



## Criminal Procedure

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### Background

CRIMINAL PROCEDURE is the body of state and federal constitutional provisions, statutes, court rules, and other laws governing the administration of justice in criminal cases. The term encompasses procedures that the government must follow during the entire course of a criminal case, ranging from the initial investigation of an individual suspected of criminal activity, through arrest, arraignment, [PLEA](#) negotiations, pre-trial hearings, trial, post-trial motions, pre-sentence interviews, sentencing, appeals, and [PROBATION](#) and [PAROLE](#) proceedings. The rules of criminal procedure may also apply after a [DEFENDANT](#) has been unconditionally released following an [ACQUITTAL](#). For example, the **DOUBLE JEOPARDY** clause of the Fifth Amendment to the U. S. Constitution may be invoked by individuals who are facing prosecution on charges for which they have already been found not guilty.

Criminal procedures are designed to safeguard both the innocent and the guilty from indiscriminate application of substantive criminal laws (i.e., laws prohibiting rape, murder, [ARSON](#), and theft, etc.) and from arbitrary or abusive treatment at the hands of law enforcement, the courts, or other members of the justice system. At the federal level these safeguards are primarily set forth in three places: the Federal Rules of Criminal Procedure, Title 18 of the United States Code sections 3001 et seq., and Amendments IV, V, VI, and VIII to the U. S. Constitution. The rules and statutes reference each other, and both are designed to enforce and delineate in greater detail the rights established by the federal Constitution.

The Fourth Amendment prohibits the government from conducting unreasonable searches and seizures while investigating criminal activity and building a case against a particular suspect. The Fifth Amendment prohibits the government from compelling individuals to [INCRIMINATE](#) themselves, from denying individuals [DUE PROCESS OF LAW](#), from subjecting individuals to multiple punishments or prosecutions for a single offense, and from being prosecuted in federal court without first being indicted by a [GRAND JURY](#). The Sixth Amendment guarantees defendants the right to a speedy and public trial by an [IMPARTIAL](#) jury, the right to be informed of all charges against them, the right to confront adverse witnesses, the right to [SUBPOENA](#) favorable witnesses, and the right to an attorney. The Eighth Amendment prohibits the government from requiring excessive [BAIL](#) to be posted for pre-trial release, from imposing excessive fines, and from inflicting cruel and unusual punishments.

The freedoms safeguarded by the Fourth, Fifth, Sixth, and Eighth Amendments have two lives, one static and the other organic. Their static life exists in the original language of the amendments as they were ratified by the states in 1791, while their organic life exists in the growing body of state and federal [CASE LAW](#) interpreting their text, applying it, and defining its scope as different factual situations come before the courts. All of the rights protected by these four amendments, except the right to [INDICTMENT](#) by a grand jury, have been made applicable to state criminal proceedings via the doctrine of incorporation. Under this doctrine U. S. Supreme Court has said that no state may deny any citizen a fundamental liberty without violating the Fourteenth Amendment's [EQUAL PROTECTION](#) and Due Process Clauses. The fundamental liberties guaranteed to criminal defendants by the Fourth, Fifth, Sixth, and Eighth Amendments are best understood in the context of the criminal proceeding during which they are normally triggered.

## **The Fourth Amendment and Criminal Procedures Governing Investigation, Arrest, and Search and Seizure**

### ***The Text of the Fourth Amendment***

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon [PROBABLE CAUSE](#), supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### ***Case law interpreting the Fourth Amendment***

Law enforcement officers are entrusted with the power to conduct investigations, make arrests, perform searches and seizures of persons and their belongings, and occasionally use lethal force in the line of duty. But this power must be exercised within the [BOUNDARIES](#) of the law, and when police officers exceed those boundaries they jeopardize the admissibility of any [EVIDENCE](#) collected for prosecution. By and large, the Fourth Amendment and the case law interpreting it establish these boundaries.

The safeguards enumerated by the Fourth Amendment only apply against governmental action, namely action taken by a governmental official or at the direction of a governmental official. Thus, actions taken by state or federal law enforcement officials or private persons working with law enforcement officials will be subject to the strictures of the Fourth Amendment. Bugging, [WIRETAPPING](#), and other related surveillance activity performed by purely private citizens, such as private investigators, will not receive Fourth Amendment protection.

Nor will individuals receive Fourth Amendment protection unless they can demonstrate that they have a reasonable expectation of privacy in the place to be searched or the thing to be seized. The U. S. Supreme Court explained that what "a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.... But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected" (see *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 576 [1976]). In general the Court has said that individuals enjoy a reasonable expectation of privacy in their own bodies, [PERSONAL PROPERTY](#), homes, and business offices. Individuals also enjoy a qualified expectation of privacy in their automobiles.

Once it has been established that an individual possesses a reasonable expectation of privacy in a place to be searched or a thing to be seized, the Fourth Amendment's protections take hold, and the question then becomes what are the nature of those protections. Searches and seizures performed without a [WARRANT](#) (a court order approving a search, a seizure, or an arrest) based on probable cause are presumptively invalid.

However, in certain situations the Supreme Court has ruled that warrantless searches may be reasonable under the circumstances and thus pass constitutional muster.

Police officers need no justification to stop someone on a public street and ask questions, and individuals are completely entitled to refuse to answer any such questions and go about their business. However, the Fourth Amendment prohibits police officers from detaining pedestrians and conducting any kind of search of their clothing without first possessing a reasonable and articulable suspicion that the pedestrians are engaged in criminal activity (see *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 21 L. Ed. 889 [1968]). Police may not even request that a pedestrian produce identification without first meeting this standard. Similarly, police may not stop motorists without first having a reasonable and articulable suspicion that the driver has violated a traffic law. If a police officer has satisfied this standard in stopping a motorist, the officer may conduct a search of the vehicle's interior, including the glove compartment, but not the trunk unless the officer has probable cause to believe that it contains [CONTRABAND](#) or the instrumentalities of criminal activity.

The Fourth Amendment also expresses a preference for arrests to be based on a warrant. But warrantless arrests can be made when the circumstances make it reasonable to do so. For example, no warrant is required for a [FELONY](#) arrest in a public place, even if the arresting officer had ample time to procure a warrant, so long as the officer possessed probable cause that the suspect committed the crime. Felony arrests in places not open to the public generally do require a warrant, unless the officer is in "hot pursuit" of a fleeing [FELON](#) (see *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 [1967]). The Fourth Amendment also allows warrantless arrests for misdemeanors committed in an officer's presence.

The exceptions to the Fourth Amendment's warrant requirement are based on the court's reluctance to unduly impede the job of law enforcement officials. Courts attempt to strike a balance between the practical realities of daily police work and the privacy and freedom interests of the public. Requiring police officers to take the time to obtain an arrest or [SEARCH WARRANT](#) could result in the destruction of evidence, the disappearance of suspects, or both.

When an officer does seek a search or [ARREST WARRANT](#), the officer must present evidence to a neutral judge or [MAGISTRATE](#) sufficient to establish probable cause that a crime has been committed. The Supreme Court has said that probable cause exists when the facts within an officer's knowledge provide a reasonably trustworthy basis for a man of reasonable caution to believe that an offense has been committed or is about to be committed. Courts will deny requests when the warrant fails to describe in particularized detail the person to be arrested or the place to be searched. The evidence upon which a warrant is based need not be ultimately [ADMISSIBLE](#) at trial, but it cannot be based on knowingly or intentionally false statements or statements made in reckless disregard of the truth. Courts will usually invalidate searches, seizures, and arrests made pursuant to a defective warrant. Inaccuracies found in a warrant due to ordinary [NEGLIGENCE](#) will not typically jeopardize a warrant's validity.

## The Fifth Amendment and Criminal Procedures Governing Post-Arrest and Pre-Arrest Proceedings

### *The Text of the Fifth Amendment*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the **MILITIA**, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in [JEOPARDY](#) of [LIFE OR LIMB](#); nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private

property be taken for public use, without just compensation.

### ***Case Law Interpreting the Fifth Amendment***

Once a suspect has been arrested or taken into [CUSTODY](#), the rights guaranteed by the Fifth Amendment are triggered. In *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966), the Supreme Court held that under the Fifth Amendment's [SELF-INCRIMINATION](#) Clause, statements made to the police during custodial interrogation will later be deemed [INADMISSIBLE](#) at trial unless the suspect is first told that he or she has: (1) the right to remain silent; (2) the right to consult an attorney before being questioned by the police; (3) the right to have an attorney present during police questioning; (4) the right to a court appointed attorney if the defendant cannot afford to hire a private attorney; and (5) the right to be informed that any statements they do make can and will be used against them at trial.

If a suspect makes a request to consult with an attorney, the interrogation must immediately cease or any subsequent statements made without the attorney present will be ruled inadmissible. However, a suspect's request for an attorney will not prevent law enforcement from compelling the suspect to participate in a [LINEUP](#) of persons for the victim to review or from having the suspect's picture taken and shown to the victim in a photo array. Nor may a suspect raise the Self-Incrimination Clause as an objection to giving a writing sample, providing a voice exemplar, or taking a blood test. Applying a Fourth Amendment analysis, the Supreme Court has said that the Self-Incrimination Clause does not apply to these situations because individuals have no privacy interest in their physical characteristics.

The purpose of the right against self-incrimination is to deter the government from compelling a [CONFESSION](#) through force, [COERCION](#), or deception. Confessions produced by these methods are not only considered uncivilized by modern standards, but they are also considered unreliable, since they are often involuntary or unwitting or the result of the accused's desire to avoid further browbeating, instead of being the product of candor or a desire to confess.

The Fifth Amendment guarantees three other rights that relate to criminal procedure. First, every defendant has the right to be indicted by a grand jury before standing trial in federal court. As noted above, the Grand Jury Clause has not been made applicable to the states, and many states allow prosecutions based on information or complaint, which are written instruments prepared by the [PROSECUTOR](#). In federal criminal proceedings and in states that use the grand jury system, grand juries are normally comprised of between 16 and 23 persons from the district in which the crime occurred, and they can return an indictment against the defendant by majority vote.

Second, the Fifth Amendment prohibits the government from subjecting individuals to multiple prosecutions or multiple punishments for a single offense. This prohibition is called the right against double jeopardy. Defendants may bring motions pursuant to the Double Jeopardy Clause either before a trial to prevent a subsequent prosecution or punishment or after trial to overturn a subsequent prosecution or punishment.

Third, the Fifth Amendment guarantees every defendant the right to due process. The Due Process Clause requires that all criminal proceedings be conducted in a fair manner by an impartial judge who will allow [ACCUSED](#) individuals to fully present their defense, and proceedings that produce arbitrary or capricious results will be overturned as unconstitutional. The right to due process applies to every phase of criminal proceedings from pre-trial questioning to post-trial hearings and appeals, and its application to some of these proceedings will be discussed below.

## The Sixth Amendment and Criminal Procedures Governing Post-Arraignment and Pre-Sentencing Proceedings

### *The Text of the Sixth Amendment*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the [ACCUSATION](#); to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of [COUNSEL](#) for his defense.

### *Case Law Interpreting the Sixth Amendment*

Once a suspect has been arrested, the rights created by the Sixth Amendment take hold. The Sixth Amendment right to a speedy trial arises after a defendant has been arrested, indicted, or otherwise formally accused. Title 18 USCA sections 3161 et seq explain the nature of this right. Prior to the point of formal accusation, the government is under no constitutional or [STATUTORY](#) obligation to discover or investigate criminal activity or accuse or [PROSECUTE](#) suspected criminals within a particular amount of time. Nor is the Speedy Trial Clause implicated after the government has dropped criminal charges, even if the government refiles those charges at a much later date.

The Supreme Court has declined to draw a bright line separating permissible pre-trial delays from delays that are impermissibly excessive. Instead, the Court has developed a balancing test that weighs the reasons for delay against the prejudice suffered by the defendant in having to endure the delay. A delay of at least one year in bringing a defendant to trial following arrest will create a presumption that the Speedy Trial Clause has been violated. However, defendants whose own actions lengthen the pretrial phase or who fail to assert this right early in a criminal proceeding hurt their chances of prevailing on a speedy trial claim.

The point at which defendants are formally charged also triggers the Sixth Amendment right to be informed of the nature and cause of every accusation against them. Courts have interpreted this provision to have two elements. First, defendants must receive notice of any criminal accusations that the government has formally lodged against them through an indictment, information, or complaint. Second, defendants may not be tried, convicted, or sentenced for a crime that materially varies from the crime set forth in the formal charge. If either element is not satisfied and the defendant is convicted, the court will set aside the verdict and sentence.

Once a defendant has been formally charged by the prosecution in writing, the defendant will be arraigned before a court. At the arraignment the court generally reads the written charges to the defendant and attempts to determine if the defendant understands the charges or needs further explanation. Defendants are also provided with the opportunity to enter a plea of guilty or not guilty at the arraignment.

The arraignment is important for Sixth Amendment purposes because it gives rise to defendants' right to counsel, after which defendants are entitled to have counsel present at every "critical stage" of the proceedings. A critical stage is every stage of a criminal proceeding at which the advice of counsel is necessary to ensure defendants' right to a fair trial or every stage at which the absence of counsel might impair the preparation or presentation of a defense. Critical stages include important pre-trial hearings, such as a [HEARING](#) upon a motion to suppress evidence, jury selection, trial, and sentencing. Noncritical stages include pre-trial procurement of defendants' [FINGERPRINTS](#), blood, DNA, clothing, hair, and handwriting or voice samples. Denial of counsel to a defendant during a critical stage is considered tantamount to an unfair trial warranting the reversal of a [CONVICTION](#).

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Defendants are not required to be represented by counsel but may instead choose to represent themselves throughout the course of a criminal prosecution, which is called appearing [PRO SE](#). However, the [WAIVER](#) of the right to counsel must be done in a knowing and intelligent fashion by a defendant who is aware of the advantages to being represented by counsel. Before accepting a defendant's waiver of counsel, courts will normally explain many of these advantages to the defendant. For example, attorneys can advise their clients whether it is in their self-interest to make any statements to the police. Attorneys can also determine the propriety of bringing any pre-trial motions, including motions to dismiss the case, compel the production of exculpatory evidence, limit [TESTIMONY](#) of adverse witnesses, and suppress evidence seized in violation of the Constitution. Under case law interpreting the Fourth Amendment, not only is unconstitutionally obtained evidence rendered inadmissible at trial under the [EXCLUSIONARY RULE](#), but any evidence derived from the constitutional violation is also subject to suppression via the "fruit of the poisonous tree" doctrine. Pro se defendants are not likely to understand these nuances of criminal procedure.

Attorneys can also influence the amount of bail that is set by a court following arrest. The Eighth Amendment prohibits courts from setting bail in an excessive amount. Criminal defense attorneys are accustomed to making arguments in favor of setting bail at a level proportionate to the severity of the crime so that gainfully employed defendants accused of less serious offenses can continue earning a living while awaiting trial. In certain instances when defendants have strong ties to a community, attorneys can convince courts to waive bail and release the defendants on their own recognizance, which means that defendants will not be incarcerated prior to trial but are obligated to appear for scheduled court appointments in a timely fashion or risk losing this privilege.

Once the trial begins, the Sixth Amendment guarantees that the defendant be tried in a court open to the public before an impartial jury. The right to a jury trial only applies to charges for which the defendant will be incarcerated upon conviction. If a defendant is tried by the court without a jury, the Sixth Amendment precludes [IMPRISONMENT](#) as a punishment. The right to a public trial is personal to the defendant and may not be asserted by either the media or the public in general. However, both the media and members of the public have a qualified First Amendment right to attend criminal proceedings.

The right to an impartial jury entitles the defendant to a jury pool that represents a fair cross section of the community. From the pool a panel of jurors is chosen to hear the case through a process called [VOIR DIRE](#). During voir dire the presiding judge, the prosecution, and attorneys for the defense are allowed to ask members of the jury pool a variety of questions intended to reveal biases, prejudices, or other influences that might affect their impartiality.

Jurors may be excluded from service for a specific reason, called a challenge for cause, or for strategic purposes, called a peremptory strike. Attorneys for both sides may exercise an infinite number of challenges for cause, while all jurisdictions limit the number of peremptory strikes. For example, in New York state courts both the prosecution and defense receive three peremptory strikes plus one extra for each alternate juror (see NY CPLR 4109). The Equal Protection Clause of the Fourteenth Amendment also limits attorneys' use of peremptory strikes, making it unlawful to exclude jurors on account of their race (see *Batson v. Kentucky*, 476 U.S. 79, 90 L.Ed.2d 69, 106 S.Ct. 1712 [1986]). The jurors who are ultimately impaneled for trial need not represent a cross section of the community as long as they maintain their impartiality throughout the proceedings. The presence of even one biased juror impaneled to hear the case is not permitted under the Sixth Amendment.

The constitutional parameters governing the size of a jury in criminal cases are not established by the Sixth Amendment but by the Due Process Clauses of the Fifth and Fourteenth Amendments. The Supreme Court has ruled that in capital cases (i.e., cases in which the death penalty may be imposed) a defendant's right to a fair trial requires that the jury be comprised of twelve members who must unanimously agree on the issue of guilt before the defendant may be convicted and sentenced to death. For non-capital cases, the Supreme Court

has ruled that the Constitution permits a verdict to be rendered by a majority vote of as few as nine jurors when the panel consists of twelve. The Court has also said that the Constitution permits trial by as few as six jurors in non-capital cases but that if a six-person jury is impaneled to decide a criminal case, all six must agree on the defendant's guilt before a conviction can be returned.

After the jury has been selected, the prosecution presents its case in chief. The Sixth Amendment guarantees defendants the right to confront witnesses who [TESTIFY](#) against them. In all but exceptional circumstances, the type of confrontation contemplated by the Sixth Amendment is face-to-face confrontation, allowing defendants to hear evidence against them, consult with their attorneys, and participate in [CROSS-EXAMINATION](#) to test the [CREDIBILITY](#) and reliability of the victim or other prosecution witnesses.

Once the prosecution finishes presenting its case in chief, the defendant must be allowed the opportunity to put on a defense. The Sixth Amendment gives defendants the right to subpoena witnesses and compel the production of evidence favorable to their case. The Sixth Amendment guarantees this right even if an indigent defendant cannot afford to pay the expenses that accompany the use of judicial resources to subpoena evidence. Defendants are under no obligation to testify themselves, as the Fifth Amendment right to remain silent applies during trial just as fully as it does during pre-trial questioning by the police. In fact, the defense need not call any witnesses or offer any evidence at all. The prosecutor has the burden of proving the defendant's guilt [BEYOND A REASONABLE DOUBT](#), and the defendant may decide that the prosecution's case is sufficiently weak that the jury will vote to [ACQUIT](#) without hearing from the defense.

If the court hears from the defense, each side is then allowed to present rebuttal testimony after which both sides will normally rest. The Sixth Amendment right to an impartial jury prohibits jury members from deliberating before all of the evidence has been submitted, the attorneys have made their closing arguments, and the judge has read the instructions. Once deliberations begin, jurors may ask the court for clarification of the instructions and for portions of the testimony transcribed for their review. If the jurors cannot reach a verdict after discussing the evidence amongst themselves, the judge will try to determine if they are hopelessly deadlocked. However, the judge cannot force a jury to reach a verdict, but the judge may encourage the jurors to make every reasonable effort to resolve their differences. If the jurors remain deadlocked for a reasonable period of time after meeting with the judge, the court will declare a [MISTRIAL](#) and dismiss the panel from further service.

If the jurors return a verdict of not guilty, the court will enter a judgment of acquittal, and the defendant is free to leave the courthouse without limitation or condition. If the jurors return a verdict of guilty, the case will proceed to sentencing. For lesser offenses, such as simple or petty misdemeanors, sentencing may immediately follow the verdict. For all other offenses, sentencing is usually conducted by the court in a separate hearing held several days or weeks after the verdict. Both the prosecution and defense are permitted to make arguments as to the appropriate sentence, and courts are generally given wide latitude in crafting individualized punishments within the statutory guidelines. Sometimes this discretion is curtailed by guidelines that require mandatory minimum sentences. Punishments may include any combination of community service, [FORFEITURE](#) of property, fines, probation, or [INCARCERATION](#). In 38 states and in federal court, defendants may be sentenced to death for first-degree murder, felony murder, and other similarly serious crimes.

## **The Eighth Amendment Limitations on Sentencing**

## ***The Text of the Eighth Amendment***

Excessive bail shall not be required, nor excessive fines imposed, nor [CRUEL AND UNUSUAL PUNISHMENT](#) inflicted.

## ***Case Law Interpreting the Eighth Amendment***

A court's discretion in sentencing a defendant is also limited by the Eighth Amendment, which prohibits the imposition of excessive fines and the infliction of cruel and unusual punishment. The Excessive Fines Clause has proven to have little effect over the course of the last two centuries. Trial judges are afforded extremely wide discretion in assessing fines on criminal defendants, and they are rarely overturned on appeal. For a fine to be overturned there must be proof that it was arbitrary, capricious, or so grossly excessive as to amount to a deprivation of property without due process of law. As a practical matter, the cost of appealing a fine often exceeds the amount of the fine itself, thereby reducing the incentive to appeal.

On the other hand, the Cruel and Unusual Punishment Clause has been the subject of much [LITIGATION](#). This clause requires every punishment imposed by the government to be commensurate with the offense committed by the defendant. Punishments that are disproportionately harsh will be overturned on appeal. Examples of punishments that have been overturned on Eighth Amendment grounds include two Georgia statutes that prescribed the death penalty for rape and [KIDNAPPING](#) (see *Coker v. Georgia*, 433 U. S. 584, 97 S. Ct. 2861, 53 L. Ed.2d 982 (1977); *Eberheart v. Georgia*, 433 U.S. 917, 97 L. Ed.2d 2994, 53 L. Ed. 2d 1104 [1977]). The Supreme Court has also ruled that criminal sentences that are inhumane, outrageous, barbarous, or shock the social consciousness also violate the Eighth Amendment.

In 1972 the U. S. Supreme Court placed a moratorium on [CAPITAL PUNISHMENT](#) throughout the United States, declaring that the statutes authorizing the death penalty were too broad and allowed for arbitrary and discriminatory application by judges and juries (see *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 [1972]). But four years later the Supreme Court upheld three new state statutes that were enacted to cure those flaws (see *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 [1976]). Thirty-five states and the federal government soon followed suit by revising their death penalty statutes to comply with the Eighth Amendment, and the nation's high court has since shown reluctance to closely scrutinize these statutes.

However, in 2001 the Georgia Supreme Court surprised many legal observers when it banned use of the electric chair in executing death row inmates (see *Dawson v. State*, — S.E.2d —, 2001 WL 1180615 [GA.2001]). The court said that death by electrocution violated the state constitution's prohibition against cruel and unusual punishment because it inflicted purposeless violence and needless mutilation on the prisoner, and as such made no measurable contribution to the accepted goals of punishment (see GA Const. Art. 1, 1, par. 17). At the same time, the court stressed that it was not calling into question Georgia's entire system of capital punishment. On the contrary, the court said that death by lethal injection raised no constitutional questions because it was minimally intrusive and involved no mutilation.

## **Appeal and other Post-Conviction Proceedings**

The federal Constitution does not guarantee the right to appeal a criminal conviction. However, every state affords defendants the right to have at least one [APPELLATE COURT](#) review the record for trial court errors. Many of these states restrict the subject matter of what may be appealed, curtail the time in which an appeal may be taken, or permit [APPELLATE](#) courts to issue decisions upon the record and briefs submitted by the parties without holding a hearing or entertaining oral arguments. Federal statutes grant criminal defendants in

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federal court the right to appeal. Only one review is granted as a matter of right, and this is to the U. S. Court of Appeals. Review of state and federal convictions by the U. S. Supreme Court is discretionary.

After incarcerated defendants have exhausted all appeals without success, they may file a [WRIT](#) of [HABEAS CORPUS](#). This is a civil suit against the warden of the prison, challenging the constitutionality of the incarceration. A habeas corpus petition is not another appeal. The only basis for granting relief to a habeas corpus petitioner is the deprivation of a constitutional right. For example, an inmate might claim that he or she was denied the assistance of counsel guaranteed by the Sixth Amendment on grounds that their attorney was incompetent. Violations of the Fourth Amendment's prohibition against unreasonable searches and seizures are not grounds for granting a writ of habeas corpus.

If a defendant loses on appeal and is denied a writ of habeas corpus, most jurisdictions offer a few last-ditch remedies. If the sentence includes parole, an inmate may petition the parole board to move up the date for parole. Inmates of state prisons may ask the governor of the state in which they are imprisoned for [CLEMENCY](#). If granted, clemency normally includes the restoration of a released inmate's [CIVIL RIGHTS](#), such as the right to vote and own a gun. A commutation of sentence is a lesser form of clemency, since it does not restore the legal rights of the inmate but only releases him or her from incarceration. Federal inmates may ask the president of the United States for a [PARDON](#), which, like clemency, releases the inmate from custody and restores his or her legal rights and privileges.

### Additional Resources

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### Organizations

#### *American Civil Liberties Union (ACLU)*

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