



South Carolina

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 the judgment against them. For example, they may file a motion:

- For a new trial based on new evidence, legal errors in the proceedings, juror, or prosecutorial misconduct
- For an acquittal.

Additionally, the convicted person, Attorney General, prosecutor, or the victim may file a petition to alter, amend, or rescind any order issued by the court in the criminal proceedings.

The prosecution may also file a motion to reduce the convicted person's sentence in certain, limited 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 free from intimidation, harassment, or abuse.

Victims have the right to be reasonably protected throughout the criminal justice process.

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

Victims have the right to prompt return of property when it is no longer needed as evidence.

Victims have the right to notification if the convicted person is released pending 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 person generally has 10 days after sentencing to decide whether to appeal. If the person decides to appeal, the [Attorney General's Office](#) assigns a lawyer to oppose the appeal. The state lawyer and the convicted person'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 the outcomes in the case.

Victims have the right to notification of any proceeding when any appellate action is being considered if registered.

The Attorney General must communicate with victims regarding the convicted person's appeal.

The Attorney General must keep each victim reasonably informed of the status and progress of the appeal until their resolution.

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. In South Carolina, the main forms of post-conviction relief are:

- Post Conviction Procedure Act: The convicted person may file a motion under this Act to challenge their conviction or sentence based on new evidence, legal errors in the proceedings, or problems with how the sentence is being carried out.
- State habeas corpus: A convicted person may seek relief through a process called "habeas corpus." In South Carolina, habeas relief is available only when relief is not available under the Act or in other unusual circumstances.

Victims' Rights

Victims have the right to notification of the outcomes in the case if registered.

Victims have the right to notification of any proceeding when any post-conviction action is being considered if registered.

Victims have the right to be present at any post-conviction hearing involving a post-conviction release decision.

Victims have the right to information about the status and progress of post-conviction proceedings if registered.

The Attorney General must communicate with victims about post-conviction proceedings.

Victims have the right to privacy and protection of information that could be used to locate or harass.

Victims have the right to refuse an interview, deposition, or discovery request.

DNA Testing

A person who was convicted of certain serious offenses in South Carolina and who claims to be innocent may seek DNA testing of biological material obtained in the case.

The court will not automatically grant the requested testing. Instead, the court may allow testing only if it finds that the identity of the perpetrator was or should have been a significant issue in the case and that the DNA testing probably would have changed the outcome of the case if it had been done earlier.

If the court grants testing and the results exculpate the convicted person, that person may seek release from prison, a new trial, or other relief. If the court grants a new trial, the case starts over.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under South Carolina 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

Victims are entitled to notification when the convicted person files a motion for post-conviction DNA testing.

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 earlier than expected through one of these programs in South Carolina: earning "credits" for good behavior in prison or for participating in academic, technical, or vocational training programs; parole; special parole for veterans for psychiatric treatment; terminal illness parole, or medical parole.

Victims' Rights

Victims have the right to notification when the convicted person is released from custody, has escaped, or is transferred to a less secure facility.

Victims have the right to notification of probation hearings and parole hearings if registered.

Victims have the right to participate and be heard in parole proceedings.

Victims have the right to consideration of their safety in release decisions.

Clemency

The [Board of Pardons and Paroles](#) can grant clemency to people convicted under South Carolina law. In South Carolina, clemency typically takes the form of a pardon, which is an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime.

The governor also has some clemency power which typically takes one of two forms:

1. Reprieve: a temporary delay of a sentence being carried out
2. Commutation: the reduction of a sentence to a less severe punishment

Victims' Rights

Victims have the right to notification of pardon hearings if registered.

Victims have the right to participate and be heard in pardon 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 and the right to apply for the [Crime Victim Compensation Fund](#).

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.