



# Georgia

## 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 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 reasonable, accurate, and timely notice of court proceedings.

Victims have the right to presence at scheduled court proceedings.

Victims have the right to confer with the prosecutor.

Victims have the right to file a motion if the victim was not properly notified of court proceedings.

Victims have the right to notification of motions for a new trial, appeals, and the convicted person's release pending the motion or appeal.

Victims have the right to notice about the result of the motion or appeal.

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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 (or the denial of a motion for a new trial, if one is filed) to decide whether to appeal. If the convicted person appeals, a [District Attorney](#) or someone from the Georgia [Attorney General's Office](#) usually opposes the appeal for the state. The state's lawyer & the convicted individual's lawyer 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

If requested, victims have the right to be notified about the appeals.

Victims have the right to notification of motions for a new trial, appeals, and the convicted person's release pending the motion or appeal.

Victims have the right to notice about the time and place of appellate court proceedings and the result of the motion or appeal.

## 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 Georgia are the following:

- State habeas corpus: Incarcerated people may seek relief in state court in a process called “habeas corpus.” Through this process, a person may seek to vacate their conviction, reduce their sentence, or obtain a new trial or other relief.
- Motion for a belated appeal: If the convicted person did not file a timely appeal because they received bad legal advice or because their due process rights were violated, they may seek permission to file a belated one.

## DNA Testing

The person convicted of a felony 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.

### Victims’ Rights

If requested, victims have the right to be notified about the post-conviction motions.

Victims have the right to notification of motions for new trial, appeals, and the convicted person’s release pending the motion or appeal.

Victims have the right to notice about the time and place of appellate court proceedings and the result of the motion or appeal.

### Victims’ Rights

Victims have a right to notice of post-conviction proceedings and victims may request a Criminal Appeal Notification. Victims may also request not to receive notification.

Victims may attend and listen to the presentations (called oral arguments) to the judges in direct appeal.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Georgia 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 and geriatric parole, medical reprieves, or reductions in their sentence (called "Performance Incentive Credits") for good behavior or completing certain educational, vocational or rehabilitative programs.

### Victims' Rights

Victims have the right to reasonable, accurate, and timely notice of release, escape, rearrest, or violation of probation and parole terms of the convicted individual.

Victims have a right to notice 20 days before the consideration of a decision to grant parole.

Victims have the right to be heard at court proceedings involving the release of the accused.

Victims have the right to file a written objection to parole release.

## Prosecutorial Review

A few prosecutors' offices in Georgia – including those in [Fulton County](#) and [Gwinnett County](#) – have established conviction review units. These units review prior cases to identify plausible claims of actual innocence.

### Victims' Rights

Victims should be notified before any proceeding in which the release of the convicted person will be considered.

## Clemency

The [Board of Pardons and Paroles](#) can grant clemency to people convicted under Georgia law. Clemency typically takes one of two 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

### Victims' Rights

Victims have a right to notice 20 days before the consideration of a decision to grant clemency, but victims must provide their contact information to the prosecutor and the State Board of Pardons and Paroles.

Victims have the right to submit a written statement in clemency proceedings.

## 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 request restitution.

Victims have the right to apply to the Georgia [Crime Victims 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.*