

## Victim Services

Victim Services advocates are available to address any concerns or questions you may have about the appeals process.

Victims of crimes committed in Arizona are entitled to be notified, upon request, of all appellate proceedings and their outcome.

When the Attorney General's Office is notified that an appeal has been filed, an advocate will contact you.

If an Oral Argument or Evidentiary Hearing is scheduled in your case, you will be notified of the date, time and location of the proceeding. An advocate can accompany you to the proceeding, if you desire.

When a decision is issued by the appellate court, you will receive a call or letter advising you of the decision. Your advocate is available to answer any questions you may have.

## Terms You Need To Know

**Appeal:** A request to a higher court to review the lower court's proceedings and outcome. The defendant argues that the lower court violated his or her rights in some way that warrants getting a new trial or a reduced sentence.

**Direct Appeal:** Filed with the Arizona Court of Appeals. In death penalty cases, the direct appeal is filed with the Arizona Supreme Court.

**Opening Brief:** A written document in which arguments are presented that the defendant's conviction or sentence is improper and should be reversed.

**Answering Brief:** A document filed in response to the Opening Brief.

**Reply Brief:** The defense presents rebuttal arguments to the Answering Brief.

**Oral Argument:** A proceeding that provides the Court the opportunity to ask questions of both the State and the defense.

**Affirms:** The defendant's conviction and sentence, as determined by the trial court, stands.

**Modify:** The appellate court itself may change a defendant's sentence or correct a conviction to comply with legal requirements without requiring the trial court to do anything.

**Remand or Reverse:** Directs the lower court to either re-try or re-sentence the defendant according to its instructions.

**Post-Conviction Relief (PCR) Petitions:** Under Arizona's Rules of Criminal Procedure, a defendant has the right to file a PCR petition asking for relief from the conviction or sentence on various, yet specific, grounds. The specific grounds for seeking relief include claims that the conviction or sentence violated State or federal constitutional rights; the trial court lacked proper jurisdiction; the sentence was excessive and illegal; newly-discovered material facts exist; or a significant change in the law has occurred which should be applied retroactively.

**Evidentiary Hearing:** Witnesses may be called and, in some cases, the defendant may need to be present.

**Petitions for Writs of Habeas Corpus:** Claims raised in habeas petitions are limited to alleged violations of the defendant's federal constitutional rights.

## Stay Informed

If you wish, the advocates of the Attorney General's Office of Victim Services will notify you when an appeal is filed, if oral arguments or evidentiary hearings are scheduled, and when decisions are issued. Know that the appeal could take several years. Be sure to keep your address up-to-date with each of the following agencies during the entire post-conviction stage of the case:

### The Prosecuting Attorney's Office that represented the State at trial.

**Arizona Attorney General  
Office of Victim Services**  
1275 West Washington Street  
Phoenix, Arizona 85007  
602.542.4911

**Arizona Department of Corrections  
Victim Notification**  
1601 West Washington Street  
Phoenix, Arizona 85007  
602.542.1854

**Arizona Board of Executive Clemency  
Victim Services**  
1645 West Jefferson Street  
Phoenix, Arizona 85007  
602.542.5656



**Arizona Attorney General  
Tom Horne**

Serving Arizona's Crime Victims

**Arizona  
Attorney General's  
Office**

1275 West  
Washington Street  
Phoenix, Arizona 85007  
Ph: 602.542.4911  
Fax: 602.542.8453

400 West Congress  
South Building  
Suite 315  
Tucson, Arizona 85701  
Ph: 520.628.6456  
Fax: 520.628.6566

Toll Free:  
866.742.4911

*Learn more about  
Victims' Rights at  
[www.azag.gov](http://www.azag.gov)*



A Guide for  
Arizona  
Crime Victims

The Criminal Appeals Process

## The Appeals Process

Our criminal justice system includes a number of steps that must be completed before a person can be convicted of a crime.

While conviction and sentencing often mark the end of the Court's involvement in a criminal case, sometimes the case may be appealed.

In Arizona, every person convicted of a felony may appeal. Defendants sentenced to death automatically have an appeal filed on their behalf.

Victims of a crime are entitled, upon request, to be advised of the case status while it is on appeal and of the outcome of the appeal.

The appeals process is different from the trial process in several ways:

- The majority of the arguments presented are made in writing rather than in open court.
- A panel of judges, rather than a judge and jury, consider and decide the case.
- Arguments relate to the defendant's rights during the prosecution of the case, rather than the actual crime.

Few, if any, hearings are scheduled.

*In the majority of cases, defendants sentenced to prison or jail remain incarcerated while their case is on appeal.*

There are three avenues of appeal available to convicted criminals:

- 1 A Direct Appeal
- 2 A Post-Conviction Relief Petition (PCR)
- 3 A Petition for Writ of Habeas Corpus

### Direct Appeal

A defendant must file a Notice of Appeal within 20 days of being sentenced. Several months later, the defense will file an Opening Brief.

The Attorney General is provided with a copy of the Opening Brief and an Assistant Attorney General (AAG) is assigned to the case. The AAG reviews the arguments, evaluates the official Court record and submits an Answering Brief.

The defense may file a Reply Brief. Then a panel of three judges from the Court of Appeals, or five judges from the Arizona Supreme Court in death penalty cases, considers the briefs. The Court may schedule an Oral Argument. The defendant is usually not present at an Oral Argument. Victims may attend oral arguments but are not allowed to participate in any way.

*The appeals process is very different from the trials in Superior Court.*

The Court will issue a written decision anywhere from a month to a year later. The decision may be quite lengthy. The Court may affirm, modify, remand or reverse the decision of the lower court.

### Post-Conviction Relief Petitions

The filing of a PCR petition takes place in the original trial court. The judge who tried the case will typically be assigned to handle the PCR.

A defendant, regardless of whether the conviction was by a jury or a plea agreement, may file a PCR petition. The original prosecuting office represents the State during PCR proceedings.

Much like a direct appeal, the arguments presented for post-conviction relief are made in writing by the defense, the State responds in writing and an Oral Argument may be scheduled. An Evidentiary Hearing may be scheduled, witnesses may be called and the defendant may need to be present.

It may then take up to a year or more for the Court to issue its decision regarding a PCR petition. As in a direct appeal, the Court may affirm, modify or reverse the original decision.

### Petitions for Writs of Habeas Corpus

Petitions for Writs of Habeas Corpus are filed with the United States District Court. A habeas petition may not be filed until all avenues of appeal at the State level have been exhausted.

Federal Rules of Procedure specify the types of claims that can be raised in habeas petitions, the

time frames for filing and the procedures to be followed by the Court, the State and the defense.

Much like a direct appeal and PCR, the arguments presented for habeas relief are made in writing by the defense, the State responds in writing and an Oral Argument or Evidentiary Hearing may be scheduled.

Months or years may go by before the Federal District Court issues its written decision.

Because the appeals process has so many steps, it can take many years for a case to be fully resolved. Because of the slow pace, notifications about a case on appeal may be infrequent. It is important that you keep the Attorney General's Office informed of any changes in your contact information to ensure that you receive all required notifications.

### Summary

The Attorney General usually represents the State in felony and habeas proceedings. In PCR petitions, the original prosecutor will represent the State. Whoever loses the appeal may continue the process to higher courts. These steps proceed in the fashion described above, with written documents submitted by both sides and the courts eventually issuing decisions.

*Appeals are often quite lengthy and complex.*