, which generally takes several months. In some cases, the lawyers from both sides present oral arguments to the judges. Then, the judges prepare a written decision in the case. The appeal process takes roughly a year or more.

Victims' Rights

Victims have the right to immediate notice of post-conviction or appellate proceedings and decisions.

Victims have a right to notification about the date, time, and location of oral arguments.

Victims have the right to attend oral arguments, but may not participate in oral arguments.

Victims have a right to the prompt and final conclusion of the case.

Victims have a right to request a copy of the Arizona Court of Appeal decision.

State Post-Conviction Proceedings

Post-conviction motions are requests to have the conviction or sentence reviewed that are filed after the direct appeal process has ended. These motions can seek many outcomes, but the main requests and outcomes in Arizona are the following:

- Motion under Arizona Rules of Criminal Procedure 32 & 33: These motions can be used to overturn an individual's criminal conviction, modify their sentence, or obtain other relief.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called "habeas corpus." Relief may be sought through this process only if it is unavailable under Rules 32 & 33.
- Special action: Convicted individuals may file special actions to seek relief from the decisions of any state agent (such as a judge or prison officials).

DNA Testing

The convicted person may seek DNA or other forensic testing of physical evidence collected in the case.

The court will not automatically grant the requested testing. Instead, testing will be awarded only if there is a reasonable probability the person would not have been convicted if the testing had been done earlier.

If the court grants DNA testing and the evidence supports the convicted person's claims, the court must hold a hearing. Often, the state will agree to the person's release. If the state does not, then typically the convicted person will file a motion for a new trial. If the court grants that motion, the case starts over.

Victims' Rights

Victims have the right to immediate notice of post-conviction or appellate proceedings and decisions.

Victims have a right to notification about the date, time, and location of oral arguments and hearings.

Victims have the right to be present at oral arguments and hearings in state post-conviction proceedings.

Victims have the right to a prompt and final conclusion of the case after the conviction and sentence.

Victims have a right to notification of the court's decision.

Victims' Rights

The court may, at its discretion, provide notification to the victim or family of the victim if the results of the post-conviction DNA testing are not favorable to the convicted person.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Arizona law may seek habeas corpus relief in federal court. Relief is available only in specific and rare circumstances. Issues often raised in federal habeas cases include claims that the convicted person had an inept attorney, claims that police or prosecutors violated their rights, hid evidence, or committed other misconduct.

In general, a person can file only one request for relief in federal habeas proceedings, though there are some exceptions to this rule.

Victims' Rights

Except for narrow exceptions when victims are testifying, victims have the right to attend federal habeas hearings, arguments, and proceedings.

Victims have the right to be heard at any federal district court proceeding involving the release, sentencing, or parole of the individual convicted of a crime.

Victims have the right to proceedings free from unreasonable delay.

Early Release Programs

If someone is sentenced to a term of imprisonment, they may be released from prison earlier than expected through these programs: parole, temporary release to participate in a job or participate in rehabilitative programs, or earning days off their sentences (called "good-time credits") for good behavior.

Victims' Rights

Victims have a right to notification when the convicted person is released from custody, escaped, recaptured, released from a mental health agency, or dies. Victims may request [post-conviction notification](#).

Victims have the right to be heard at any proceeding when post-conviction release from confinement is being considered including but not limited to parole, furlough, and probation.

Arizona victims can also search [Vine](#) to access custody status and case information.

Prosecutorial Review

Prosecutors' offices in [Maricopa](#) and [Pima](#) counties have established conviction review units to review past convictions where there are plausible allegations of actual innocence. The Pima office also reviews claims of erroneous sentences. Review is discretionary, and there is no remedy if the unit declines to review a past case.

Victims' Rights

Victims have a right to be heard at any proceeding when any post-conviction release from confinement is being considered.

Victims have a right to be present and be heard at any proceeding where the convicted person's factual innocence is being considered.

Victims have a right to a copy of the court's order if a convicted person is found factually innocent.

Clemency

The governor can grant clemency to people convicted of felonies under Arizona law. The [Board of Executive Clemency](#) helps the governor in this process. Clemency typically takes one of three forms:

1. Commutation: the reduction of a sentence to a less severe punishment
2. Reprieve: a temporary delay of a sentence being carried out
3. Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

Victims' Rights

Victims have a right to be present and heard at any proceeding where post-conviction release is being considered.

Victims have a right to notice of clemency hearings and a right to notice of the clemency board's decision.

Victims have a right to free copies of any electronic recordings of post-conviction release hearings upon request.

Compensation

Restitution is a court-ordered payment from the convicted person to the victim to account for the victim's loss or injury.

Victim Compensation is state-sponsored funding to compensate victims for losses related to crimes that are not covered by other sources such as insurance or restitution.

Victims' Rights

Victims have a right to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

Victims may have a right to up to \$25,000 in compensation from the [Arizona Victim Compensation Program](#).

The information provided in this resource is not intended as legal advice and is current as of July 2024. States regularly change how they handle criminal proceedings and victims' rights during those proceedings. Confirm with the state agencies provided in this resource for more up-to-date information. Different stages and victims' rights may apply to certain types of cases and certain types of victims, such as cases involving accused individuals who are minors and cases involving sexual offenses, domestic violence, and child victims.