

Criminal Appeals Study

GENERAL CODING INSTRUCTIONS COURT OF LAST RESORT CODING FORM

Thank you for agreeing to assist the National Center for State Courts (NCSC) and the Bureau of Justice Statistics (BJS) with this very important project. We cannot emphasize enough how crucial it is that you read and understand *all* of these instructions because many questions that may arise will be answered by the following information. Please be sure to code each case as accurately, consistently, and completely as possible. We have included two sample coding forms at the end of these instructions. They have been completed in a manner consistent with these instructions. Please refer to them as you read these instructions. To assure complete and accurate data, please abide by the following basic rules for coding:

- **Every case coded for this study *must* be a direct appeal of a criminal case (i.e., capital felony, non-capital felony, misdemeanor) in which a verdict or judgment was entered in a trial court.**

A direct appeal occurs when the defendant 1) appeals the final judgment of a trial court to an intermediate appellate court, 2) appeals the final judgment of a trial court to a court of last resort, or 3) appeals the final judgment of a trial court to a court of last resort following an appeal to an intermediate appellate court. The appeal can be taken either by right or by permission and can be taken from the final judgment of the defendant's conviction, sentence, or both. The state may also file a direct appeal in some instances, e.g., the state may be able to file an appeal of the defendant's sentence.

Notes:

- a. If you discover a case on the list that was not appealed (i.e., no notice given to the appellate court), please make a note of the case name and number and notify the NCSC. If for any reason you cannot locate a case or if a case on the list does not seem to fit the description of the sample (i.e., a direct criminal appeal filed during 2008), please notify the NCSC for further instructions.
 - b. If a case was dismissed for procedural error and a subsequent appeal was filed, we are interested in the subsequent appeal only if that resolved the case on the merits. If the subsequent appeal results in a second dismissal for procedural error, exclude the second appeal and only code the first appeal.
- **When in doubt about how to code something**, please call the National Center for State Courts (NCSC). *Please do not guess how to code something*. It is **strongly encouraged** that you code two or three appeals and then call your court liaison to discuss the coding process and ask any questions that arose. While coding, keep a list of questions (and the docket number that is affected), then call [appropriate project staff name] toll-free at **1-800-616-6109** Monday through Friday, 8:30 a.m. to 5:00 p.m., Eastern Time.

- **Write CLEARLY!**
 - o Shape your numbers and letters *CLEARLY* and *DISTINCTLY*. This is a very important way to ensure that the data are entered, stored, and reported accurately.
 - o Use a *PENCIL* so you can erase and re-enter the data clearly, if necessary.
 - o See the **SAMPLE CODING FORMS** for examples.

- **Code each item accurately.**
 - o If the item requires checking a box, be certain that you check the one that you intend to check.
 - o Be certain that you write the numbers for DATES in the correct order. For example, July 1, 2008 should be coded as: **7 / 1 / 08** (month/ day/ year). If this is coded 1 / 7 / 08, it will create an error of 6 months.
 - o See the included “Miscellaneous Coding Instructions” document for additional examples of scenarios that you may encounter while coding. Use those examples as a supplement to, rather than as a substitute for, the instructions provided below.

- **If the data item DID NOT OCCUR** (e.g., no reply briefs were filed), write **“DNO” in the blank**. However, **if the event DID OCCUR**, but you **DON'T KNOW** the answer (e.g., you know that a request to reconsider/rehear was made, but you do not know if it was granted), mark **“DK”** (for “Don’t Know”) in the checkbox provided. Please use “DK” sparingly—make every attempt to find and enter the correct information.

- **If there is something peculiar or particularly interesting about the case**, please include comments on the back of the coding form, including an explanation of how you determined codes for the case. This detail will assist the NCSC and BJS in analyzing the data that you provide about each appeal.

SPECIFIC DATA ITEMS

In this study, we are *only* collecting information about **direct appeals of a criminal case (i.e., capital felony, non-capital felony, misdemeanor) in which a verdict or judgment was entered in a trial court**. For the purpose of this study, do not include appeals of cases that are not included on the list provided to you by the NCSC. If you find a case that you believe should be included in the study, please notify the NCSC for further instructions.

Defendant’s Last Name: Write the last name of the defendant in the trial court case. If there was more than one defendant write the last name of the defendant that filed the current appeal.

Trial Court County, State: Write the county and state of the trial court from which the case was appealed.

Trial Court Case Number: Write the number assigned to the trial court case. Be sure to record the complete number, including any prefixes or suffixes. (The appellate court docket numbers, to be completed below and in Question 1, will be different than the Trial Court case number recorded here.)

Intermediate Appellate Court Case Number: Write the number assigned to the intermediate appellate court case. Be sure to record the complete number, including any prefixes or suffixes. (The Court of Last Resort docket number, to be completed in Question 1 below, will be different than both the Trial Court case number [reported above] and the Intermediate Appellate Court case number recorded here.)

1. Court of Last Resort Docket Number: Write the number assigned to the appeal by the Court of Last Resort (**COLR**). Be sure to record the complete number, including any prefixes or suffixes. (The Court of Last Resort docket number will be different than the Trial Court and Intermediate Appellate Court case numbers that you recorded above.)

2. Petitioner (from Trial Court case): Check the box next to the party who filed this appeal. Please note that both parties may appeal the same or different issues (e.g. the defendant may appeal a judgment for the State, while the State may appeal an interlocutory ruling of the court).

- Note: for the purposes of this project, references to the party initiating the appeal will be the “**petitioner**.” Some courts refer to this party as the appellant. Similarly, for purposes of this project, references to the party responding to the initial petitioner will be “**respondent**”. Some courts refer to this party as the appellee. The use of appellant and appellee will be reserved for parties at the Intermediate Appellate Court.

In some instances, neither the petitioner nor respondent has filed the appeal; instead, the Intermediate Appellate Court has decided not to resolve the issues of the appeal and transfers or certifies the case to the Court of Last Resort. The Court of Last Resort may also decide that the issues on appeal have important policy implications so they decide to transfer the case from the Intermediate Appellate Court prior to that court making a decision in the case. If the case was transferred or certified by the Intermediate Appellate Court to the Court of Last Resort, check the “Transfer from IAC” box.

3. Is it an appeal from: Conviction, Sentence, Both: Record the phase of the trial court criminal case from which the appeal is being taken.

4. Appeal Milestones: Write the date that each of the following events occurred. If the event has not yet occurred or if the appeal was withdrawn, abandoned, dismissed or otherwise terminated before the event was necessary, enter “**DNO**” to indicate the event did not occur. While it is likely that these events will occur chronologically in the order they appear on the coding form, they will not necessarily occur in this order.

a) Appeal requested: write the date on which the Petitioner filed a request for certiorari or review of a trial court or an IAC decision.

b) Appeal granted/denied: write the date on which the COLR granted or denied the Petitioner’s request for certiorari or review.

c) Initiated Documentation: write the date on which the appellate court first received jurisdiction of this case. This date will usually be the date that the notice of appeal is filed or docketed with the appellate court. If the petitioner mistakenly filed the notice of appeal with the wrong court, and the notice of appeal was forwarded to the proper court, write the date on which the appropriate court received the notice. If there is no notice of appeal date listed, and if this court utilizes docketing statements, write the date on which the docketing statement was filed. A docketing statement is a form filed by the petitioner and often used by the court for scheduling and assignment purposes. Some courts use other names for these forms, such as “case information sheet” or “statement of the case.”

d) Record filed: write the date on which the complete trial court record was filed with the COLR (excluding the transcript). If the parties filed a joint statement of the case (or some other abbreviated record) in lieu of a complete trial record, note the date on which this statement was filed. At times there may be multiple record submissions. If this is the case, use the latest date to indicate when the COLR received the full record.

e) Transcript filed: write the date on which the complete transcript was received by the COLR. If the transcript is not recorded separately, but is part of the record, use the date the court received the record.

f) Petitioner brief filed: write the date on which the petitioner filed its brief with the COLR. For this question, we are interested only in briefs on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court judgment.

g) Respondent brief filed: write the date on which the respondent filed its response brief with the COLR. For this question, we are interested only in briefs that respond to the petitioner’s brief on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court judgment.

h) Reply briefs: write the dates on which any reply briefs were filed with the COLR. Be sure to assign the date of the brief to the appropriate party (petitioner or respondent). If the parties filed more than one reply brief, indicate the filing date and filing party on the back of the coding form, labeling each clearly as reply briefs. If a reply brief is filed and you know the date, but do not know which party filed the brief, enter the date and mark the “DK” box. Likewise, if you know that the petitioner filed the brief, but you do not know the date of the brief, mark the “DK” box.

i) Amicus briefs filed?: check the “Yes” box if any amicus briefs were filed in this case. An amicus brief is a brief filed by a person or group that is not a party to the case.

j) Briefing Completed: write the date on which all petitioner and respondent briefs were submitted to the COLR in preparation for oral arguments or decision.

If there are different dates for fully briefed and submitted, please use the latest date to indicate when all documents are submitted to the appellate court. Do not include the filing of amicus briefs in this calculation as the briefs of interest are those filed by the parties to the case.

k) Oral argument: write the date on which oral arguments were held before the COLR. Write “DNO” in this space (do not check “none”) if no oral arguments were held because the appeal was withdrawn, dismissed, or otherwise terminated before oral arguments were necessary. If there are multiple dates listed in which oral arguments were heard, list the latest date on record.

l) Decision/Disposition: write the date on which the COLR issued a final decision for the appeal OR the date on which the appeal was dismissed. Do not include the dates on which the court decided motions or preliminary issues.

5. Type of Conviction (use codes): Using the attached list of crime codes, indicate the category that accurately captures the most severe crime for which the defendant was convicted. There are five primary conviction categories. The first digit reflects the general category of the crime and the second digit indicates a more detailed sub-category. For purposes of determining the severity of the crime, the general, but not definitive, rule is that the lower the first digit number, the more severe the offense. Attempted offenses are included within each crime type (i.e., it is implied that, for example, conviction/charge code 20 includes attempted burglary). If Conviction code 50 (“Other criminal offense”) is used, be sure to explain the offense on the back of the page.

Indicate the level of severity for the offense by marking one of the following boxes:

Capital Felony, Non-Capital Felony, or Misdemeanor. Be sure to indicate the severity of the offense even if the conviction offense cannot be identified.

- A felony should be classified as a **capital felony** only if the defendant has been sentenced to death.
- **Note:** Do not assume the level of severity of an offense since, with limited exceptions, these offenses may be classified as a felony or a misdemeanor depending upon state statute. Look to the statement of facts or the opinion to see if either document specifies the conviction type and/or the level of severity of the offense.

6. Total # of issues presented in the petitioner’s initial brief: Indicate the total number of issues raised on appeal by the petitioner in the petitioner’s initial brief. We are only interested in issues that were actually briefed. This information should therefore be obtained from the briefs only; do not tally the number of errors assigned by the petitioner in the notice of appeal or other preliminary documents.

6a thru 6f: Issue on appeal (use codes): Using the attached list of issue codes, indicate the category that accurately captures the legal issue presented in the petitioner’s brief. There are eight primary categories for “issue on appeal.” The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 (“Other trial court error”) is used, be sure to explain the error on the back of the page. In addition, please note the type of error on the back of the page whenever any of the “other” issue codes are used. These codes

will be the same codes used for categorizing “issues addressed” by the court in Question 9, but note that the issues raised in the briefs may or may not be the same issues that are addressed by the court in the opinion.

The total number of issues entered **must match** the number coded for Question 6(a) thru 6(f), **unless** the petitioner raises more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the brief). If the party’s brief raises more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write “3” in Question 6 and list 3 codes for Questions 6a, 6b, and 6c. If there are 8 issues on appeal, write “8” in Question 6 but list only the first 6 codes for Questions 6a through 6f.

7. Appellate court disposition: Check the manner in which the appeal was resolved at the COLR. While it is possible that only one option will apply to a case, the options listed are **not necessarily mutually exclusive**; **please check all options that apply**. Please be thorough and precise when coding the dispositions. If the appeal is still pending, skip to Question 10 and check the box marked “Pending.”

a. Review/transfer not granted or dismissed due to:

Appeal improvidently granted – the appeal was initially accepted by the court, but it was later determined that the appeal should have been rejected for some reason. Typically this code will be used for appellate courts with discretionary (or by permission) jurisdiction over criminal cases.

Lack of jurisdiction – the appeal was dismissed because it was filed in the wrong court or because this court has no jurisdiction over the case’s subject matter or there is a lack of jurisdiction because the trial court has issues pending and thus still has jurisdiction over the case.

Denied (discretionary review) – the case is a by permission appeal (meaning that the court has discretionary jurisdiction over the appeal), and the court denies review.

Procedural error – a procedural error prevents COLR review of the issues raised. For example, the petitioner missed the deadline for filing a notice of appeal. This option also includes appeals that are extinguished by the filing of a timely post-verdict motion in the trial court.

No valid issue on appeal – the notice of appeal did not allege a reviewable error. Trial court decisions may only be appealed if the errors were prejudicial, were preserved during trial, and were identified and explained in an appellate brief. If a notice of appeal fails to allege that the error was prejudicial, or if the errors alleged were not objected to during trial, then the appeal fails to present a “valid question” – thus there are “no valid questions on appeal.”

Unknown – the appeal was not accepted, but the reason underlying the rejection is not apparent.

b. Appeal withdrawn before decision:

By petitioner – the petitioner withdrew the appeal before the COLR issued an opinion.

Transfer/certified to IAC - the appeal was transferred to the state's Intermediate Appellate Court before review by the COLR. For example, this may occur when a COLR transfers a case to the IAC due to the IACs current handling of several appeals with errors related to those raised by the current appeal.

- Note: the transfer or certification of a case to the IAC is a disposition for the case, but it does not resolve the issues on appeal. As such, if this disposition is chosen there will not be an opinion written in the case, and the "No opinion" box should be checked in Question 8.

Unknown – the appeal was clearly withdrawn and is no longer pending, but the withdrawing party is unknown.

c. Affirmed in whole: the COLR affirmed the entire trial court decision or judgment.

d. Reversed in whole: the COLR reversed the entire trial court decision or judgment. Include here any judgments that are "vacated in whole." **Be sure to explain the effect of the reversal in the space below.**

e. Reversed in part: the COLR reversed only part(s) of the trial court decision or judgment. This is also referred to as "affirmed in part/reversed in part." Include here any judgments that are "vacated in part." **Be sure to explain the effect of the reversal in the space below.**

f. Remanded: the court sent the case back to the lower court for additional proceedings. Check this even if the lower court will revisit only some of the issues. **Be sure to explain the effect of the remand in the space below.** Do not include the court's *reasons* for remanding the case; include only the *effect* of the remand, (e.g., Remand to the trial court for a new trial, in light of the improper jury verdict forms.) If the court reversed the trial court decision in whole or in part and remanded the case, check both (f) remanded and (d) or (e).

g. Conviction/sentence modified: This option is applicable if the COLR modified the trial court's resolution of at least one issue without remanding the case. A separate issue may be remanded and coded as such. **Be sure to explain the effect of the modification, below.** Do not include the court's *reasons* for modification here; include only the *effect* of the modification, (e.g., Sentence reduced from 2.5 years to 1.5 years). If the court reversed the trial court decision in whole or in part and modified the conviction or sentence, check both (g) modified and (d) or (e).

8. Type of Decision: Indicate the format of the court's opinion. An opinion on the merits is one in which the court has considered the arguments of the parties, either following oral arguments or based on a review of the briefs only (i.e., in a judicial

conference). If the court does not consider the merits of the appeal (i.e., there is no resolution of the issues in the case), select “No Opinion” (Question 8) and **DO NOT** code any issues in Question 9.

Full Opinion: The appellate court produces an expansive discussion and elaboration of the merits of the case or the defect or procedural error. The elaboration may include statements of fact, issues, and the court’s reasoning.

Memorandum: The appellate court produces a limited discussion of the merits of the case or the procedural determination. The discussion will only include some statements of fact, issues, or the court’s reasoning.

Summary/Dispositional Order: The appellate court produces a document that has no discussion of the facts or merits of the case, or no discussion of the defect or error, and gives no reasons for the court’s decision (e.g., “Affirmed. No opinion.” or “Denied. No opinion.”)

Other Opinion: if the type of decision is not listed above. Use this sparingly.

No Opinion: The appellate court did not issue an opinion on the merits of the case.

9. Total # of issues addressed by Opinion: Indicate the total number of issues addressed by the court in the dispositive opinion. Mark the “OPINION PENDING” checkbox if the appeal is currently awaiting the release of the final opinion. If the opinion is released at a later date, please return to this question to complete the coding.

1. Issue Addressed: Using the attached list of issue codes, indicate the category that accurately captures the legal issue addressed by the court. There are eight primary categories for “issue on appeal.” The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 (“Other trial court error”) is used, be sure to explain the error on the back of the page. In addition, please note the type of error on the back of the page whenever any of the “other” issue codes are used. These issues may or may not be the same issues presented in the petitioner’s brief as listed in Question 6.

The total number of issues entered **must match** the number coded for Question 9(a) thru 9(f), **unless** the opinion addresses more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the opinion). If the opinion addresses more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write “3” in Question 9 and list 3 codes for Questions 9a(1), 9b(1), and 9c(1). If there are 7 issues on appeal, write “7” in Question 9 but list only the first 6 codes for Questions 9a through 9f.

2. Resolution: Enter the appropriate resolution using the attached list of five codes for each of the “issues addressed” by the court. Code the court’s resolution only for opinions that are dispositional in nature. If Resolution code

4 (“Other or unknown resolution on the merits”) is used, be sure to explain the other resolution on the back of the page.

10. Present status of appeal: Indicate whether the appeal has been closed (for any reason) or is still pending. An appeal is considered closed only if the court has issued a final order or opinion dismissing or resolving the appeal. This includes appeals that are dismissed at the request of either party. If the appeal is STILL PENDING, skip to Question 13. If any further appeal is pending, the case should be considered closed at the COLR.

11. Request to reconsider/rehear:

- a. If applicable, write the *first* date on which either party requested that the COLR reconsider or rehear the issues. If no request was made, check “none” and skip to Question 12. Do not answer this question if the COLR has not yet issued a decision for this case or if the deadline to move for reconsideration or rehearing has not yet expired (a motion could still be filed).
- b. **Reconsideration/rehearing granted:** if you recorded a date for part a, indicate whether the COLR granted the request to rehear or reconsider the appeal. If a decision was made, but you are unsure of the results, mark the “DK” box to indicate you “don’t know”. If no request for reconsideration/rehearing was made, do not check either box. If the court modified its original judgment after rehearing or reconsideration, please note the effect of the modification on the back of this coding form.

12. Any further appeal?: Identify the court and status, if known, of any additional appeals initiated by either party.

13. Defendant’s counsel: Write the name, address, and telephone number of the defendant’s counsel for the COLR appeal. If the defendant has more than one attorney simultaneously, write the name and contact information that appears first in the COLR record. If the defendant changed counsel during the COLR appeal, write the name and contact information of the most recent attorney. Please check if the defendant was assigned either a public defender or court appointed counsel. If the defendant does not have counsel, check “pro se / pro per” and complete the blanks with the defendant’s contact information. An attorney representing him or herself is NOT considered pro se (in this situation, write the name and contact information of the defendant).

14. State’s counsel: Write the name, address, and telephone number of the state’s counsel for the COLR appeal. If the state has more than one attorney simultaneously, write the name and contact information of the lead counsel or counsel of record.

Please use the back of this form to state additional comments about this case, including any deviations from typical appeal processing: On the back of the coding form, please list any additional information that might be useful in understanding the appeal, particularly any unique processing events.

Coder’s initials & date: Please print your initials and date each coding form as it is completed.