

## Overview of the Illinois Criminal Justice System

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Practice Concentrating in Appeals, Post-Conviction and *Habeas Corpus*

If you live in an Illinois correctional center like Menard or Centralia, you have been through an Illinois circuit court, and a judge has sentenced you to the custody of the Department of Corrections. If you want to know how to get a court order to let you out, this paper gives you an overview of the usual process. Read all the way to the end, because sometimes what you do depends on what you already did. Every one of these steps has time limits that the courts enforce without mercy.

Usually this can be a nine-step process. Step 1 is your state trial or guilty plea, from the time that the state charged you with a crime until the circuit-court judge sentenced you to the Department of Corrections. Here's what the other eight steps look like.

**Step 2. Direct Appeal:** You start your direct appeal by having the circuit court file your notice of appeal to the Illinois appellate court. There are many claims that you could make, but they all boil down to the same thing: You claim that your case file in the circuit clerk's office, plus your transcripts, show that the state or the circuit court violated your rights. Usually these will be your rights under the United States Constitution. You have the right to an attorney. If you cannot afford an attorney, a court will appoint an attorney for you.

**Step 3. Petition for Leave to Appeal:** If the Illinois appellate court denies your appeal, you can complain to the Illinois supreme court by sending a petition for leave to appeal. That means that you can't appeal unless the Illinois supreme court says that you can appeal. The supreme court almost always says no and doesn't even tell you why. If you had an appointed attorney for your direct appeal, your appointed attorney might not be required to take this step.

**Step 4. Petition Under the Post-Conviction Hearing Act:** This is where you make the claims that you *could not* make in your direct appeal. There are many post-conviction claims that you could make, but they usually boil down to the same thing: You claim that your rights (usually your rights under the United States Constitution) were violated, but that your case file in the circuit clerk's office, plus your transcripts, *do not* show the violation.

You do this in the circuit court, which is the same court that sent you to the Department of Corrections. Free pre-printed forms are available from many places, including from me. You do not have the right to an attorney until a circuit court judge finds in an order that your petition states the gist of a constitutional claim, which means that you are not wasting the court's time.

How do you show that your constitutional rights were violated, without using the circuit-court file and your trial transcripts? You have to state new facts under oath. This almost always means putting one or more notarized affidavits in the petition.

For example, a common post-conviction claim is that your trial lawyer gave you ineffective assistance. Maybe you told your trial lawyer that you could not have done the crime because you were at church when the crime was done, and you told your lawyer where the church was and gave your lawyer the name of your pastor who saw you there. You would use two affidavits to show that in your post-conviction petition. The first affidavit would be your affidavit. It would say that you told your lawyer you were at church and gave him the church's name and your pastor's name. The second affidavit would be from your pastor. It would say that you were with him at the time, that your lawyer did not call him about it, and that he (your pastor) would testify about that if you called him as a witness.

There is an exception to the rule that in a post-conviction petition you can only make claims that the trial-court record does not show. In a post-conviction petition you can also claim that your lawyer in your direct appeal was ineffective for leaving a claim out of your direct appeal. You would have to do that if you were also claiming that your rights were violated in some way that is shown by the trial-court record and transcripts.

**Step 5. Post-Conviction Appeal:** If the trial-level court dismisses or denies your post-conviction petition, you can appeal the dismissal or denial to the Illinois appellate court. Right now you can get appointed counsel for this, but you do not have a constitutional right to counsel on this step.

The post-conviction appeal is like the direct appeal in that you are claiming that the record shows that your constitutional rights were violated. In other words, this is just a paper appeal. You can't bring in new facts.

At this level, and from here on out, the court's decisions do not have much to do with the prisoner's rights. The court mostly decides what claims you cannot make because of steps that you did not follow.

**Step 6. Post-Conviction Petition for Leave to Appeal:** If the Illinois appellate court denies your post-conviction appeal, you can complain to the Illinois supreme court by sending a petition for leave to appeal. Again, that means that you don't get to appeal unless the Illinois supreme court says that you can appeal. Again, the supreme court almost always says no and doesn't even tell you why. If you had an appointed attorney for your post-conviction appeal, your appointed attorney might refuse to take this step.

After the Illinois supreme court denies leave to appeal, you have come to the end of the state-court process, unless you come up with new facts. New facts would have to be something like the state's only eyewitness signing an affidavit that her boyfriend did the crime and not you. If that happened, you would ask the state circuit court for permission to do a second post-conviction petition.

**Step 7. Petition for a Writ of Habeas Corpus:** Now you are in United States district court. The court clerk will send you the habeas corpus form to fill out and send in. Then the district judge will decide whether you have enough of a claim that the state should have to answer it.

The only claims that a habeas court will consider are the claims that you made in an Illinois circuit court and again in an Illinois appellate court and again in a petition for leave to appeal to the Illinois supreme court. The claims cannot have changed on the way up. Also, you would have to claim at each step that the same constitutional right was violated.

**Step 8. Habeas Corpus Appeal:** If the United States district court denies your habeas corpus petition, you may be able to appeal to a United States court of appeals. You would be claiming that the file of the district court shows that the district judge made a mistake.

You cannot appeal from the district court to the court of appeals unless the district judge certifies your appeal. That means the judge would have to agree that there is some possibility that he or she made a mistake when he or she denied your habeas corpus petition. Obviously this does not happen often, because if the judge thought he or she was making a mistake, the judge would not have denied your petition.

**Step 9. Petition for *Certiorari* to the United States Supreme Court:** If you have been to the United States court of appeals and still have no relief, this is the only place left. Almost every case ends with a letter saying that the petition is denied. The court seldom gives reasons.

*Certiorari* is also possible from a state-court judgment. That means that you could ask for *certiorari* after step 2, 3, 5 or 6 above. A request for *certiorari* after step 3 is not unusual.

Usually *certiorari* is the end of the line for a prisoner's claim in a criminal case. If you do not get *certiorari*, you are back to looking for new facts to take to the state circuit court, as I described above in Step 6.

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The above is a summary of only the most-frequently-used remedies for Illinois state prisoners. Less-frequently-used remedies like interlocutory appeals, stays, recall of a mandate and state *habeas corpus* I leave for another time.

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