



Illinois

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 prosecutor may also file a motion to modify 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 timely notification of all post-trial hearings.

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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 of the trial court's judgment to decide whether to appeal. If the convicted person appeals, an [appellate prosecutor](#) opposes the appeal for the state. The prosecutor & the convicted person'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

Victims have the right to notice of any hearing, oral argument, or decision in direct 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 Illinois are the following:

- Post-Conviction Hearing Act: An incarcerated person may file a petition under this Act to seek relief from a constitutional problem in the proceedings.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called "habeas corpus." Habeas petitions in Illinois may be used to seek to vacate a conviction, modify a sentence, or seek immediate release or other relief.
- Writ of error coram nobis: A convicted person may use this writ to seek relief based on evidence that was not available at the time of the initial trial or plea, such as proof of a witness's perjury or the convicted person's mental illness at the time of trial.

DNA Testing

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

The court will not automatically grant the requested testing. Instead, the court must allow testing only if it finds that the testing has the potential to produce new, noncumulative evidence that would show that it is more probable than not that the convicted person is innocent or would have been acquitted if the evidence had been available earlier.

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

Victims have the right to notice of any hearing, oral argument, or decision in state post-conviction.

Victims should receive notice of the date, time, and place of post-conviction hearings within 48 hours of the court's scheduling of the hearing.

Victims are entitled to notice before they are subpoenaed to testify in post-conviction hearings.

Victims are entitled to object to the defense's request for the victim to testify in post-conviction hearings.

Victims' Rights

Victims may be entitled to victim services if a motion is filed to vacate the conviction based on favorable post-conviction DNA testing results.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Illinois 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, or, earning reductions to their sentences for good behavior or completion of rehabilitative, educational, or vocational programs (usually called "good-time credits").

Victims' Rights

Victims have the right to timely notification of hearings for convicted persons found not guilty by reason of insanity.

Victims have a right to timely notification of any hearing related to a modification of sentence, probation revocation, aftercare release, and parole hearing.

Prosecutorial Review

A state-wide conviction review unit, called the Illinois Attorney General [Conviction Integrity Unit \(CIU\)](#), identifies, reviews, and investigates post-conviction claims of innocence to determine whether new, credible evidence substantially proves that a convicted person is innocent.

Certain local prosecutors' offices – including [Cook County](#), [Kankakee County](#), and [Lake County](#) – have their own conviction review divisions.

Victims' Rights

Victims do not have the right to be present at hearings or proceedings regarding the dismissal of charges, conviction reversal, sentence reduction, or release under court rule. However, courts may choose to notify victims of these proceedings and allow victims to be present.

Victims do have the right to timely notification of orders or decisions that dismiss charges, reverse a conviction, reduce a sentence, or release a person convicted of a crime.

Clemency

The governor can grant clemency to people convicted under Illinois law. The [Illinois Prisoner Review Board](#) helps the governor in this process. 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 timely notice of clemency hearings.

Victims have the right to submit a statement at clemency hearings.

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 are entitled to court-ordered restitution. Victims have the right to information regarding the collection of restitution.

Victims may be entitled to compensation of up to \$45,000 (\$27,000 for crimes before 8/7/2022) through the Illinois [Crime 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.