

AFTER THE TRIAL

A LEGAL TOOLKIT FOR PRISONERS AND THEIR LOVED ONES

By **City Bureau** fellows
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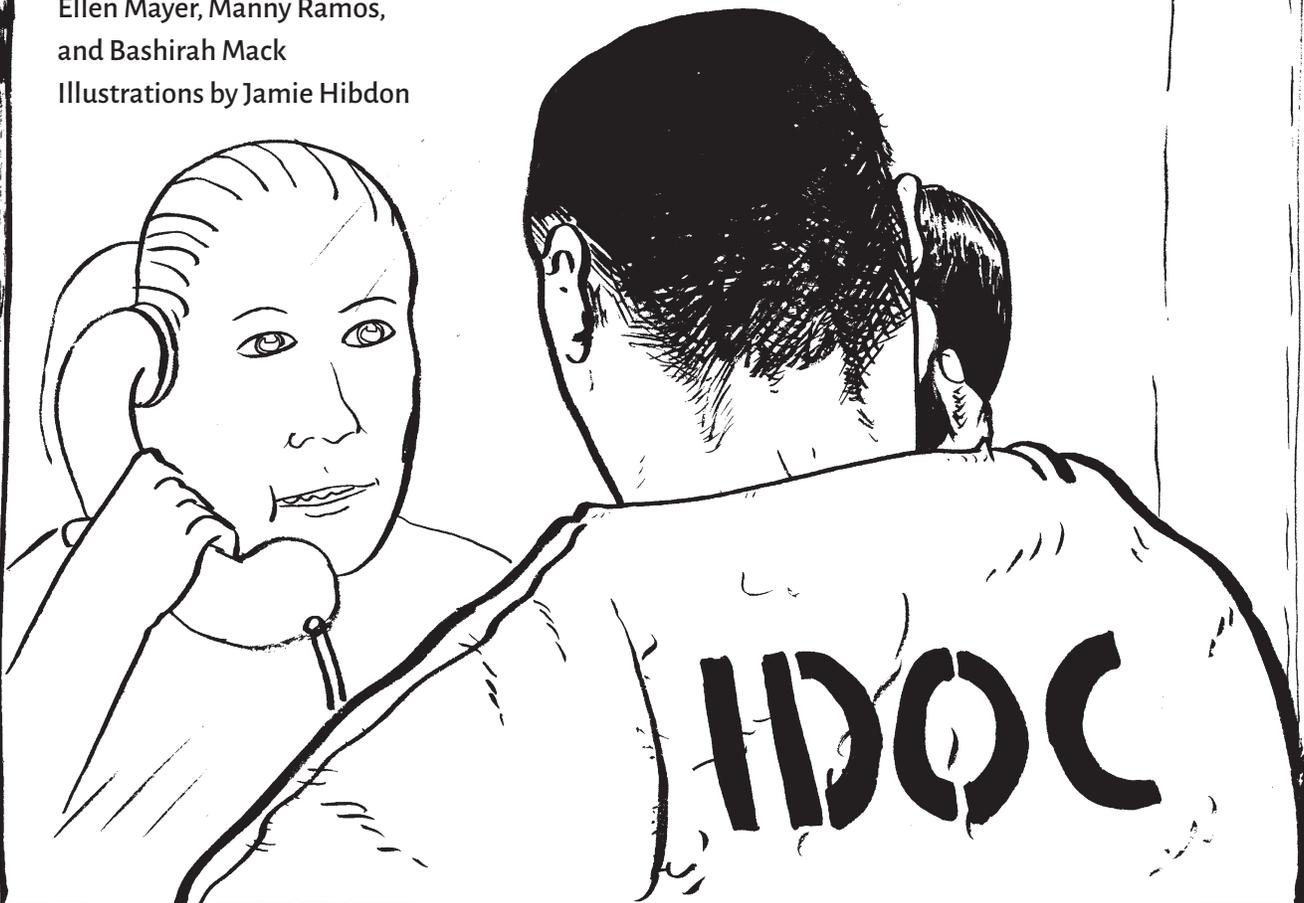


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Introduction

The judicial system is a complicated maze. It has its own rules and its own special language that the rest of us don't speak. If you haven't been to law school, navigating the judicial maze can seem impossible. But your life, or the life of someone you love, might depend on it.

That's why we made this zine.

Who is it for?

This zine is for Illinoisans who are trying to navigate the legal system while incarcerated. If the courts handed you a wrongful conviction or an unfair sentence or otherwise violated your constitutional rights, you should be able to access what we call "relief." That could mean a new sentence, a retrial or even a reversal of your conviction. But the lawyers we spoke to for this zine told us that once you're incarcerated, the courts make it incredibly difficult for you to actually pursue relief, especially if you can't afford a lawyer.

If you're seeking legal relief, you'll need to learn a lot in a short time about court rules and procedures as well as state

and federal laws. If you have no clue where to begin, this zine is for you.

If you have an incarcerated loved one and you want to help him or her navigate the legal system, this zine is for you, too. You'll need to understand his or her legal options, and you'll need to have a shared legal vocabulary so you can communicate easily.

We hope that this zine will help you help each other navigate the judicial maze.

Who are we?

This zine was written by Ellen Mayer, Manny Ramos and Bashirah Mack. We are a team of reporting fellows at City Bureau, a civic journalism lab in Chicago, focused on serving the South and West Sides. Over the course of our Spring 2018 fellowship, this team has been working on a story about a young incarcerated man named Danny Olivares. He was convicted of a murder when he was 21. Ever since then, he and his family have been trying to win relief from the courts, arguing that Danny received ineffective counsel. Our story follows Danny and his family as they try to navigate the Illinois courts system.

Because City Bureau is a community newsroom, it is important to us that we create something valuable *for* the communities we are writing *about*. That is why we decided to make this zine. In the process of reporting Danny's story, we've spoken to lawyers and judges about legal procedure. To help with our research, we've gotten access to legal resources that aren't accessible to most people. Most importantly, we've spoken to formerly incarcerated folks about the needs and challenges of prisoners trying to represent themselves. We've compiled all that information into this zine, in the hopes that it will be useful to other people in Danny's position.

The art for this zine was created by Jamie Hibdon, a cartoonist and illustrator who is part of the comics journalism collective Illustrated Press. Bea Malsky provided the print design. The Invisible Institute supported this project by providing legal review of our work.

What this zine does

This zine lays out, in very basic terms, the post-conviction legal options available to prisoners. It explains key legal vocabulary you'll need to know, and it tells you where to find legal resources, including books, pamphlets and even printing services. We've also included tips from lawyers and formerly incarcerated people about how to do legal research, how to assemble a post-conviction petition and how to write a legal brief.

There are other legal resources for incarcerated people seeking to represent themselves ("jailhouse lawyers"), but we know they can be difficult to access and difficult to read. They are often very long and dense with legal language. By contrast this zine is meant to be user-friendly and accessible. We also know that the legal system can feel impersonal and overwhelming. We have tried to make this zine intimate by including personal reflections by people who have also navigated the legal system from prison.

What it doesn't do

This zine definitely cannot replace legal counsel from a trained lawyer. It's also not a comprehensive legal resource. We encourage you to get your hands on as many books and pamphlets as possible to help guide you through the legal system. In particular, you should write to the Illinois State Bar Association and request its free handbook on post-trial remedies. Flip to "Legal books + resources for incarcerated folks" on page 25 of this zine for more information.

This zine also does not apply to young people in the juvenile court system. Illinois' juvenile courts have different rules for post-conviction relief than the adult criminal courts. For example, the juvenile courts will not allow a young person to file a post-conviction petition, which is one of the key forms of post-conviction relief we discuss in this zine.

Finally, this book does not cover prison litigation. If a prison has violated your legal rights, you may be able to sue for some kind of relief. We don't cover that subject in this zine, but we do include some resources and legal contacts that can help you.

Glossary

Affidavit: A written statement that is made under oath and signed before a notary or another person who is authorized to supervise an oath. Affidavits can be used as evidence in court. Lying in a sworn affidavit is perjury, and ideally you should speak to a lawyer before signing one.

Affirm: The decision of the appellate court to approve the ruling of a lower court. If the court affirms, then you have lost your appeal.

Appellant: The person who appeals his or her case from a lower court to a higher court.

Brief: A written document in which you or your lawyer present your legal argument to the court. Usually, a brief includes the facts of the case followed by legal arguments, supported by statutes, case law and evidence.

Case law: Law that has been established by judicial decisions, as opposed to law contained in statutes or in the constitution. Case law can also refer to a collection of judicial decisions that deal with a specific legal issue. When you do legal research for your petitions, you will need to look for case law that relates to your case.

Claim: An assertion of a right or a legal demand. If you file any kind

of post-conviction litigation, your appeals or petitions will consist of multiple claims.

Claimant: The person who makes a claim.

Collateral remedies: This refers to any form of post-conviction relief other than the direct appeal. In Illinois, post-conviction petitions, petitions for relief from judgment, state and federal habeas corpus petitions and mandamus petitions are all examples of collateral remedies.

Docket: The list of cases to be heard by a particular court. “Docket” can also be used as a verb. “To docket” means to put a legal action on the list of cases to be heard.

Frivolous: Without any legal merit or significance. A claim is frivolous if it is not based in law or fact. The courts will dismiss your post-conviction litigation if you make frivolous claims.

Habeas corpus: This Latin phrase literally translates to “that you have the body.” See the definition for “writ of habeas corpus” below.

Indigent: Poor or unable to afford basic necessities. The courts use this term to identify people who cannot afford to pay a lawyer.

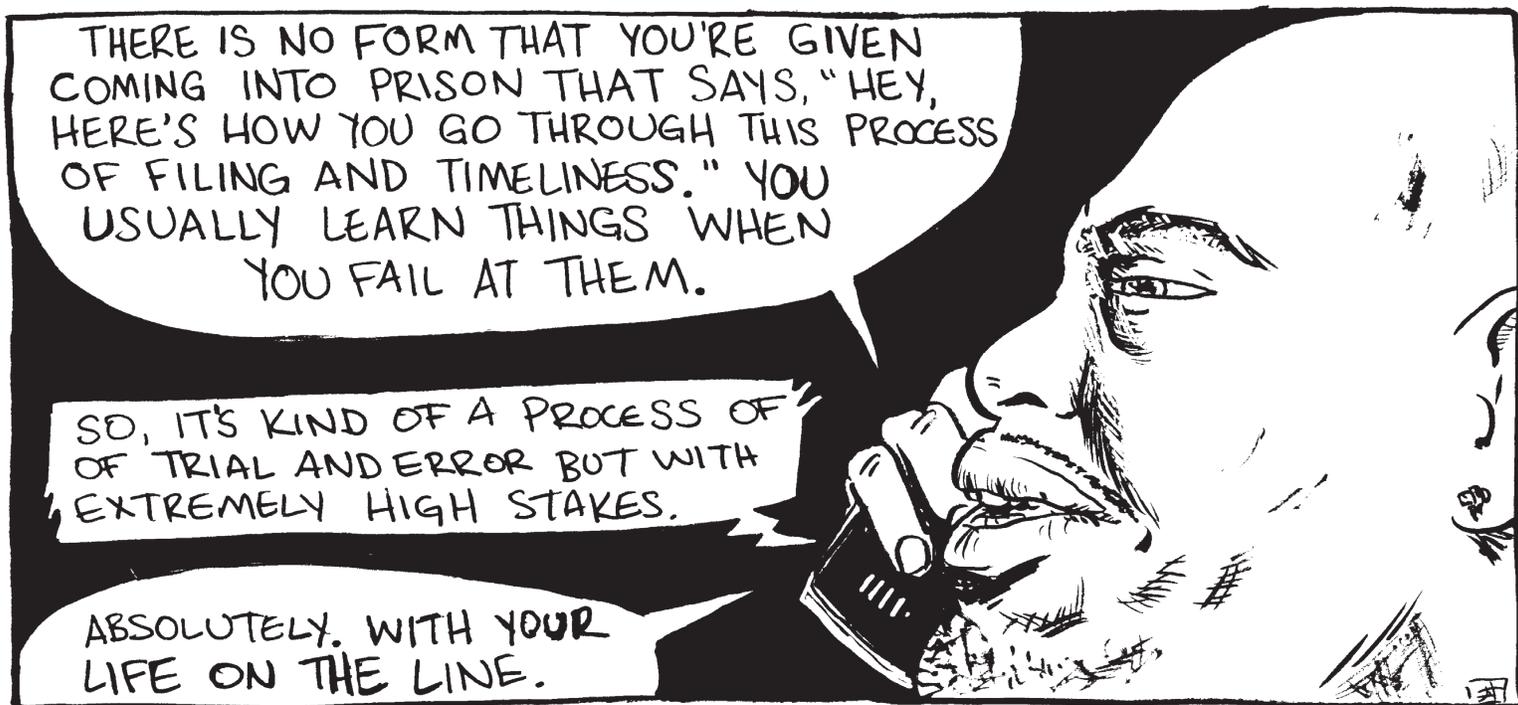
In forma pauperis: This Latin phrase literally means “as a poor person.” If you are filing a petition and you can't afford to pay the filing fees and court costs, you should indicate that you are filing in forma pauperis. The courts will allow you to proceed without paying.

Jailhouse lawyer: An incarcerated person who is self-taught in the law and represents him- or herself in litigation. This term can also refer to people in prison who are considered more knowledgeable and experienced than others and who help their fellow inmates with litigation. Some jailhouse lawyers do this work in exchange for payment like cigarettes or food.

Litigation: Formal term for legal action. Litigation can refer to criminal trials, lawsuits, appeals, post-conviction petitions, etc.

Material fact: A fact that is essential to prove your case. In order for a fact to be material, you must have a reasonable argument that if the fact had been included, the decision in your case would be different.

Motion: A document in which you request that a judge make a particular order or ruling. For example, you may need to file a motion to proceed “in forma pauperis” if you can't afford to



pay court costs. You or your lawyer can also make an oral motion during a trial or hearing.

Perjury: The crime of intentionally lying to the court after having sworn to tell the truth before a judge, notary or other official. You can commit perjury during trial, administrative hearings or even in your written affidavits. The court may sentence you to time in prison if you commit perjury.

Pro se: A person who is representing themselves in court or otherwise pursuing legal action without a lawyer.

Relief: The broad term for any kind of benefit that the courts might grant you if you win your case. In the context of post-conviction litigation, "relief" could be a new sentence, a retrial or even a reversal of your conviction.

"Relief" can sometimes be used as a synonym for "remedy" (see below).

Remand: An order directing a trial court to consider a case again. This is one of the possible decisions that a court can make after reviewing an appeal.

Remedy: A legal process that allows you to recover your rights or to seek compensation if you have been wronged. In other words, a remedy is a way to get relief from the courts.

Reverse: The decision of a higher court to overturn the verdict of a lower court. This is one of the possible decisions that a court can make after reviewing an appeal. A reversal can result in the lower court dismissing all of your charges or changing its judgment. Often the higher court will decide to "reverse and remand" which means you will have a retrial in the

lower court.

Statute: A law that is established by a legislative body (like the U.S. Congress or a state legislature) rather than by a court decision.

Vacate: The decision of a judge to set aside or cancel a previous judgment or order.

Writ: A judicial order that requires someone to appear in court or to perform a specific act. Writs can be directed at a lower court judge or a prison official, among others.

Writ of habeas corpus: A judicial order requiring that the state bring a prisoner before a court, so that a judge can determine whether the state has a valid legal reason to hold that prisoner in custody. Go to page 16 to learn more about habeas corpus litigation.

What to know when you're representing yourself

In Illinois, anyone who has been charged with a crime has the right to free representation for the trial and direct appeal. That means the courts will give you a public defender if you can't afford a lawyer. You *do* have other legal options if your direct appeal fails, which we'll lay out on page 14. But after the direct appeal, you're on your own. If you want to pursue other kinds of post-conviction legal action, you'll either have to pay for a lawyer, find an organization that will do pro bono (free) legal work or represent yourself.

Many prisoners can't afford a lawyer and pro bono organizations can only take on a handful of cases at a time. Some folks simply prefer to advocate for themselves. Whatever the reason, many prisoners end up representing themselves in post-conviction legal action once the direct appeal is over. Another term for this is "pro se litigation."

If you're representing yourself, you're not alone. But you are facing a steep uphill battle.

Lawyers go to school for three years just to learn the laws and procedures that make up our legal system. If you don't have that formal training, you're already operating at a disadvantage. That being said, there is a long and rich history of jailhouse lawyers who have taught themselves the law and used that knowledge to get relief for themselves and their fellow prisoners. If you're trying to join their ranks, the first thing you'll have to do is learn the rules.

The courts have strict filing deadlines and rules for what you can and can't argue in your post-conviction briefs. And there are steep penalties for breaking those rules. For example, if you file a post-conviction petition late, the courts will dismiss it, and you may never get a chance to

"The only thing I could equate it to is like this notion of performing surgery without being a doctor. I don't know how we can expect people to do this."

Vanessa Potkin, director of post-conviction litigation at the Innocence Project

file another one. Or, if the court finds that your petition is "frivolous" (without legal merit), you'll be required to pay all of the filing fees and court costs and the department of corrections can revoke your sentencing credit.

Unfortunately, that means that there's no room for trial and error. If you're filing for post-conviction relief, you have to get it right the first time.

That sounds like a lot of pressure! But we're not trying to discourage you. Actually, we're trying to encourage you to do as much research as possible and get as much help as you can. If you have access to a good law library in prison, use it and ask the librarian lots of questions. If your fellow inmates are willing to share their own post-conviction experiences, learn from their successes and failures. If you have family or loved ones who want to help you, let them.

If you are able to afford an attorney for post-conviction litigation, flip to page 11 for resources and attorney contact information.

What to know as a family member or loved one

The courts can be overwhelming and intimidating. When you talk to lawyers, it may feel like they're speaking a completely different language. Without legal training, you may feel like there's nothing you can do to help your loved one file his or her petitions. But in fact, you can be an incredible asset to your loved one if you are willing and able to get involved.

Of course, even if you want to help, your loved one may prefer to operate solo. He or she may not want to burden you or might just feel a sense of urgency to get it all done. After Chicagoan Danny Olivares lost his appeal in 2009, he wrote his own post-conviction petition. Danny's sister Jael says he didn't ask for much help. "I think he didn't feel that anyone was as invested in [his freedom] as he was," she says. "So he kind of just decided to do it himself."

Ultimately, Danny's family did help out in a few ways. They sent him legal books and they helped him make copies of his post-conviction petition. They also helped Danny get affidavits (sworn statements) from witnesses in his case.

If you're planning to take an active role in your loved one's legal fight, make sure he or she knows that you want to help and offer some ideas of how you can help.

For example, throughout this zine, we are going to emphasize the importance of doing legal research. But, depending on where your loved one is incarcerated, there may be very limited legal resources. For example, Danny Olivares told us that in Illinois' Stateville Correctional Center, inmates can only access law books if they know the exact name of the cases they want to read. Prisoners in solitary confinement have to request that books be brought to their cell, which can take weeks.

Without regular access to law books or the internet, your loved one may have a lot of trouble doing the research necessary to write a strong petition. You, on the other hand, can access the internet, either at home or at a public library. That, in and of itself, is a huge advantage. Once your loved one decides what kind of claim he or she wants to bring in litigation, you can help identify the most relevant court cases to read with just a quick Google search. You can visit your county's public law libraries and ask the librarians there for help finding the most up-to-date case law. (For more information on legal research and case law, flip to page 23.)

Identifying case law is just one way that you can be helpful to your loved one. He or she might also need help accessing legal resources, contacting witnesses or finding new evidence.

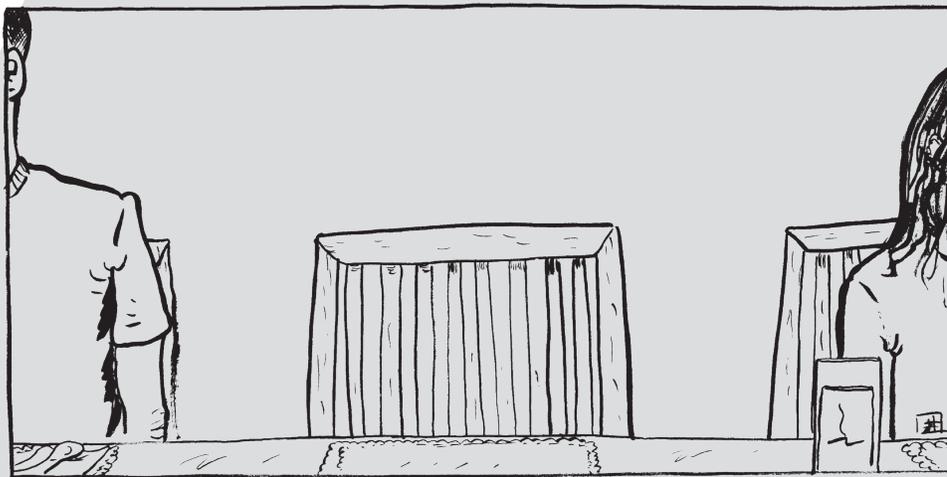
Of course, all of this work takes time and money, and it can have an emotional cost, too. We hope that this zine will help prepare you for the challenges ahead and make the process a little easier to navigate.

But this zine is just a starting point. On page 25 we'll give recommendations for books and resources you can use for further information. And on top of that, we recommend that you seek out and learn from other people who have loved ones in prison.

Orlando "Chilly" Mayorga is the director of Chicago Anti-Violence Education at Precious Blood Ministries. Chilly is also a former prisoner, and he says he wishes someone was checking on his family back then and letting them know they weren't alone in this experience. "It would have been good for them to have somebody to walk them through

"EVERY ANNIVERSARY DINNER WE HAVE FOR MY PARENTS WE HOLD A SEAT FOR DANNY. . . WE JUST ALWAYS TRY TO KEEP HIM IN OUR MIND."

-Jael, sister to
DANNY OLIVARES



"I MEET A LOT OF MOTHERS. THEY TELL ME HOW THEY FEEL. THEY WERE DEVASTATED WITH NOTHING TO DO. AND I SAY 'NO, YOU CAN'T STAY IN THAT MINDSET! YOU NEED TO GO AHEAD.' THAT'S WHERE I GET MY STRENGTH, WHEN I [TELL] OTHER PEOPLE TO BE STRONG."

-IRMA, MOTHER TO
DANNY OLIVARES

not only the legal process but everything that comes with it," he says. "I know how emotionally and psychologically taxing that was."

On page 27 we'll include information about a few organizations in the Chicago area who provide resources to families of incarcerated people.

You might notice that we use the word "you" to speak

directly to our readers. We do this because we want this zine to feel personal. In many of the following pages, the "you" specifically refers to prisoners and their experiences. But that doesn't mean those pages aren't for prisoners' loved ones, too. Reading them will give you insight into your loved one's legal options and will give you ideas about how you can help.

Legal services in Illinois

Public Defenders

Appellate Defenders

Everyone is entitled to a lawyer for the first appeal after your trial, also known as the direct appeal, so if you can't afford to pay a lawyer yourself, you should tell the courts that you are "indigent" and they will appoint a lawyer from the appellate defender's office. If you're just at this stage, you should flip to page 13 for more information.

Post-Conviction Public Defenders

In Illinois, you are not entitled to a lawyer for a post-conviction petition. If you can't afford to pay a lawyer at this stage, you will have to write your petition on your own. However, the final stage of the post-conviction process is an evidentiary hearing. If your petition makes it all the way to that stage, the judge may appoint a public defender to represent you. In order for that to happen, your petition should include a "motion to proceed as a poor person" and a "motion for appointment of counsel."

Hiring a private attorney

ISBA Lawyer Referral Service

If you are looking to hire a lawyer for your appeal or post-conviction litigation, you should consider using the Illinois State Bar Association's phone referral service. The ISBA is the largest association of lawyers in the state. They have a database of licensed lawyers who have signed up for this referral service.

Note: The ISBA won't take calls from prisoners, but it will take calls from prisoners' family members or loved ones. It will refer you to a lawyer based on your geographic area and your legal need. Then you can meet with that lawyer for a \$25 consultation. After that point you can decide whether or not you'd like to work with him or her on your case.

Consultation cost: \$25

Phone number: (800) 922-8757

Hours: Mon - Fri, 9 am - 3 pm

Website: www.isba.org/public/phonereferral

CBA Lawyer Referral Service

The Chicago Bar Association also offers a referral service for those in the Chicago area. A loved one can use this service on behalf of a prisoner. Their database includes 300 pre-screened lawyers. The service works by phone or online and it will connect you with a qualified criminal lawyer. You can choose to have a consultation with that lawyer and then decide whether or not you'd like to work with him or her on your case.

Note: The CBA charges a \$30 administrative fee for this referral service. The lawyer may also charge you money for his or her time during the consultation. Before the consultation you should ask if there will be any additional charges.

Consultation cost: \$30 + additional lawyer fees

Phone number: (312) 554-2001

Hours: Mon - Fri, 9 am - 4:45 pm

Website: www.lrs.chicagobar.org

Pro Bono Post-Conviction Legal Services

The following organizations provide free legal service to people who are wrongfully convicted. You can send a letter to these organizations to request representation. Your letter should include a summary of how you became wrongfully incarcerated, the county where the crime occurred, how much time you have remaining in your sentences and your contact information.

Keep in mind that all these organizations have limited capacity and can only take a few cases at a time.

Exoneration Project

311 N. Aberdeen Street, 3rd floor, Suite E
Chicago, IL 60607

Note: A loved one can also apply online on behalf of a prisoner at apply.exonerationproject.org

Center on Wrongful Convictions

Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611

Note: The Center will only accept requests directly from the person who needs representation. However, it will accept supplemental information from a loved one.

Illinois Innocence Project

Institute for Legal and Policy Studies
University of Illinois Springfield
One University Plaza, MS PAC 451
Springfield, IL 62703-5407

Pro Bono Advocates for Prisoners' Rights

Uptown People's Law Center

4413 N. Sheridan Road
Chicago, IL 60640

UPLC is a legal organization that fights for prisoners' rights, filing lawsuits against the state for unconstitutional prison conditions. Many of its lawsuits are "class actions," meaning that it represents a large group of prisoners who are all accusing the state of the same thing. UPLC also takes on some individual cases. If you believe your rights have been violated in prison, you should write to UPLC and summarize your complaint. The organization deals with issues like denial of adequate medical care, excessive force matters, denial of religious rights, discrimination, access to the courts, lack of due process, etc.

Note: UPLC does *not* represent people in criminal appeals or post-conviction cases.

The direct appeal

If you're already past the direct appeal, go ahead and skip to the next page. If you've just received your verdict and you plan to appeal your case, you should file your "notice of appeal" as soon as possible. If you're somewhere in the process of the appeal and you want to understand what's going on, read on.

What is the notice of appeal?

The notice for appeal is a simple form that lets the courts know that you plan to appeal your case.

What is the deadline to file the notice of appeal?

You have 30 days from the final judgment to file your notice of appeal. If you plan to appeal your verdict, then file no later than 30 days from the date of your verdict. If you plan to appeal your sentence, then file no later than 30 days from your sentencing hearing.

Do I have to file it myself?

If you have an attorney for your initial trial, he or she might take care of this step for you. Sometimes trial attorneys file the notice of appeal on the same date that the jury hands down its verdict.

If your attorney did not handle this step for you, ask him or her to send you a copy. A loved one on the outside can also access your forms for you. You should send the notice of appeal to the appellate court that is located in the same district where you stood trial. For example, if your trial was in Cook County Circuit Court, then you will file your appeal in the First District Appellate Court.

Where can I find the forms I need?

All the forms for your appeal are contained within the appendix for Article VI of the Illinois Supreme Court Rules. If a family member or loved one has internet access, he or she can find a printable version of the notice of appeal at illinoiscourts.gov/supremecourt/rules

Otherwise, you can always visit or write to the clerk of the appellate court to ask for a copy of the form.

What is an appeal?

By appealing your case, you are requesting that a higher court review the legality of the decision made by the lower court. After your trial, you first appeal to the appellate court. This is known as the "direct appeal." After that you may be able to appeal to the Illinois Supreme Court.

If you have an appeal, there is no trial and no jury. Instead, a panel of three judges considers the appeal and makes a decision. These judges can't review new evidence or testimony. They can only review the records from your lower court trial. They'll also review the legal briefs, or arguments, from both sides. Then their job is to determine whether the lower court correctly applied the law to the facts at hand.

If you do have new evidence that you think could change the court's opinion, you can submit a post-conviction petition or a petition for relief from judgment. Flip to page 14 for more information on these petitions.

I can't afford to pay a lawyer. Can I still appeal my case?

Yes. Everyone is entitled to a lawyer for the direct appeal. If you can't afford a lawyer, you should say so on your notice of appeal. The courts will appoint an appellate defender to your case. Depending on the court, you may be able to represent yourself

on appeal. However, some courts may not allow this. And if you are filing your appeal pro se, the courts will not give you an oral hearing.

After the appeal:

After the appellate court reviews your case they will either “affirm” the lower court’s decision, which means you’ve lost your appeal, or they will give you some kind of relief. In this case, relief can mean that you get a retrial or that your verdict is completely overturned.

It is important to know, however, that most appeals do not get any kind of relief. According to the Annual Report of the Illinois Courts, only 19 percent of criminal appellate court decisions in 2016 provided the appellee with any kind of relief. Only a very small handful of appeals results in a verdict being completely overturned.

What now?

If your appeal failed, don’t give up hope. You do have more legal options, which we’ll lay out in the next section. However, if you plan to do any more post-conviction litigation, there are a few steps you should take immediately.

Most importantly, you should ask your appellate lawyer to send you a copy of his or her brief as well as “the record on appeal.” This includes all the court documents and transcripts from your initial trial. If you plan to do any more post-conviction litigation, you will need to have these documents.

If your lawyer doesn’t give you a copy, you’ll have to request another copy from the courts—which can take a lot of time and may cost a lot of money. Flip to page 29 to read more about fees and costs to expect.

This is the point at which many prisoners find themselves without a lawyer for the first time. You may be feeling overwhelmed and unsure of what to do next. In the next section, we’ll lay out all the possible ways to get relief going forward and we’ll help you figure out which legal remedies make the most sense for your case.

What are my legal options after the appeal?

Relief in the State Courts

Petition for Leave to Appeal to the Illinois Supreme Court

What is it: Exactly what it sounds like. This is your request for the Illinois Supreme Court to review your appeal.

You should file this if: You have already had your direct appeal and lost. It is important to note that the Illinois Supreme Court only agrees to review 2 to 4 percent of the appeals filed. It usually only agrees to take cases if the outcome will have broad impact across the state. So, in your petition you need to make a strong argument that your case will impact how we interpret state law.

Deadline: 35 days from the appellate court’s final decision

Where to file: Illinois Supreme Court

Motion for Reduction of Sentence

What is it: This is your opportunity to argue that the courts should have given you a shorter sentence.

You should file this if: You can make a legal case for why your sentence should be shorter. Unfortunately this doesn’t apply if you took a plea deal. It also doesn’t apply if the courts gave you the minimum possible sentence based on the verdict. If you want to challenge your verdict, you should file a PC, below.

Deadline: 30 days after your sentencing

Where to file: State circuit court where you had your trial

Post-Conviction Petition

Common Abbreviation: PC

What is it: A PC petition is a written request asking the circuit court to review your conviction because there was a substantial violation of your state or federal constitutional rights during your trial.

You should file this if: You have a strong legal argument that the lower court violated your constitution rights. The best way to figure out whether you should file a PC is by reading the state and federal constitution and by reading about common constitutional violations. For example:

Common PC claims:

- **Brady violation:** The prosecutor failed to disclose evidence that is favorable to your case, could have reduced your sentence or could have affected the credibility of a witness.
- **Ineffective counsel:** Your lawyer's conduct was objectively unreasonable and his or her "deficient performance" affected the outcome of your case.
- **Juror misconduct:** Members of the jury broke the law of the court, e.g., doing their own research outside of the trial.

For more on assembling your PC, go to page 21.

Deadline: You have to file your PC no later than 6 months from the judgment of the appellate court. Or if you didn't file a direct appeal, you have 3 years to submit your PC.

Where to file: State circuit court

Actual Innocence Petition

What is it: An actual innocence petition is a particular kind of PC (see above) that you file if you have newly discovered evidence that proves your actual innocence. This petition works the same way as a standard PC; you use the same format and you file in the same way. The difference is what you write in the petition itself.

You should file this if: You have newly discovered evidence—but, keep in mind, it has to be information that you could not have known about at the time of your trial. You have to be able

to argue that if the jury knew about this evidence during the trial, its verdict would be different. DNA testing is a common kind of evidence in actual innocence claims.

Deadline: There is no deadline or time limit. If you discover new evidence at any time after conviction, you can file an actual innocence petition.

Where to file: State circuit court

Motion for Leave to File

Successive PC

What is it: If you file a second, third or fourth post-conviction petition, each one is considered a "successive" petition. If you want to file a successive petition, you will have to ask for permission from the court. You do this by submitting a motion for leave to file a successive PC. **Note:** If you plan to file an actual innocence petition after you have already filed a regular PC, that will be considered successive, so you will need to get leave from the court.

You should file this if: You have a strong legal claim that wasn't included in your first PC. However, you must provide a good reason for why that claim wasn't included the first time. For example, you may have a claim of actual innocence based on evidence that you did not discover until after you filed your first PC. You also must argue that this new claim is "prejudicial," meaning that if you had made the claim in your first PC, the outcome would have been different. Keep in mind that the court only grants successive petitions in exceptional circumstances.

Deadline: None

Where to file: State circuit court

Petition for Relief from Judgment

What is it: A request for relief because there was "an error of fact" from the lower court. In particular, this petition deals with facts introduced into the trial by the prosecution (the lawyer for the state).

You should file this if: You have learned that the prosecution introduced information to the court that was factually untrue.

You must have discovered this factual error after the trial was finished. And finally, you must be able to argue that if the error was corrected during your trial, the jury's verdict would be different.

Common claims: The prosecution used perjured (untrue) testimony from a witness unknowingly. (If the prosecution knowingly did this, that's a violation of your constitutional rights and you should file a PC.)

Deadline: 2 years from the date of your sentencing

Where to file: State circuit court where you had your trial

Appealing Your Petitions

If the circuit court dismissed or denied my petition, can I appeal that decision?

Yes. You may appeal the lower court's ruling to the Illinois appellate court. This applies to PCs, actual innocence petitions and petitions for relief from judgment. In the appeal, the appellate court will review the circuit court's decision to determine whether the judge correctly applied the law to the facts at hand. However, it is very difficult to file an appeal without an attorney. In fact, the appellate courts may not even allow you to proceed pro se. If you would like to appeal your PC or other petition, you may need to find a lawyer to represent you.

Deadline: You must file your notice of appeal no more than 30 days after the circuit court's final judgment.

Where to file: Illinois appellate court

Relief in the Federal Courts

Petition for a Federal Writ of Habeas Corpus

Common abbreviation: Habeas petition

What is it: A written application to the federal court requesting a writ of habeas corpus. This writ is a judicial order requiring that prison officials bring you before the court so it can determine whether your imprisonment is legal.

Note: There is also a procedure for a writ of habeas corpus for state courts. We have left state habeas corpus action out of this guide because there are only a few very specific circumstances in which the state habeas corpus applies.

You should file this if: You have exhausted all your options in the state courts. That means you first have to file your direct appeal, your petition for leave to appeal to the Illinois Supreme Court and a post-conviction petition. Once you have gone through all these steps, you may file a habeas petition. Then you must be able to claim that the state is violating the federal constitution by holding you in its custody. In other words, you have to show that your federal constitutional rights were violated during your trial.

Wait, that sounds like the PC: Yes, you're right! They both deal with constitutional violations. The difference is that the PC goes to the state court for review and should include claims about both state and federal constitutional violations. The habeas petition goes only to the federal court in Illinois and you can only include claims based on the federal constitution.

Deadline: One year from the final judgment of the Illinois Supreme Court

Where to file: U.S. district court

Petition for a Writ of Certiorari

Common abbreviation: Writ of cert (pronounced "sert")

What is it: The petition you file if you want to appeal your case to the U.S. Supreme Court

You should file this if: You have already appealed to the Illinois Supreme Court or to the U.S. Court of Appeals (for a federal habeas corpus) and lost. The U.S. Supreme Court will only hear your case if it has broad implications for the way we apply or interpret federal law. The court will not consider claims relating to state law. Keep in mind that the court grants a hearing to only 1 percent of petitions it receives.

Deadline: 90 days after the final decision of the Illinois Supreme Court (or the U.S. Court of Appeals for a federal habeas corpus)

Where to file: U.S. Supreme Court

Know your deadlines

1. Past Court Dates:

Fill in the dates of the following events. If you haven't gotten to any of these steps yet, leave the date blank.

Sentencing hearing: _____

Appellate court's final decision: _____

State supreme court's final decision: _____

2. Filing Deadlines:

Use the dates above to calculate your deadlines.

Petition for leave to appeal to the supreme court
Appellate court's final decision + 35 days = _____

Motion for reduction of sentence
Sentencing hearing + 30 days = _____

Post-conviction petition (after the direct appeal)
Appellate court's decision + 35 days + 6 months = _____

Post-conviction petition (if no appeal is filed)
Sentencing hearing + 3 years = _____

Actual innocence petition: **NO DEADLINE!**

Petition for relief from judgment
Sentencing hearing + 2 years = _____

Petition for a writ of habeas corpus
IL supreme court's final decision + 1 year = _____

Petition for a writ of certiorari
IL supreme court's final decision + 90 days = _____

Common confusions and mistakes

Common Confusions

What is and isn't an appeal

It is very common for people to use the word “appeal” to refer to any kind of post-conviction litigation. In an everyday context that makes sense. But in the legal world, “appeal” has a specific meaning, and you may have trouble communicating with a lawyer or with the courts if you misuse the term. The word “appeal” only refers to the request for a higher court to review the decision of a lower court.

If the type of litigation has the word “appeal” in its name, it is an appeal! You should also look at what kind of court will be reviewing your case. If the circuit court is reviewing your case, it is not an appeal. If a higher court is reviewing your case (appellate or supreme court), then it is an appeal.

In general when speaking to a lawyer or writing a legal brief, it's best to be very specific about the kind of litigation you're referring to. But if you're looking for a phrase to sum up all the kinds of post-conviction litigation that *aren't* appeals, you can say “collateral remedies.”

The difference between state and federal courts

Unless you work in the legal field, you might never know that there are separate court systems for state and federal law. These two systems rarely intersect. When they do, it is because a state law or a state court decision somehow violates the federal constitution.

For the most part, post-conviction litigation happens within the state court system. The only exception is if you file a petition for a writ of habeas corpus or if you appeal to the U.S. Supreme Court. But you cannot do either of these things until you have exhausted all of your options at the state level.

Federal courts do handle prison litigation cases. If you want to sue the state because a prison has violated your rights in

some way, then you will deal more with federal courts.

State courts in Illinois

Circuit Courts (County Courts) → Illinois Appellate Court
→ Illinois Supreme Court

Federal courts in Illinois

U.S. District Courts (Northern, Central, Southern) → U.S. Court of Appeals for the 7th District → U.S. Supreme Court

The difference between a bad lawyer and ineffective counsel

It is common for people to claim “ineffective assistance of counsel” (IAC) in their PCs or habeas corpus petitions. The U.S. Supreme Court says that the 6th Amendment to the constitution gives everyone the right to “effective counsel” or an effective lawyer. So if you did not have an effective lawyer in your trial or appeal, that means your constitutional rights have been violated and the courts should grant you a retrial or some other kind of relief.

The trick is understanding what the courts mean by “effective.” If you feel like you had a bad lawyer for your trial or appeal, you might be totally right, but that doesn't necessarily mean that you received ineffective counsel. For example, most people would assume that if a lawyer was drunk or asleep during trial, that means they were ineffective. But the courts do not always see it that way.

The Supreme Court case *Strickland v. Washington* established a two-part test for identifying IAC:

1. The lawyer's performance was “deficient” and “objectively unreasonable.”
2. The lawyer's performance was “prejudicial” to the case, meaning that if he or she had acted differently, the outcome would be different.

You have to prove both of these to effectively argue IAC. So if your lawyer was drunk you have to prove that your verdict would be different if he or she was sober. You also have to prove that your lawyer's behavior while drunk was *objectively* unreasonable. This is difficult to do!

Look for objective standards that you can use. For example, it is your lawyer's duty to investigate all possible evidence and witness testimony. If he or she failed to investigate something, that is an objective case of deficient performance. You can claim IAC based on your attorney's failure to investigate.

However, if your lawyer did investigate a certain witness but chose not to call him or her to testify, that could be considered valid trial strategy. The court is unlikely to grant your claim of IAC based on the attorney's trial strategy.

Common Mistakes

Don't miss your deadlines

The courts are very strict about filing deadlines. Meeting those deadlines is one of the biggest challenges in post-conviction litigation, even for professional lawyers. We've created a worksheet on page 17 to help you calculate all your relevant deadlines.

If you miss a deadline, the court will dismiss your petition unless you can prove that something outside of your control prevented you from filing on time.

One particularly difficult deadline is for the post-conviction petition. If you file a direct appeal and lose, you only have six months to file your PC.

Brian Nelson from Uptown People's Law Center says that six months isn't enough time to teach yourself the law, research your case *and* write a legal brief. He recommends that you start working on your PC while your lawyer is working on the appeal. The lawyer should have copies of all the trial documents, police records and court transcripts. Ask him or her to send you copies of those documents so you can start reading them ASAP.

Don't argue the same issue twice

If you or your lawyer raise a particular claim and the court makes a ruling on that claim, the issue is now settled. The courts will not consider that same claim again in later litigation. This is known as *res judicata* or "a matter judged."

As you assemble your petition, make sure you're not bringing up claims that have already been settled in your trial, appeal or other past litigation. It does not matter if you think you can make a better argument this time around. If you do bring up the same claim a second time, the court will likely dismiss your petition without a hearing.

This is another example of how you have to get it right the first time. For every claim you make in your PC, make sure you provide as strong a legal argument as you can, because you won't be able to make that claim again in later petitions.

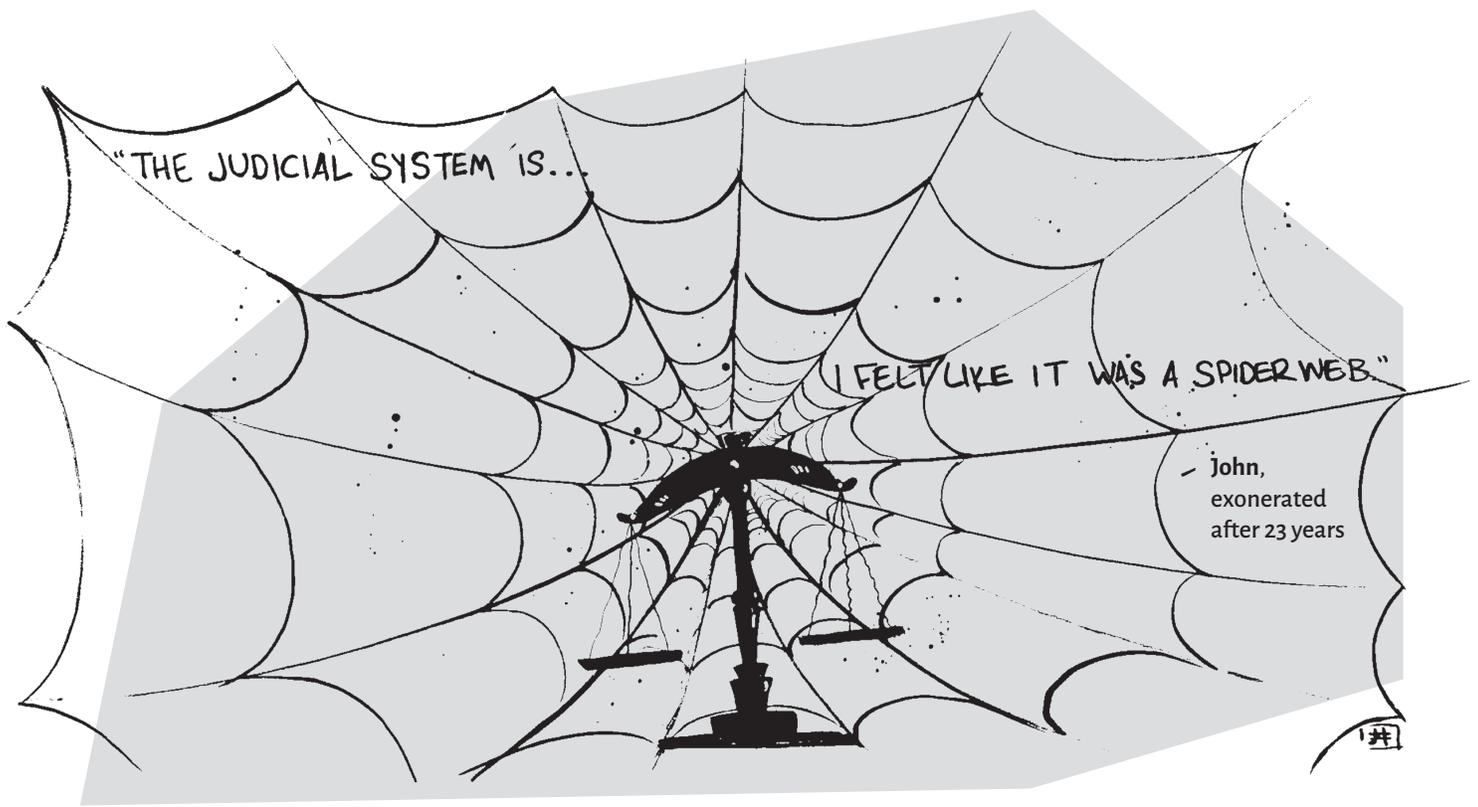
There is one exception to this rule: If you file a petition for a federal writ of habeas corpus, you can and should include claims that you have brought in previous litigation, so long as those claims have to do with violations of the federal constitution. In fact, the federal courts will only consider your claims once they've already been considered by state courts.

Don't argue any claims that you "waived" in earlier litigation

If you or your lawyer had the opportunity to raise a claim in prior litigation, but chose not to, you have "waived" that claim. That means you can't argue that claim in any later petitions. If you try to raise a claim that was already waived, the court will dismiss your petition.

Wait, so what kind of claims *can* I raise?

At this point you might be thinking that every legal claim is off limits, but that's not entirely true. For example, you might learn about new facts or evidence that were not available at the time of trial. Or you might be able to argue ineffective assistance of counsel.



Avoid filing frivolous petitions

The court may find that your petition is frivolous if it doesn't have any basis in law or fact. So it is very important that every claim you make is supported by evidence and has a clear connection to Illinois or federal law.

If the court decides that your petition is frivolous, the consequences can be very harmful to you.

- » The court will dismiss your petition without a hearing
- » The court may not allow you to file a second or "successive" petition
- » You will be charged all of the filing fees and court costs associated with the petition even if you are indigent and the court originally waived those costs
- » The state can penalize you by taking away up to 180 days of your sentencing credit

To be clear, the court is supposed to be lenient with pro-se petitioners. That means that if you filed your petition without the help of a lawyer, the court shouldn't punish you for not knowing all the rules. If you include a claim that your lawyer had "waived" in previous litigation, that's an understandable mistake for someone who isn't a trained lawyer. In this case, the court might dismiss your petition but it *probably* won't find the petition frivolous. That means you have "lost" but you won't lose sentencing credit or be forced to pay a fee.

However, there is always a danger that the court will decide your petition is frivolous. So it is important to make sure that your petition has a strong legal basis and that you try to avoid the mistakes we've listed above.

What you'll need to assemble your petition

The record on appeal

In order to file your own post-conviction litigation, you will need the “record on appeal.” This includes all the court documents and transcripts from your initial trial. Reviewing these documents will help you determine what kinds of errors or violations occurred that you can bring up in your petition. You may also need to include certain pages from these documents as evidence to support the argument in your petition.

If you filed a direct appeal, your appellate lawyer should have a copy of the record on appeal. You should ask him or her to send you a copy ASAP. If possible, it is better to get those copies from your lawyer than from the court. He or she may also have documents, like police records, that your trial lawyer used to prepare for the initial trial. It will be helpful to have these documents as well. You should ask your appellate lawyer to share as many documents from your case as possible.

If you didn't have a direct appeal, you should send a request to the circuit court where you had your initial trial and ask for a copy of the record on appeal. If you say that you are “indigent” and unable to pay, the court will prepare the record for free. However, they will only do this once. If you request the record a second time you will have to pay. Go to page 29 for more information on court costs.

Appellate brief and court decision

If you file a direct appeal, ask your appellate lawyer to send you a copy of his or her appellate brief. This is the

document in which he or she makes the legal argument for your appeal. Make sure to review that document so you understand what claims the lawyer made and how. After the appeal, the court should send you a copy of its decision. Make sure you hold onto this document and review it as well. Every decision includes the court's reasoning for why a legal claim is or is not valid. It is important for you to know how the courts have responded to your case so far, so that you can write a convincing argument in the future.

Court forms and petition templates

There is no specific form to file a post-conviction petition or a petition for relief from judgment. However, it will be helpful to see an example or template, so you know the best way to format your petition and what information you should include. The appellate defenders' office usually sends a packet of petition templates to clients after the direct appeal. If you didn't have an appellate defender, ask around to see if any of your fellow inmates has a template or example petition to share.

There are specific forms to file a petition for a federal writ of habeas corpus. If and when you decide to file this kind of litigation, you should write to the clerk of the federal district court to request a copy of that form as well as an instruction sheet and the “in forma pauperis” application.

Evidence

If you file a post-conviction or actual innocence petition, it is very important that you include as much evidence as

possible to support your legal claims. Without sufficient evidence, the court is likely to dismiss your petition without a hearing. In particular, you will need some new evidence that wasn't included in the trial proceedings.

New evidence could include (but is not limited to):

- » A statement from a witness who testified at your trial, but is now saying something different (recanting their original testimony)
- » A statement from a new witness who did not appear at trial
- » A statement from a witness who did appear at trial but who has new information to share
- » A record that proves your location at the time of the crime (phone records, business records, receipts, etc.)
- » A transcript from another court case

Of course, it is very difficult to discover new evidence from within prison. This is where it is helpful to have outside help from a family member or loved one. If someone on the outside is willing and able to investigate and interview witnesses, that will help build your case.

Affidavits

An affidavit is a written statement that is made under oath and signed before a notary. You will need to include affidavits in any petition you file.

If you are using witness statements as evidence in a PC or actual innocence petition, those statements will have to come in the form of an affidavit. That means that each witness will have to write down his or her statement and sign it before a notary.

In a petition for relief from judgment, you will need to include your own affidavit in which you swear that the facts laid out in your petition are true.

Notaries

As noted above, each petition you file will need to include affidavits that are signed before a notary. In addition, you will need to sign the petition itself before a notary. Every prison should have a notary on staff. Usually it's the person working in the law library. If you have limited access to the library for any reason, it's a good idea to find out as soon as possible what the process is for getting your documents notarized and how long it will take.

For example, if you're in a maximum security prison, you may have to rely on the prison guard to take your documents to the library to be notarized. This could take a while, so it's a good idea to get the process started well before your filing deadline.

Copies

Any kind of litigation requires a lot of printing and copying. For example, when you file a PC or actual innocence petition, you are required to send two copies to the court and another copy to the state's attorney's office. You should also keep at least one copy for yourself.

Depending on the prison, there may be a law library which provides free copying services for legal documents (as long as you can prove that you need those copies for your litigation). Just like with the notary, you should find out as soon as you can what the process is for making copies of your documents and how long it will take. You may need to go through a prison guard to get it done.



Legal research and writing

Monica Cosby is one of the main sources of wisdom for this zine. Monica is currently a community organizer with the Westside Justice Center and Moms United Against Violence and Incarceration. Previously, she was incarcerated for 20 years, and she worked in the prison law library helping other inmates write their petitions. She has committed herself to spreading legal literacy both in and out of prisons, and she encourages prisoners to do as much legal research as they can.

Learn the rulebook

Monica recommends many of the books included in our reading list on page 25. She also believes it's important to know both the state and federal constitutions backward and forward. "That's part of legal literacy," she says. Both of these documents are available online so if you can't access them in the prison law library, you can ask a family member or loved one to print and send you copies. Monica also recommends reading the Illinois Supreme Court rules. These are available online as well, but they are many pages long. Focus on articles I, IV and VI.

Learn from each other

Most importantly, Monica says, "learn from reading other briefs." Talk to your fellow inmates about their petitions. If they're willing to share with you, look at how they wrote their legal briefs. If their petitions were successful, examine carefully to see what made them work. If their petitions failed, learn what mistakes to avoid.

In fact, Vanessa Potkin from the Innocence Project says this is how professional lawyers operate, too. "If I'm litigating a motion or a new claim," Vanessa says, "I'm gonna reach out to my colleagues and ask if somebody else has done a similar motion." This is particularly helpful so that lawyers don't have to re-invent the legal research for each case.

So, if you are writing a PC petition and you want to claim a Brady violation, you should find out if any of your fellow inmates have also filed a Brady claim. Ask them what case law they used as the basis for their argument. That way you can identify which cases are most relevant to you. This is incredibly important because in some prison law libraries, the librarian will only help you with your research if you know the exact case that you need to read.

Read case law

Like Monica, Brian Nelson taught himself the law while in prison. He filed his own litigation and helped his fellow inmates do the same. Brian now works as the prisoners' rights coordinator at Uptown People's Law Center in

Chicago. His top recommendation is to read as much case law as you can get your hands on.

The term “case law” refers to a collection of judicial decisions that establish or interpret the law around a particular issue. For example, if you want to claim ineffective assistance of counsel, you should look up all the case law around that subject. As Brian points out, “In every decision, the judge tells you what [the lawyer] did wrong.” Reading case law will help you understand which arguments the courts will accept and which arguments will be denied.

Brian filed a lawsuit against the state for holding him in solitary confinement. “I learned the whole history of solitary confinement,” he says. “I searched for everything I could find. I even wrote [to] the Library of Congress.” So basically, he recommends, “Read and read and read.”

Be careful with “jailhouse lawyers”

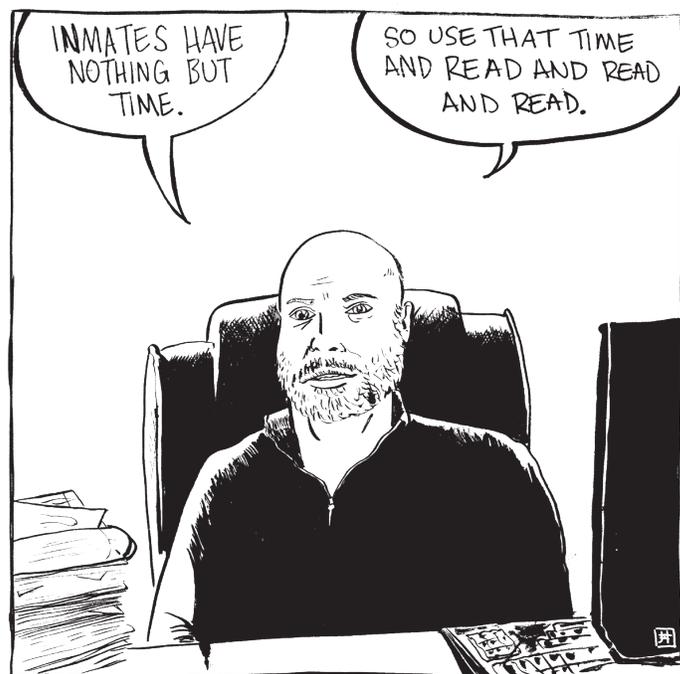
Brian agrees with Monica that it’s valuable to learn from your fellow inmates, but he says to be wary of jailhouse lawyers who offer to write your petition in exchange for some kind of payment. “Look for people who will do the work with you and teach you,” Brian says, “because if that person gets transferred, you need to be able to carry it out yourself.” He also says it’s important to ask questions and make sure you understand what you’re filing. “If I tell you, ‘This is the case that can get you out,’ [you should] read and learn the case.”

Tips for legal writing

Keep it simple and focus on the facts

Alan Mills is Brian’s boss at Uptown People’s Law Center. His top piece of advice for legal writing is actually that you shouldn’t try to write a legal brief the way a lawyer would. “Just get the facts out clearly,” he says. That may sound counterintuitive but Alan says, “Judges know the law. They don’t know the facts of your case.”

That doesn’t mean that you shouldn’t make a legal argument. You should make sure that you base all of your claims on relevant case law. But you don’t need to weigh



BRIAN NELSON,
PRISONERS’ RIGHTS COORDINATOR AT
UPTOWN PEOPLE’S LAW CENTER

down your petition with more than one or two references to other cases. In each claim, simply lay out the facts of your case and show how they support your argument.

Write strategically

Brian Nelson says that writing a brief is “like playing chess,” because you have to anticipate the judge’s reaction to every claim. His first piece of writing advice for prisoners is, “Think several moves ahead and attack it from every angle.” This is much easier to do if you have read the relevant case law as well as the appellate court’s decision from your direct appeal.

Brian recommends that you treat each claim in your petition like a pyramid: Try and find three different ways to argue the same claim. That way, if the judge rejects the first angle, they still have to consider your two other points. But again, make sure each of these arguments have basis in case law!

Brian recommends the *Prisoners’ Self-Help Litigation Manual* as a good source to learn more about legal writing. For more information on this book, read the next page.

Legal books and resources for incarcerated folks

Law books and pamphlets

ISBA Post-Trial Remedies: A Handbook for Illinois Prisoners

By The Illinois State Bar Association Standing Committee on Corrections and Sentencing

What is it: This is the best and most comprehensive resource you will find about post-conviction litigation in Illinois. This is important because different states have different procedures and you need to make sure you are following rules that are specific to Illinois. This resource explains each form of post-conviction remedy, tells you what information to include in your petition, and shows you how and where to file it. Anyone who is hoping to represent themselves in litigation should write to the ISBA and request this pamphlet immediately.

Price: Free

How to get it: Send a letter requesting a copy to the following address:

Illinois State Bar Association
P.O. Box 2096
Springfield, IL 62701

Prisoners' Self-Help Litigation Manual

By John Boston and Daniel E. Manville

What is it: This book does not specifically cover post-conviction litigation, but it is strongly recommended by both Monica Cosby and Brian Nelson as a resource for prison litigation. If you want to sue the state for relief because a prison has violated your rights, this book can be an incredible resource to help you navigate that process. The last two chapters talk about how to do legal research and how to write legal documents, which can also be extremely helpful for people trying to get post-conviction relief.

Price: \$35 or free to view at a public law library

How to get it:

- » Request at prison law library
- » Buy on Amazon or Barnes & Noble
- » View at Cook County Law Library, 50 W Washington St #2900, Chicago, IL 60602
- » Request from one of the organizations listed on the next page

The Jailhouse Lawyer's Manual

By the Columbia Human Rights Law Review

What is it: A very extensive guide to post-conviction relief as well as prison litigation. This book is not specific to Illinois. It is written for a national audience so it mostly deals with federal and constitutional law that will apply in any state. However, because it is written in New York, there is some discussion of New York state law as well. Read carefully and make sure that you don't take any recommendations that only apply in New York courts. In particular, we recommend reading Chapter 2: Introduction to Legal Research, which is applicable in any state.

Price: \$30 for a hard copy or free to view online

How to get it:

- » Have a loved one access and print out relevant sections for free at <http://jlm.law.columbia.edu>
- » Have a loved one request a hard copy by printing out the order form and following instructions at <http://jlm.law.columbia.edu/order-the-jlm>

The Nutshell Series

By West Academic Publishing

What is it: A series of books that break down different areas of law and legal practice in a way that is quick, simple and thorough. These books are intended for law students but can also be helpful for a prisoner or prisoners' loved one who is trying to teach him or herself the law. In particular, we recommend the following nutshell books:

Criminal Procedure, Constitutional Limitations in a Nutshell by Jerold H. Israel and Wayne R. LaFave

Legal Research in a Nutshell by Morris L. Cohen and Kent C. Olson (this is ideal for a loved one who has internet access)

Price: \$47 per book, or view for free at a public law library

How to get it:

- » Request from prison law library
- » Order from Amazon or Barnes & Noble
- » View at Cook County Law Library, 50 W. Washington St #2900, Chicago, IL 60602
- » Request from one of the organizations listed to the right

Flipping Your Conviction: State Post-Conviction Relief for the Pro Se Prisoner

By Ivan Denison

What is it: The organization Chicago Books to Women In Prison lists this book as one of their most frequently requested books. The book is written by a man named Ty Evans, but he publishes under the name Ivan Denison. Evans is incarcerated in Indiana and has worked in his prison law library, helping his fellow inmates with their litigation. The book includes an overview of the legal claims one can make in a PC petition. It also includes blank forms and sample petitions, which can be extremely helpful. However, it is very important to remember that his book is not specific to Illinois. If you follow instructions in this book, *make sure they do not contradict the instructions in the ISBA handbook* (see previous page).

Price: \$49.99

How to get it:

- » Request from prison law library
- » Order from Amazon or Barnes & Noble
- » Request from one of the organizations listed to the right

Organizations that send books to prisons

The following organizations send donated books to incarcerated people in Illinois. They can be good resources for legal, educational or recreational reading. To request books, send a letter to the addresses below.

UC Books to Prisoners

P.O. Box 515
Urbana IL 61803

Chicago Books to Women in Prison

4511 N. Hermitage Ave.
Chicago, IL 60640

A loved one can also email on behalf of prisoners. Just provide the name, address and book preferences of the incarcerated person. Send your email to: chicagobwp@gmail.com.

Resources for families and loved ones

Legal Resources

Public law libraries

Cook County operates a public law library to serve lawyers as well as people who are representing themselves in court and the public as a whole. There are 6 branches of the law library, spread throughout Cook County. The main branch is located in the Daley Center in downtown Chicago.

You will find the best selection of books at the main branch, but every location has computers with Westlaw and LexisNexis, two online legal research tools that the majority of lawyers now use to find relevant case law for their cases. In addition, every location has a librarian on staff who can show you how to use Westlaw and who will help you conduct your research. The main law library in the Daley Center also holds regular educational programming that may help you with your legal research.

If you don't live in Cook County, you should use your county government's website to find out if your county has a public law library and what kind of services it provides.

Legal Aid of Illinois Online

The Illinois Legal Aid website contains tons of helpful resources including fillable legal forms and basic explanations of appeals, post-conviction petitions, etc.

If you're looking for a simple template for affidavits or motions (e.g., motion to proceed as a poor person) you can find those in the Form Library section of their website. The website has Spanish language as well as English pages.

Website: www.illinoislegalaid.org

Legal Aid self-help centers

Legal Aid of Illinois also runs Legal Self Help centers around the state, including 4 in Cook County. These centers have computers with internet that are available for public use, and they usually have someone on hand to help you find legal forms and information on the Legal Aid website. This is especially helpful if you're having trouble navigating the website on your own.

Chicago-Kent Self-Help Web Center

Daley Center, 50 West Washington Street, Room 602
Chicago, IL 60602

Open Mon - Fri, 9:00 AM - 4:30 PM

Resource Center for People Without Lawyers

Daley Center, 50 West Washington Street
Concourse Level, CL16
Chicago, IL 60602

Open Mon - Fri, 8:00 am - 4:00 pm

Legal Self Help Web Center - Legal Aid Society of Metropolitan Family Services

Sixth Municipal District Markham Courthouse
16501 S. Kedzie Parkway
Cook County Law Library, Basement Room 072
Markham, IL 60428

Open Mon - Friday, 8:30 am-12:00 pm, 1:00 pm-5:00 pm

Rolling Meadows Courthouse Self-Help Center

Third Municipal District Rolling Meadows Courthouse
2121 Euclid
Basement Room 036
Rolling Meadows, IL 60008

Open Friday only, 9:30 am-12:30 pm

If you're not located in Cook County, you can use the Legal Self-Help Directory on the website to find the location closest to you: www.illinoislegalaid.org/get-legal-help/lshc-directory

Social and Emotional Support for Prisoners' Loved Ones

Precious Blood Ministry of Reconciliation

Based in Chicago's Back of the Yards neighborhood, Precious Blood offers multiple services for families of incarcerated people. The organization occasionally coordinates family visits to Illinois prisons. In addition, it hosts a monthly gathering called Communities & Relatives of Illinois Incarcerated Children (CRIIC). CRIIC offers support, encouragement and community to anyone who has a loved one in prison. PBMR also provides reentry services for the formerly incarcerated. Contact Julie Anderson to get involved: criic.julie@yahoo.com.

Website: pbmr.org

Phone: (773) 952-6643

Cabrini Green Legal Aid

Chicago-based Cabrini Green Legal Aid offers a monthly Reunification Ride, taking children—along with their caretakers—to visit their mothers in Logan Correctional Center. Loved ones of incarcerated folks can sign up for the program by calling Jessica Newsome: (312) 850-4621. Mothers at Logan can sign up by requesting a Reunification Ride form from their counselor.

Website: www.cgla.net

Phone: (312) 738-2452

Printing & Copying

Chicago Public Library

Printing: 15 cents per page

Copying: 15 cents per page

Scanning: free

Cook County Public Law Library

Website: www.chipublib.org/faq/printers-and-copiers

Printing: 15 cents per page

Copying: 15 cents per page

Scanning: 15 cents per page

Illinois Legal Aid Self-Help Center

Website: www.illinoislegalaid.org/get-legal-help/lshc-directory

Printing: Available at some locations, free at some locations for legal information and forms only. Check the Legal Aid website to find out which centers have free printing services.

Fees and costs to expect

We don't have to tell you that incarceration has a steep financial cost both for prisoners and for their loved ones. Calls to and from prison, commissary items and travel for visitations can all be expensive. Unfortunately, navigating the judicial system can be expensive, too.

Of course, representing yourself is much cheaper than hiring a lawyer. But there can still be many costs associated with pro-se litigation. For example, Danny Olivares filed a PC petition pro se while incarcerated in Stateville. He wasn't able to make copies of his legal documents in prison, so he sent stacks of paper home to his family. They then paid to make copies of all the documents and sent them back. In addition, they bought and sent Danny legal books to help with his research.

Whether you are incarcerated or supporting an incarcerated loved one, it's helpful to know in advance how expensive your litigation process can be. Below we've laid out some of the fees and costs you may run into.

Filing fees and court costs

For any kind of litigation, the courts usually charge litigants a filing fee when they submit a petition. The courts also charge litigants for court costs. If you are filing a petition and you can't afford to pay these costs, you should indicate that you are "indigent" and that you are filing "in forma pauperis." In this case the courts will waive the costs and allow you to proceed without paying. However, you may be required to fill out a form or submit an affidavit that proves your inability to pay.

Keep in mind that if the court finds your petition to be frivolous they will force you to pay all the fees and costs after the fact.

Potential costs

PC or Petition for Relief from Judgment: \$60-90

Petition for a writ of habeas corpus: \$5

Requesting court documents

As mentioned on page 21, you will need access to all the court documents from your trial, also known as "the record on appeal." You should be able to request a first copy of the record on appeal for free. You just need to let the courts know that you are indigent.

However, if you had a direct appeal, that first copy probably went to your appellate lawyer. You should ask your appellate lawyer to provide you with a copy of the record on appeal ASAP. If you're not able to get those documents from your lawyer for any reason, you may need to pay the courts for a second copy.

Potential costs

Record on appeal: \$110 for 100 pages or less. \$185 for 101-200 pages. Each additional page after 200 costs 30¢.

Copying documents

As mentioned on page 22, you will need to create a lot of photocopies in the process of filing your petition. There should be free copying services available to prisoners in the law library. However, access to that library may not be guaranteed. In some prisons, inmates only get access to the library for one hour every month. In maximum security, prisoners don't have any access to the law library. Instead they have to rely on their prison guards to take documents to the library for copies. Unfortunately that means that there's no guarantee of confidentiality.

Like Danny Olivares and his family, you may find that the best or only option is to send documents home for copying, which costs a lot of money!

Potential costs

Copying at branches of the Cook County Law Library or Chicago Public Library: \$15 for every hundred pages (or 15 cents per page).

Miscellaneous costs to expect

- » Law books (see page 25 for more information)
- » Postage costs for shipping documents and books



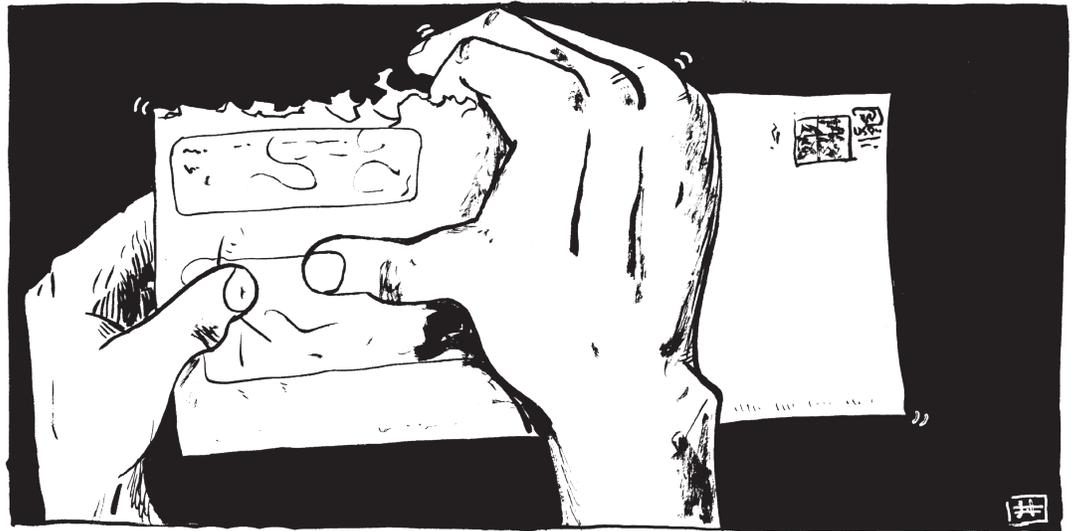
"IF A PETITION DOESN'T WORK, IT'S NOT A REFLECTION OF YOUR INTELLECTUAL CAPACITY. IT'S A REFLECTION OF A SYSTEM THAT'S SAYING, 'FUCK YOU.'"

MONICA COSBY,
COMMUNITY ORGANIZER AT
WESTSIDE JUSTICE CENTER,
FORMERLY INCARCERATED

Dealing with denials and staying busy

As Monica Cosby points out, "No one wants to hear, 'be patient,'" but the judiciary system moves slowly. It may take months or, in some cases, years to get the results of an appeal or a post-conviction petition, and Monica says, "You need to find [something] to do while you're waiting." She recommends taking advantage of any kind of educational or arts programming that your prison provides. This can have a significant impact on your future, as well. In 2013, the RAND Corporation released a study finding that prisoners who receive some education "are significantly less likely to return to prison after release and are more likely to find employment than peers who do not receive such opportunities."

If you are in solitary or in a prison that doesn't offer any programs, then you may have to educate yourself. In that case, Brian Nelson recommends that you just keep reading. Brian was in solitary confinement for 12 years. He passed the time by reading and teaching himself the law. He also hand-copied every single page of the Catholic Bible word for word. "If I say I'm a Christian or Catholic, I should know what I'm talking about," Brian says, "So I did it for me, nobody else."



"YOU ALWAYS HOLD ONTO THE FACT THAT YOU'RE INNOCENT... BUT YOU KNOW, DENIALS ARE HARD."

- JOHN, EXONEREE
AFTER 23 YEARS
IN PRISON

Take advantage of your prison library, borrow from your fellow inmates, or write to request books from one of the organizations that sends books to prisoners throughout Illinois. Flip to page 26 for more information about how to contact these organizations.

Also, keep in mind that very few appeals and post-conviction petitions are successful. According to data from the state's attorney's office, the Cook County Circuit Court received 1,322 post-conviction petitions in the five-year period from 2013 to 2017. The court only granted relief to 46 of those petitioners. That's about 3 percent of all petitions filed.

That doesn't mean that you should give up hope. We just want to prepare you for the fact that you may face disappointment. John is a former prisoner who was exonerated after 23 years in prison (he asked that we only use his first name). He filed multiple post-conviction petitions and appeals before he finally got relief. And John says, "Denials are hard." Some days, he almost felt like

sabotaging his chances. John says it can feel "more peaceful and less painful to know that another 'no' isn't coming through the mail, than it is to have an actual opportunity in court where they could rule in your favor."

Still, John always held onto the fact that he was innocent: "I believed that I would always try. I believed that I'd always have hope." John and his loved ones persevered and finally won his freedom in 2017.

If you do get a denial in the mail, Monica Cosby says it's important not to get down on yourself. "If a petition doesn't work, it's not a reflection of your intellectual capacity," Monica says. "It's a reflection of a system that's saying, 'Fuck you.'"

Whatever happens, Monica says, "Support each other. If a petition is denied, be there to be in solidarity with each other." And, she says, be sure to celebrate the triumphs, too.

Print design by Bea Malsky

To request a copy of this toolkit, please visit

www.citybureau.org/afterthetrial

or send a letter requesting a copy to the address below:

**City Bureau
6100 S. Blackstone Ave.
Chicago, IL 60637**

Please be aware that City Bureau is not a legal organization and we will not be able to answer your questions or provide any kind of legal advice. Please flip to page 11 to find the contact information of legal organizations that may be able to provide assistance.