



Florida

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 arrest the judgment
- A motion to withdraw a plea
- A motion to modify the sentence

The prosecution may also file a motion to reduce the sentence in certain situations.

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.

Victims have the right to be informed of all post-conviction processes and procedures.

Victims have the right to the right to reasonable, accurate, and timely notice of all public proceedings involving the criminal conduct and specifically any proceeding during which a right of the victim is implicated.

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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 convicted individual generally has 30 days after sentencing to decide whether to appeal. If the convicted person appeals, the [Florida 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 notification of oral arguments.

Victims have the right to be present at oral arguments.

Victims have the right to a victim's advocate if requested.

Victims in capital cases have the right to a letter from the Office of the Attorney General that explains the direct appeals decision.

Victims have the right to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related post-judgment proceedings.

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 Florida are the following:

- Motion under Florida Rules of Criminal Procedure 3.850: With this motion, the convicted person may seek to withdraw their plea, vacate their conviction, obtain a new sentence, or other relief.
- Motion under Florida Rules of Criminal Procedure 3.851: These motions are similar to Rule 3.850 motions, but they are filed by people sentenced to death.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called "habeas corpus." These proceedings provide relief in only very limited circumstances, as most claims proceed under the rules above.
- Review of sentences of people convicted as juveniles: People who were convicted of certain serious crimes before they turned 18 can have their sentences reviewed after serving 15 to 25 years in prison.
- Writ of mandamus: This remedy typically can only be used to review certain final orders of the Florida Parole Commission, prison disciplinary proceedings, and decisions of the Florida Department of Corrections.

Victims' Rights

Victims have the right to the right to reasonable, accurate, and timely notice of all public proceedings involving the criminal conduct and specifically any proceeding during which a right of the victim is implicated.

Victims have the right to be heard at any public proceeding involving the release of a convicted person.

Victims have the right to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related post-judgment proceedings.

DNA Testing

The convicted person may file a motion seeking DNA testing of physical evidence.

The court will not automatically grant the requested testing. Instead, testing will be awarded if the court finds plausible the claim that the convicted person is innocent.

If the court grants testing and the evidence supports the convicted person's claim, that person may seek to vacate their conviction, obtain a new trial, or other relief. If the court grants a motion for a new trial, the case starts over.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Florida 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, medical parole, reductions in their sentence (called "gaintime") for good behavior, or completing certain educational, vocational or rehabilitative programs.

Victims' Rights

Victims have the right to provide information to the release authority and be heard before a decision to release an incarcerated person is made.

Victims have the right to be notified of any release decision.

Victims are entitled to notice 6 months before the incarcerated person's release. If the release is unexpected, victims have a right to notice as soon as possible.

Prosecutorial Review

Several prosecutors' offices in Florida have established conviction review units: the 4th Circuit ([Clay, Duval, and Nassau Counties](#)); 9th Circuit ([Orange and Osceola Counties](#)); the 13th Circuit ([Hillsborough County](#)); and the 17th Circuit ([Broward County](#)). These units review prior cases to identify plausible claims of actual innocence.

Victims' Rights

Victims have the right to confer with the prosecuting attorney regarding release, sentencing, or any other disposition of the case.

Clemency

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

1. Commutation: the reduction of a sentence to a less severe punishment
2. Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime
3. Remission: a reduction of the fines or restitution amounts a convicted person must pay
4. Restoration of civil rights lost because of the conviction (such as the right to own firearms)

Victims' Rights

Victims have the right to notification of clemency and expungement proceedings.

Victims have the right to provide information to the governor, court, and/or clemency board before a clemency decision is made.

Victims are entitled to notification of clemency decisions before the convicted person is released from confinement.

Compensation

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

Crime victims' compensation helps with financial losses that directly result from violent crime. These losses include loss of wages, medical expenses, mental health counseling, as well as funeral and burial costs.

Victims' Rights

Victims have the right to restitution.

Victims have the right to speak with the prosecutor about restitution.

Victims have the right to apply to the [Florida Victim Compensation](#) (VC) 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.