

# A Victim's Guide to the Capital Case Process



**Office of Victims' Services  
California Attorney General's Office  
Bill Lockyer, Attorney General**

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**December 2000**




STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
BILL LOCKYER  
ATTORNEY GENERAL

Dear Friend,

In California, persons convicted of a death penalty offense can spend as much as 20 years on Death Row before implementation of their sentence. While we continue to fight to reduce unreasonable delays in the appellate process, these delays are the result of the system we employ to ensure that justice is rendered in all capital murder cases. Though necessary, this system can make an already traumatizing experience even more difficult for the victims of these heinous crimes and their loved ones. Death penalty cases involve all levels of law enforcement, including local police and sheriff officers, district attorneys and the Attorney General's team of lawyers. Due to the complexity of most death penalty cases, the system can be confusing for victims and citizens, alike. I believe it is important that interested parties be given the information they need to make sense of the capital litigation process.

In an effort to alleviate some of the frustration resulting from a lengthy capital murder case, the Attorney General's Office of Victims' Services has prepared this book, *A Victim's Guide to the Capital Case Process*, outlining the death penalty appellate process. This book explains the process from the trial, the appeals process, clemency and through to execution. We are committed to doing all that is possible to bring criminals to justice as well as make the system more understandable to those affected by these cases. If you would like more information about the death penalty process or if we can provide any other assistance, please contact the Office of Victims' Services at 1-877-433-9069.

Sincerely,

  
BILL LOCKYER  
Attorney General

# Table of Contents

<b>Trial .....</b>	<b>1</b>
<b>Appellate Process .....</b>	<b>2</b>
<b>Direct Appeal .....</b>	<b>3</b>
<b>Direct Appeal (Certiorari) .....</b>	<b>5</b>
<b>State Habeas Corpus Proceedings .....</b>	<b>6</b>
<b>Federal District Court .....</b>	<b>8</b>
<b>The Capital Case Process .....</b>	<b>10</b>
<b>Ninth Circuit .....</b>	<b>12</b>
<b>United States Supreme Court .....</b>	<b>13</b>
<b>Second or Successive Appeals .....</b>	<b>14</b>
<b>Executive Clemency .....</b>	<b>15</b>
<b>Execution .....</b>	<b>16</b>
<b>Post - Execution .....</b>	<b>17</b>
<b>Glossary .....</b>	<b>18</b>
<b>Acknowledgments .....</b>	<b>22</b>



## **Trial**

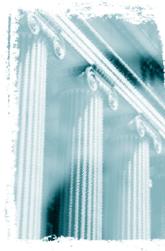
A capital murder prosecution begins when the grand jury hands down an indictment or the District Attorney files an information following a preliminary hearing charging the defendant with murder and special circumstances. Among the circumstances which can warrant a death sentence are multiple murder, felony-murder, torture, lying in wait, or killing a peace officer. The trial, which occurs in a superior court, proceeds in two phases. During the first phase of the trial, called the guilt phase, the jury must decide whether the prosecution has proved beyond a reasonable doubt that the defendant is guilty of first degree murder with at least one special circumstance. If the jury finds the defendant guilty, the trial proceeds to the penalty phase of the trial, during which the jury reviews aggravating and mitigating evidence. The jury must then return a verdict of either death or life in prison without the possibility of parole.

If a jury returns a verdict of death, a trial judge is called upon to determine whether to reduce the judgment to life without the possibility of parole. Trial judges rarely reduce a death verdict to life without parole. If the jury returns a life sentence, the judge has no authority to impose death.



## **Appellate Process**

After a defendant is convicted of murder with special circumstances and sentenced to death at trial, the appellate process begins. A capital conviction is normally reviewed in (appealed to) both state and federal courts. The Office of the Attorney General represents the State in these proceedings which can span several years. The following is a brief explanation of the steps in the appellate process. The explanation assumes that the conviction and death sentence are affirmed at each stage of the process. If, at any given stage, either the conviction or sentence is reversed, the State may appeal that decision to a higher court, but if the State is unsuccessful, a retrial or re-sentencing may be required. In any event, every case is different, and some cases may involve more appeals than others.



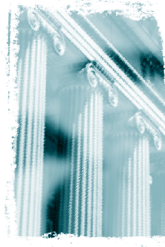
## **Direct Appeal**

A defendant who is sentenced to death is entitled to an automatic, non-waivable, direct appeal to the California Supreme Court. The California Supreme Court must find at least one new attorney, but usually two, for the defendant. At this point the defendant is called the “appellant” and the State is called the “respondent” in the official court proceedings. The record of the trial, including all of the papers filed in the trial court, the evidence presented at trial, and the written report of all the trial testimony, is compiled and filed in the Supreme Court. The defendant’s (appellant’s) attorney files a brief, in which it is argued that error occurred during the trial and that the defendant’s conviction and/or death sentence should be reversed. Then the Attorney General’s Office files the State’s (respondent’s) brief answering the claims in the defendant’s brief. The defendant has an opportunity to file a reply to the State’s brief. There is an oral argument before the Supreme Court.

The Supreme Court reviews the briefs, considers the written and oral arguments advanced by both sides, and, within 90 days after argument, issues a written opinion that addresses each of the defendant’s claims. Based on its resolution of the claims, the court affirms or reverses the conviction, the sentence, or both. If the

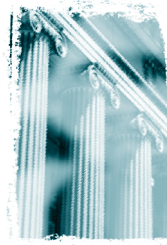
court affirms the conviction and sentence, the defendant may petition the United States Supreme Court for a writ of certiorari. The United States Supreme Court will then determine whether the petition for certiorari review presents issues it needs to resolve by either agreeing or refusing to hear the case.





## **Direct Appeal (Certiorari)**

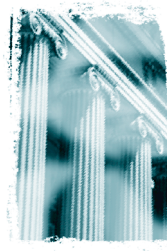
The defendant, now called the “petitioner,” files a petition for writ of certiorari in the United States Supreme Court in Washington, D.C., asking the Court to review the case and arguing that the California Supreme Court was wrong in deciding the defendant’s federal constitutional rights were not violated at trial. The Office of the Attorney General represents the State. The State, called the “respondent,” files a brief in opposition responding to the petition. The State argues for the Supreme Court to decline to review the defendant’s case. In the vast majority of cases, the Supreme Court refuses to review the case and denies, with a short written order, the defendant’s petition for writ of certiorari. At this point, the defendant’s direct appeal is complete.



## **State Habeas Corpus Proceedings**

A defendant sentenced to death is also entitled to seek state habeas corpus review. State habeas corpus review is essentially an additional appeal, differing from the direct appeal described earlier in that the defendant may raise claims based on facts outside the trial record (for example, ineffective assistance of trial counsel). State habeas review begins when the defendant, now called the “petitioner,” files a petition for writ of habeas corpus in the California Supreme Court. The Supreme Court generally requires that a habeas petition be filed while the direct appeal is still pending. The Attorney General on behalf of the State, or “respondent,” files an opposition, specifically refuting the defendant’s claims and arguing that no error or prejudice occurred in either the guilt or penalty phases of the trial. If the Supreme Court determines that a hearing is necessary to resolve the defendant’s claims it will order the trial court to hold an evidentiary hearing and report its findings to the Supreme Court. Upon receipt of the report and briefing from the parties the Supreme Court will hear oral argument and issue an opinion within 90 days after the argument. As with the direct appeal, the defendant may appeal to the United States Supreme Court through a writ of certiorari if the California Supreme Court rules against them. Such review is rarely granted.

After the California Supreme Court denies relief in the direct appeal and any companion state habeas petition, the trial court sets an execution date. If this is the defendant's first execution date following direct appeal, the trial court must set an execution date within 60 to 90 days from the date of the order. If the defendant has previously had an execution date scheduled, the trial court must set the date within 30 to 60 days from the date of the order.



## **Federal District Court**

Under federal law, after state claims have been reviewed, a petitioner may raise federal constitutional claims in federal court. The defendant will ordinarily ask the United States District Court to appoint counsel to represent him in federal court. The federal court will appoint counsel and allow a certain number of days for the defendant to file a petition for writ of habeas corpus. Here the defendant is called the "petitioner" and the State, represented by the Attorney General's Office, is called the "respondent." The petition must generally be filed within a year after the state proceedings ended.

In the petition filed in the United States District Court the defendant argues that the conviction and/or sentence should be overturned because the conviction was obtained in violation of the defendant's federal constitutional rights. In its answer the State responds to each of the defendant's claims, arguing that relief must be denied and the conviction and sentence upheld.

The record of all of the previous state court proceedings, including the trial, direct appeal, and state habeas action, are filed in the United States District Court. In some cases the District Court holds an evidentiary hearing to resolve some or all of the defendant's claims.

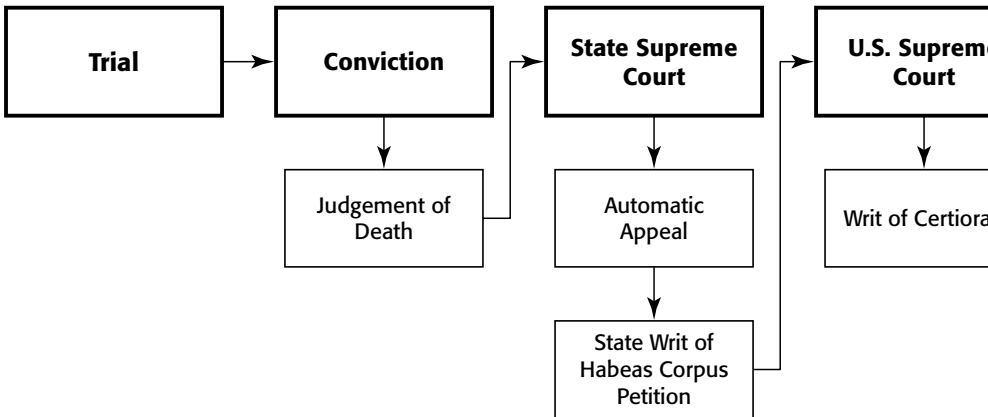
Then the court reviews the petition, the answer, the record from the state court proceedings, and the record of the federal hearing, if any, and decides whether to grant or deny the defendant relief on any of the claims. The court will address each claim in a written order. If the court denies relief, the defendant may appeal the district court's decision to the United States Court of Appeals for the Ninth Circuit.

Sometimes, in the petition filed in the United States District Court, the defendant argues the conviction and/or sentence should be overturned for reasons never before presented to the California Supreme Court during the direct appeal or state habeas corpus proceedings. If this happens, the United States District Court may tell the defendant to file another state habeas petition in the California Supreme Court and present the new claims to that court first. The federal court proceedings may be delayed while the defendant goes back to the California Supreme Court to pursue these new claims.

# The Capital

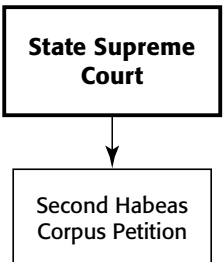
**1**

## State Court (First Appeal & Habeas)



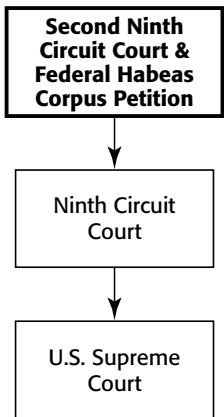
**3**

## Second or Successive State Habeas Petition



**4**

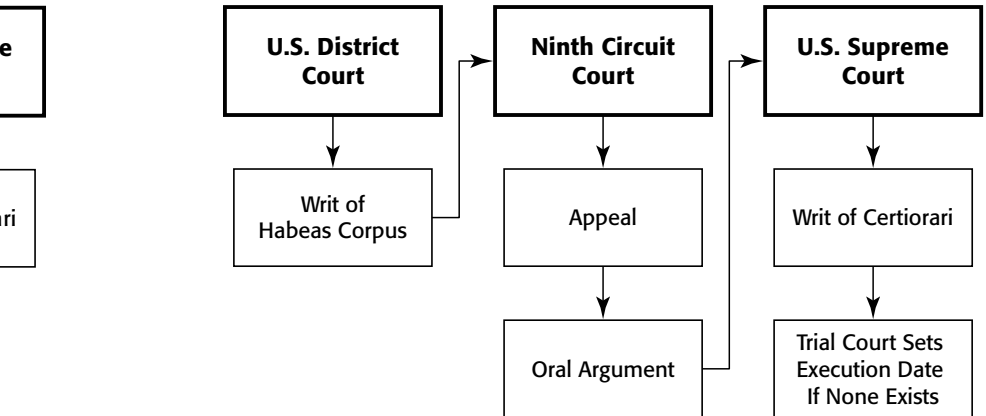
## Second or Successive Federal Habeas Petition



# Case Process

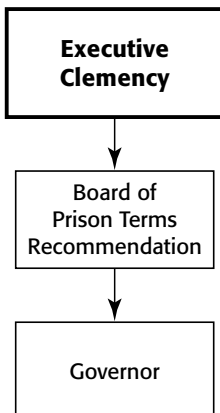
2

## Federal District Court (First Federal Habeas & Appeal)



5

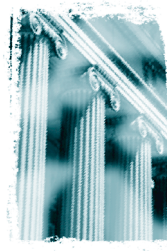
## Application for Clemency from the Governor



6

## Execution





## **Ninth Circuit**

The defendant, now called the “appellant,” files a legal brief explaining why, in the defendant’s view, the district court’s denial of relief was wrong. The State, called the “appellee” and represented by the Attorney General’s Office, files a brief arguing that the district court correctly denied relief. In death penalty cases, the Ninth Circuit generally requires oral argument. A three-judge panel considers the briefs, the arguments, and the record from the district court and issues a written opinion either affirming or reversing the district court’s decision. If the Ninth Circuit affirms the district court’s decision, the defendant may seek a rehearing by the same three-judge panel of the Ninth Circuit or suggest an en banc hearing. An en banc hearing is a review of the case by 11 judges of the Ninth Circuit. If denied, the defendant may petition the United States Supreme Court to review the case.





## **United States Supreme Court**

The defendant, called the “petitioner,” files a petition for writ of certiorari in the United States Supreme Court in Washington, D.C., asking the Court to review the federal habeas case and arguing that the decision of the Ninth Circuit Court of Appeals is incorrect. The State, now called the “respondent,” files a brief in opposition, arguing that the Ninth Circuit’s decision is correct and stating that there is no reason for the Supreme Court to review the defendant’s case. Generally, the Supreme Court denies the defendant’s petition for writ of certiorari with a short written order.

After the United States Supreme Court denies certiorari relief in the federal habeas case, the trial court sets an execution date. The trial court must set the date within 30 to 60 days from the date of the order.



## **Second or Successive Appeals**

While the defendant gets only one direct appeal in the California Supreme Court, it is typical for the defendant to request permission from the courts to file more than one habeas corpus petition in state and federal courts. The circumstances under which either the state or federal courts will consider claims raised in second or successive habeas corpus petitions are limited, but such requests are granted.



## **Executive Clemency**

After the appellate process is complete, a defendant may seek executive clemency. Executive clemency is the power of the Governor to grant full or conditional pardons, reprieves of execution, and commutation of sentences. Clemency can only be granted by the Governor, who may obtain a nonbinding recommendation from the Board of Prison Terms.

The district attorney for the county that obtained the conviction will participate in the proceeding. The defendant will be represented by his or her counsel. The victim's survivors have a right to participate in the clemency hearing as well. If the defendant had a felony conviction before receiving the death sentence, the Governor must obtain permission from a majority of the California Supreme Court in order to consider clemency. Even if given permission by the California Supreme Court, the decision to grant or deny clemency remains exclusively with the Governor.



## **Execution**

If the Governor denies the defendant clemency, and no court stays the execution in order to consider a last-minute state or federal habeas petition filed by the defendant, the defendant is executed.

It is your right as a surviving family member to request to witness the execution. Approval and arrangements must be made through the Office of Victims' Services. The Attorney General's Office of Victims' Services Director is available to accompany you to the execution should you choose to attend.

For further information, please call toll-free 1-877-433-9069 or (916) 324-6289.



## **Post - Execution**

Once the execution is complete, people have different reactions. There is no right or wrong way to feel. Whatever your reaction to the execution, it is your personal reaction. Ideally, you already have a support group with which you can share your feelings, but the Office of Victims' Services will be happy to refer you to a grief counselor or a support group in your area.

# Glossary

**Answer:** A pleading by which a defendant attempts to resist plaintiff's demands by an allegation of facts. The defendant may use an answer to set up all defenses, but he also has the option to use a motion to assert certain defenses. (*Black's Law Dictionary, 5<sup>th</sup> Edition, 1979, West Publishing Company, St. Paul Minn.*).

**Brief:** A brief is a written legal document used by counsel to convey to the court the essential facts of his or her client's case. In an appeal, a brief is mandatory. It is used to state the questions of law involved in the case and from which counsel seeks the court's application. (*CRC §435*).

**Direct Appeal:** This action is the defendant's attempt to apply for review directly from trial. The appeal is based solely on the defendant's record at trial. In death penalty cases, the appeal is always automatic.

**En Banc Hearing:** An en banc hearing refers to a session where the entire membership of the court will participate in the decision rather than the regular quorum. The U.S. Circuit Court of Appeal usually sit in small panels of judges, but for important cases it may expand the bench to a larger number, hence they are said to be sitting en banc. (*Black's Law Dictionary, 5<sup>th</sup> Edition, 1979, West Publishing Company, St. Paul Minn.*).

**Information:** A formal accusation of a crime, issued by a prosecutor. An alternative to an indictment.

**Judgment:** The court's official decision on matters before it. A final judgment is an appealable order when no further judicial action by the court is essential to the final determination of the rights of the parties. (*UAP-Columbus JV 326132 v. Nesbitt* (1991) 234 Cal.App.3d 1028, 285 Cal.Rptr. 856).

**Oral Argument:** A formal opportunity for each party's counsel to summarize the points on appeal in front of a panel of appellate judges. Also, the counsel may respond to questions from the judges. The court does not attempt to guide counsel as to the matters on which oral argument is desired. (CRC 22 and Cal. Const., art. VI, §§ 2,3).

**Petition for writ of certiorari:** 28 USCS §1254(1)  
Provides that a case in the Courts of Appeal may be reviewed by the Supreme Court by a writ of certiorari granted upon the petition of any party in a criminal case. Review on certiorari is not a matter of right, but rather granted at the Supreme Court's discretion. (*S.Ct Rule 10.1*).

**Petitioner:** One who presents a petition to a Court. A petitioner is a person designated as one who starts or takes an appeal from a judgment. (*Black's Law Dictionary, 5<sup>th</sup> Edition, 1979, West Publishing Company, St. Paul Minn.*).

**Relief:** A relief is the general designation describing the assistance or benefit which a complainant seeks from the Courts. In essence, it is the petitioner's statement to the court on what he wants. (*Black's Law Dictionary, 5<sup>th</sup> Edition, 1979, West Publishing Company, St. Paul Minn.*).

**Reply:** Almost always referred to in an appeal. A reply is a brief filed by a defendant in response to the plaintiff's brief.

**Second or Successive Appeal:** Normally a successive appeal refers to an additional appeal which typically is a habeas petition. This appeal is an attempt by the defendant to introduce new evidence, information or case law into his appeal.



**State Habeas Corpus (aka habeas petition):** Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus in state court to inquire into the cause of such imprisonment or restraint. (*California Penal Code §1473*).

**Writ of Habeas Corpus:** A petition to introduce new information or evidence which was not presented at trial. Prisoners often seek release by filing a writ of habeas corpus. A writ of habeas corpus is also referred to as a judicial mandate to a prison official ordering that an inmate be brought to a court so it can be determined whether or not that inmate is imprisoned improperly. (*People v. Montgomery*, 125 P.2d 108, 109, 51 C.A.2d 144).

# Acknowledgments

We wish to thank the following professionals who have generously contributed their time, expertise and energy toward the successful compilation of such a valuable and comprehensive resource guide for victims and survivors in capital cases. Most especially, to all the victims of crime for their inspiration. The supporting individuals are listed in alphabetical order.

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