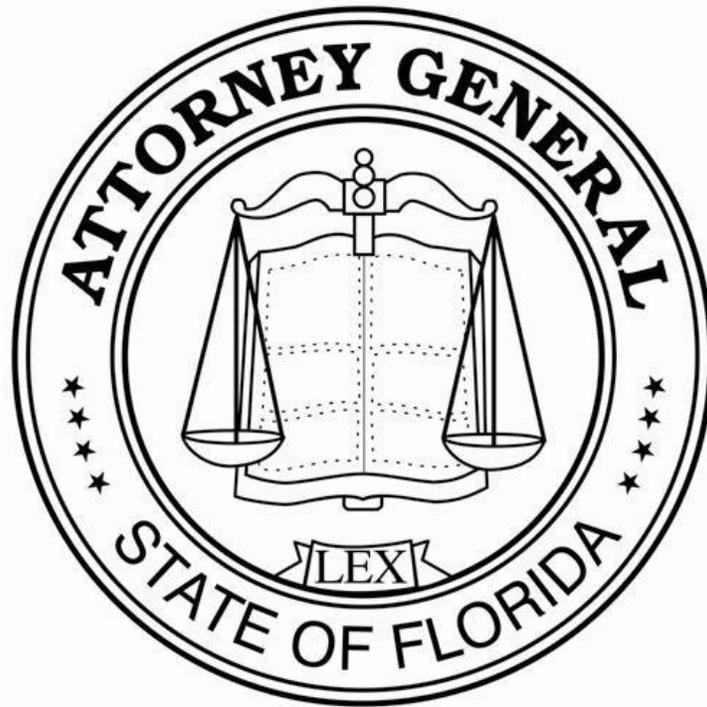


# A Guide to Victims' Rights and Services in the Capital Appeals Process



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.

Cases in which the defendant has been sentenced to death are known as capital cases because they involve capital punishment. Capital cases are extremely serious in nature; therefore, there are a number of important differences between capital cases and non-capital cases.

The primary distinction is that capital cases are automatically appealed directly to the Florida Supreme Court. The first step in the process is called the direct appeal. 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 is 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.

Although the direct appeal is often the only form of review in non-capital cases, it is only the first step in capital cases. If the Florida Supreme Court affirms the defendant's conviction and sentence, in most cases the defendant will ask the United States Supreme Court to review the case. This is known as a petition for writ of certiorari.

## DISCRETIONARY APPEALS

Most capital defendants continue to pursue their cases in court, even after losing their direct and discretionary appeals. Discretionary appeals can be filed before cases even go to trial. They involve issues that may arise during or before the trial.

## WHEN A DIRECT APPEAL IS FILED WITH THE COURT

When the OAG is notified that a defendant has filed a direct appeal, a request for victim information is sent to the state attorney's office that prosecuted the case. All victim information will be provided to our office by the state attorney's office; therefore, it is very important 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, a letter will be sent informing you of the appellate court that will be reviewing the case and briefly explain the appeals process.

## ORAL ARGUMENT

Oral arguments in appeals are scheduled in all capital cases in order to allow the court to review the issues and clarify any questions raised in the briefs. During the oral argument, only the attorney for the defendant and the assistant attorney general, representing the State, are permitted to speak. The judges may interrupt the attorneys to ask questions regarding their legal arguments or about the facts presented at trial. The court's duty is to interpret and apply the law to the facts of the case and then determine whether the trial court's rulings were correct. A decision is not made during the oral argument session, and there is no time frame during which a decision must be made. Depending upon the complexity of the issues involved, the court may take one month to a year or longer to make a decision about an appeal.

## NOTIFICATION OF ORAL ARGUMENT

We will notify you of the date, time and location of the oral argument, if one is scheduled. As a victim of 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, indicating only whether the court agrees with the decision of the trial court, or it may be lengthy and include the differing opinions of the judges assigned to the case. Regardless of the length of the opinion, the decision is legally binding. When the appellate court makes its decision, you will receive a phone call and letter from the capital appeal's advocate with the OAG advising you of the decision.

- If the appellate 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 appellate 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 appellate 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.

### COLLATERAL ATTACK

In collateral attacks, the defendants 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 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 post-conviction relief or petitions for writ of habeas corpus. The state and federal collateral review process can be extremely time-consuming, as each court seeks to determine whether the defendant has presented any constitutional basis for relief either from the conviction or sentence.

### TRAVEL EXPENSES

Funding is available for travel reimbursement from Victims of Crime Act (VOCA) grant funds, the U.S. Department of Justice, Office of Justice Programs. Please contact the capital advocate at the OAG for information on the specific travel amounts that can be reimbursed.

To receive reimbursement, please bring the following with you to the hearings/arguments:

- Receipts for lodging
- Receipts for transportation
- Receipts for parking.

Due to the length of the appeal process in capital cases, you may obtain information on the status of the case at any time; request future notification; add other family members to the notification list; or provide address and telephone number changes for our records by contacting the Office of the Attorney General.

### COMMON QUESTIONS ABOUT APPEALS

Who represents the defendant during the appellate process?

Defendants can be represented by three different groups of attorneys or they can represent themselves.

- When defendants petition the court to represent themselves this is called pro se.
- The most common representation of a defendant is done by Capital Collateral Regional Counsel (CCRC). This is an organization which is funded by the government and has offices in the northern, middle and southern regions of the state.
- Registry counsel: Most of the attorneys with the registry counsel are former CCRC that are now in private practice. However, some are private attorneys that request to handle capital cases. Registry counsel was put in place to handle up to five capital cases.
- The public defender who originally handled the case at trial may also represent the defendant at the direct appeal.

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

A defendant who is incarcerated will not be present when the appellate court hears oral arguments.

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

Capital cases are automatically appealed directly to the Florida Supreme Court.

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's office. If you testified at the first trial, it is likely you will be called to testify at a retrial. The capital 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?

If you have been notified that an appeal has been filed, you should notify the OAG capital advocate of any address changes. To do this you may call the toll-free number (1-855-308-8395) and let the OAG capital advocate know your most current information. Capital appeals last on average ten to fifteen years, so 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 Attorney General's Office to help me if I am a crime victim?

The following general information and services are available:

- **State Attorney:** If the appellate court sends the case back to the trial court for any reason, we will 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 a victim advocate with the Parole Commission to accompany you to the hearing. Please note that clemency cannot be granted by the Governor alone. It must be a majority rule by the cabinet, which is made up of the Agriculture Commissioner, Attorney General, Chief Financial Officer and the Governor.
- **Inmate Information:** Victims will be provided with information regarding where the inmate is incarcerated and a tentative release date, as well as instructions on how to be added to the release notification list, Victim Information and Notification Everyday (VINE). For additional information you may access the Department of Corrections website at [www.dc.state.fl.us](http://www.dc.state.fl.us).

For more information about services that can be provided, please contact the Office of the Attorney General by calling:

1-800-226-6667

or

(850) 414-3300

or by writing:

Office of the Attorney General  
Attention: Capital Victim Services 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  
[www.myfloridalegal.com](http://www.myfloridalegal.com)

Florida Department of Corrections/VINE  
[www.dc.state.fl.us](http://www.dc.state.fl.us)

Florida State Courts [www.flcourts.org](http://www.flcourts.org)