

**A Guide to Victims'
Rights and Services in the
Criminal Appeals Process**



**Office of Attorney General
Ashley Moody
Division of Victim Services and
Criminal Justice Programs**

Florida Constitution Victims of Crime Amendment

Article I Declaration of Rights

Section 16(b)

Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

Florida's Appellate Court System

The purpose of this handbook is to provide a basic overview of the appellate process, to answer some questions you may have, and to explain how and when you may be notified about the case during the appeal.

Following a case through the appellate process in Florida can be complicated. Appellate procedures are governed by strict rules, and the attorneys involved in a case must follow them carefully. Sometimes the outcome of an appeal can be determined by obscure points of law, or even by a question of whether the right kind of appeal was brought at the right time. This section is intended to help you understand the procedures and types of appeals that may become a part of the case you are following.

In order to ensure that the guilty are lawfully punished, Florida's criminal justice system involves a number of steps that must be completed before a person can be convicted of a crime. Among these stages are the police investigation, arrest, review by prosecutors working for the state attorney, depositions, court hearings, the trial and sentencing proceedings. You may have participated in one or more of these steps.

The trial court's involvement in the case typically ends when the conviction and sentencing steps are completed. However, every person convicted of a crime has a right to appeal the conviction and sentence, so the case may continue through the **appellate process**. Defendants who plead guilty may, in some cases, appeal their conviction.

You are entitled to be advised of developments in the case while it is on appeal, and you will be provided information concerning any decisions affecting the case.

Direct Appeal

A defendant has the right to appeal the conviction and sentence to one of the five District Courts of Appeal. An appeal is the method by which the defendant, now a convicted felon, can raise questions about the validity of the conviction and/or sentence. The district courts are located in Tallahassee, Lakeland, Miami, West Palm Beach, and Daytona Beach.

A defendant must file a **notice of appeal** within 30 days of the conviction and sentence. This notice is followed by a written document that explains the reasons why the conviction or sentence may be improper. The defendant or the defendant's attorney must cite some legal error or similar basis for the appeal and may not simply re-argue the evidence in hopes of getting a different verdict. Only the transcript of the trial court proceedings and other official court records of the case can be used by the defendant as the basis for an appeal. The written document filed by the defendant is called an **initial brief**. In the language of the courts, the defendant filing the appeal is called the "**appellant**" and the State is called the "**appellee**."

A copy of the defendant's initial brief is filed with the Office of the Attorney General (OAG), at which time the case is assigned to an assistant attorney general. The assistant attorney general reviews the arguments presented in the defendant's initial brief, reads the trial transcript and other records, then prepares an **answer brief** for the court explaining why the conviction and sentence are valid and should not be overturned.

These briefs are filed with the District Court of Appeal. The district courts are composed of between nine and fifteen judges; however, cases are usually reviewed by a panel of three judges.

Oral Argument

In some cases, an **oral argument** may be requested either by the assistant attorney general or the defendant's attorney. The attorneys present an oral argument to the appellate judges in a formal court hearing. During an oral argument, appellate judges hear legal arguments regarding the validity of the conviction and/or sentence. The judges may interrupt the attorneys to ask questions regarding their legal arguments or about the facts presented at trial. Only the attorneys are permitted to address the court and their time is strictly limited.

Once an oral argument concludes, the appellate judges consider the legal issues privately. Depending upon the complexity of the issues involved, **the court may take from one month to a year or longer to make a decision about an appeal.**

Notification of an Oral Argument

We will notify you of the date, time and location of the oral argument, if one is scheduled. As a victim of a crime, you have the right to be present at the oral argument, although your attendance is not required. Upon request, a victim advocate may accompany you and arrange a meeting between you and the assistant attorney general to discuss the appeal following the oral argument.

Victim Notification of the Appellate Decision

After reviewing all the documents filed with the court and the discussion during oral arguments, the court issues a formal written opinion announcing its decision regarding the appeal. The opinion may be very short, known as a *Per Curium Affirmed*, which means the judges decided that there were no errors in the trial process and is considered a "win" for the State, or the opinion may be written and include the differing opinions of the judges assigned to the case and may refer

to specific laws that were challenged. Regardless of the length of the opinion, the decision is legally binding.

The written opinion issued by the appeals court is sent to the trial court in the circuit where the case was originally heard.

- If the appeals court affirms the decision of the trial court, then no further action is needed by the trial court and the defendant's conviction and sentence stand.
- If the appeals court reverses the trial court, the trial court must then comply with the higher court's order. If the appellate court orders the trial court to retry the case, a new trial may be scheduled.
- If the appeals court affirms the conviction but remands the case for re-sentencing due to an error regarding the sentence imposed by the trial court, it will direct the trial court to re-sentence the defendant. The case is then returned to the trial court where the original sentence was imposed for further court proceedings as ordered in the appellate court's opinion. If this occurs, the defendant's conviction remains intact; only the sentence is affected.

Discretionary Appeal

After the appeals court issues its decision on the direct appeal, either side may file a discretionary appeal to a higher court. In most cases, the next highest court after the District Court of Appeal is the Florida Supreme Court. These appeals, known as petitions for discretionary review, are rarely successful as few cases meet the strict requirements for such review. If a majority of the seven justices of the Florida Supreme Court do agree to hear the case, the attorneys will prepare briefs similar to the ones that were part of the process before the District Court of Appeal and oral arguments may occur.

Collateral Attack

Some defendants continue to pursue their cases in court, even after losing their direct and discretionary appeals. In these collateral attacks, they argue that their rights, as guaranteed by the United States and Florida Constitutions, were violated. These arguments often are directed at the competence of their attorneys or at the State for allegedly withholding favorable evidence from the defense at trial. Although the pattern may vary, these attacks customarily begin at the trial court level and may work their way to the Florida Supreme Court, the local Federal trial courts, the U.S. Eleventh Circuit Court of Appeal (based in Atlanta), or even to the United States Supreme Court. These collateral attacks are known as either motions for postconviction relief or petitions for writ of habeas corpus.

The OAG usually handles criminal appeals for the State of Florida — in other words, our office works to persuade the appellate courts that a conviction is valid and sentence appropriate and should, therefore, not be overturned. When an appeal is filed, our office notifies the state attorney's office so they can give us your name, mailing address and telephone number. That way, we can notify you that an appeal has been filed and let you know when the appellate court decides the case.

The appeals process can take a year or longer to complete. We recognize that this can be difficult for you, especially if you are still experiencing the physical, financial and/or emotional effects of being victimized. The Division of Victim Services and Criminal Justice Programs within the OAG is available to help you with any questions or concerns you may have. You can reach an appellate advocate at:

1-800-226-6667 or 850-414-3300

Appellate Services for Crime Victims

When a Direct Appeal is Filed with the Court

When the OAG is notified that a convicted defendant has filed a direct appeal, we send a request for victim information to the state attorney's office that handled the case at trial.

Victim Contact Information

Because all victim information will be provided to our office by the state attorney's office, **it is very important that you keep the state attorney's office informed of your current address and telephone number.**

When we receive your name and address from the state attorney's office, we will send a letter informing you which appellate court will be reviewing the case and briefly explaining the appeals process.

Notification of an Oral Argument

As a victim of a crime, you have the right to be present at the oral argument, although your attendance is not required. Upon request, a victim advocate may accompany you and arrange for you to speak with the assistant attorney general to discuss the appeal following the oral argument.

Victim Notification of the Appellate Decision

When the appellate court makes its decision, we will send you a letter notifying and explaining the decision.

Common Questions and Answers About Appeals

Will the defendant stay in prison while an appeal is pending?

Generally, yes. Most convicted defendants remain in prison during the appeal process. However, a defendant may request the trial court to set bond, which may allow the defendant to be released until the outcome of the appeal. Any decision about releasing a defendant on bond while the appeal is pending is made by the trial court, which bases its decision on several factors including the potential threat to other citizens that may be posed by releasing the defendant. If a defendant is released on bond, the court may place certain restrictions on that person's activities. A defendant's misconduct while out on bond may give the trial court reason to revoke bond and immediately return the defendant to custody. Your local state attorney's office can provide you with information regarding a defendant's bond status.

If the defendant is released on bond, can he or she contact me?

When setting bond, the trial court has the authority to place certain restrictions on a defendant's behavior. One restriction may direct the defendant to have no contact with you or any of the witnesses involved in the case. If the defendant violates the restrictions, the trial court may revoke the bond and order the return to custody immediately of the defendant. If you are interested in seeing this restriction included as a condition of the bond, you should discuss the matter with the assistant state attorney who handled the case, or with a victim advocate within the state attorney's office.

If oral arguments are scheduled, will the defendant be present?

A defendant who is in prison will not be present when the appeals court hears oral arguments. A defendant who is not incarcerated may attend the oral arguments, which are open to the public.

How will I know which appellate court is handling the case?

Once the appeal is filed the OAG appellate advocate will notify you in which court the appeal will be heard. Cases are assigned to one of the five District Courts of Appeal. The location where the crime occurred will determine the specific District Court of Appeal which will hear the case. Some District Court of Appeal decisions are themselves appealed to the Florida Supreme Court, which is located in Tallahassee.

If the case involves Federal issues and is appealed through the Federal courts, it is also assigned based on where the crime occurred. If this happens, you will be provided information on which Federal court will handle the appeal.

If restitution is ordered when the trial court imposes a sentence, will I be paid then, or will I have to wait until the appeal is resolved?

Restitution payments ordered by the court following a conviction may be delayed until the appeal is resolved.

If the appellate court says the case has to be retried, will I have to testify?

If the appellate court orders a new trial, the case is sent back to the state attorney. If you testified at the first trial, it is likely you will be called to testify at a retrial. The OAG appellate advocate will provide you with the name of someone to contact at the state attorney's office for additional information on the new trial.

Is there such a thing as an appeal even before a case goes to trial?

Yes. As the assistant state attorney and the defense prepare for a trial, a number of legal issues may be presented for resolution by the judge before a trial occurs. These issues usually involve points of law and can determine which witnesses will be allowed to testify; whether certain pieces of evidence can be used by either side; and other matters that will affect the course of the actual trial.

Depending on the issue and its importance to the case, the assistant state attorney may feel that the judge's conclusion was legally incorrect and may choose to appeal the decision. If this happens, the trial may be postponed until the appeal is resolved. It is important to know, however, that this kind of appeal is very limited and does not occur in most cases.

If I change my address, who should I notify so that I can be notified of possible appeals?

You should keep the state attorney's office that handled the case informed of your current address. If you have been notified that an appeal has been filed, you should also notify the OAG appellate advocate of any address changes. To do this you may call the toll-free number (1-800-226-6667) and let the OAG appellate advocate know your most current contact information.

Appeals sometimes last a year or more. It is very important to keep the OAG notified of any address changes, so you can be contacted when a decision is made should you choose to keep track of the appeal.

What other information and services are available through the OAG to help me if I am a crime victim?

In addition to providing you with information about the appellate process and the Division of Victim Services and Criminal Justice Programs, the OAG offers the following general information and referral services:

- **State Attorney:** If the appellate court sends the case back to the trial court for any reason, we can refer you to a victim advocate with the state attorney's office who can keep you advised of developments in the case.
- **Executive Clemency/Parole Commission:** If the defendant has applied to the Governor for executive clemency, the OAG can provide

you with general information about your rights in the clemency process. If you are notified by the Executive Clemency Office that a hearing has been scheduled, we will refer you to the Parole Commission's victim advocate to accompany you to the hearing.

Please note that clemency cannot be granted by the Governor alone. The Governor, with approval from at least two other members of the Cabinet (which is made up of the Governor, Agriculture Commissioner, Attorney General, and Chief Financial Officer), may grant clemency.

- **Inmate Information:** For inmate information, you can access the Department of Corrections website at: www.dc.state.fl.us. Additionally, the Department of Corrections offers a toll-free automated inmate information and notification service. Victim Information and Notification Everyday (VINE) Service is available 24 hours a day, seven days a week. Anyone may call the toll-free number 1-877-VINE-4-FL (1-877-846-3435) and receive an inmates current location and tentative release date. You may also register to receive an automated notification when an inmate is released, transferred, escapes, is placed in a work release facility, transferred to another jurisdiction, returned to the department's custody, or dies while in custody.
- **Probation Information:** If a defendant is on probation, we can provide you with the name, address and telephone number of the probation officer assigned to supervise the defendant.
- **Advocacy Referral:** The Division of Victim Services and Criminal Justice Programs can provide you with information on victim service programs and offer you referral services to local resources throughout Florida.

For more information about services that can be provided, please contact the Division of Victim Services and Criminal Justice Programs within the Office of the Attorney General by calling:

1-800-226-6667

or

(850) 414-3300

or by writing:

**Office of the Attorney General
Division of Victim Services
and Criminal Justice Programs
Attention: Victim Services Program Specialist
PL-01, The Capitol
Tallahassee, Florida 32399-1050**

**TDD/TTY users may call via the Florida
Relay Service by dialing 711**

Office of the Attorney General
<http://www.myfloridalegal.com>

Florida Department of Corrections/VINE
<http://www.dc.state.fl.us>

Florida State Courts
<http://www.flcourts.org>