



# Arkansas

## Post-Conviction Case Activity & Victims' Rights

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### Post-Sentencing Review

After an individual has been convicted and sentenced, they may file motions in the trial court to challenge their conviction or sentence. For example, they may file:

- A motion for a new trial based on new evidence, jury misconduct, legal errors at trial, or other problems with the proceedings
- A motion to arrest the judgment
- A motion to modify the sentence

### Victims' Rights

Victims have the right to be treated with fairness, respect, and dignity. This right extends throughout all stages of the post-conviction process.

Victims have a right to the return of property that is no longer needed as evidence.

*This product was supported by grant number 15POVC-23-GK-01412-NONF, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this product are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

## Direct Appeal

After the court decides on any post-trial motions (or if no post-trial motions are filed), the individual convicted of a crime may ask a higher court to review the trial court's or jury's decisions. This is called a "direct appeal." On appeal, the court does not admit new evidence or call witnesses. Instead, it reviews what happened at trial (called the trial record) and written briefs filed by both sides describing their positions.

If an individual convicted of a crime requests an appeal, they may ask the court to release them while the appeal is ongoing. The convicted individual is more likely to be released in misdemeanor cases than in felony cases.

The convicted individual generally has 30 days after sentencing to decide whether to appeal. If the convicted person appeals, the state Attorney General's Criminal Department assigns a lawyer for the state to oppose the appeal. The state's lawyer and the convicted individual's lawyer then prepare written briefs for the judges, which generally takes several months. In some cases, the lawyers from both sides present oral arguments to the judges. Then, the judges prepare a written decision in the case. The appeal process takes roughly a year or more.

### Victims' Rights

Victims have a right to prompt notification of the appeal, the date, and the place of any hearing or oral argument, and the court's decision in the appeal.

Victims have a right to attend oral arguments, but may not participate.

## State Post-Conviction Proceedings

Post-conviction motions are requests to have the conviction or sentence reviewed that are filed after the direct appeal process has ended. These motions can seek many outcomes, but the main requests and outcomes in Arkansas are the following:

- Petition under Arkansas Rule of Criminal Procedure 37: These petitions can be used to seek release, a new trial, a sentence modification, or other relief.
- Motion for a belated appeal: If the convicted person failed to pursue a direct appeal within the usual timeframe, they may ask the court for permission to pursue one later for a good cause.
- State habeas corpus: Incarcerated people may seek relief in state court in a process called "habeas corpus." State habeas relief is available only in very narrow circumstances, as most requests must be brought under Rule 37.
- Writ of error coram nobis: A convicted person may seek this form of relief only if (1) they were legally insane at the time of trial, (2) their guilty plea was coerced, (3) the prosecution withheld material evidence, or (4) a third party confessed to the crime between conviction and direct appeal.

### Victims' Rights

Victims have a right to prompt notification of the state post-conviction motion, the date and place of any hearing or oral argument, and the court's decision in the post-conviction proceedings.

Victims have a right to attend post-conviction hearings or oral arguments.

## DNA Testing

The convicted person may seek DNA or other forensic testing by filing a motion with the convicting court claiming that specific, scientific evidence not available at trial establishes their innocence. In general, this motion must be filed within 36 months of the conviction.

The court will not automatically grant the requested testing. Instead, testing will be awarded only if the identity of the perpetrator was an issue in the criminal proceedings and the person seeking testing shows that the evidence would raise a reasonable probability of their innocence.

If the court grants testing and the evidence supports the convicted person's claims, that person may seek to vacate their conviction, obtain a new trial, or have their sentence reduced. If the court grants a motion for a new trial, the case starts over.

## Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Arkansas law may seek habeas corpus relief in federal court. Relief is available only in specific and rare circumstances. Issues often raised in federal habeas cases include claims that the convicted person had an inept attorney, claims that police or prosecutors violated their rights, hid evidence, or committed other misconduct.

In general, a person can file only one request for relief in federal habeas proceedings, though there are some exceptions to this rule.

### Victims' Rights

Except for narrow exceptions when victims are testifying, victims have the right to attend federal habeas hearings, arguments, and proceedings.

Victims have the right to be heard at any federal district court proceeding involving the release, sentencing, or parole of the individual convicted of a crime.

Victims have the right to proceedings free from unreasonable delay.

## Early Release Programs

If someone is sentenced to a term of imprisonment, they may be released from prison earlier than expected through these programs: parole, medical parole, early release to transitional housing, or if they are incarcerated at Hawkins and Ester, they may be released 18 months early if they participate in certain religious programming and do community service.

### Victims' Rights

Victims or their next of kin have the right to notification about release, death, escape, and recapture. Victims have a right to notification of parole hearing dates, and status changes of parole or probation.

Victims have a right to notification of the incarcerated person's furlough, work release, halfway house, or entry into a community program.

Victims have a right to information before an incarcerated person's release from a hospital or mental facility. This information is available through the [VINE](#).

Victims have a right to present a written or oral statement before the Parole Board.

## Clemency

The governor can grant clemency to people convicted of felonies under Arkansas law. The [Post-Prison Transfer Board](#) helps the governor in this process. Clemency typically takes one of two forms:

1. [Commutation](#): the reduction of a sentence to a less severe punishment
2. [Pardon](#): an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

### Victims' Rights

Victims have the right to notification of the date, time, and place of clemency hearings.

Victims have the right to submit a written or oral statement regarding a pardon or commutation.

Victims have the right to notification before the Post-Prison Board submits a recommendation to the governor that a commutation or pardon be granted.

## Compensation

Restitution is a court-ordered payment from the convicted person to the victim in order to account for the victim's loss or injury.

Crime victims' compensation helps with financial losses that directly result from violent crime. These losses include loss of wages, medical expenses, mental health counseling, as well as funeral and burial costs.

### Victims' Rights

Victims have a right to court-ordered restitution.

Victims may be eligible for up to \$25,000 in compensation from the [Arkansas Crime Victims Reparations](#) program.

*The information provided in this resource is not intended as legal advice and is current as of July 2024. States regularly change how they handle criminal proceedings and victims' rights during those proceedings. Confirm with the state agencies provided in this resource for more up-to-date information. Different stages and victims' rights may apply to certain types of cases and certain types of victims, such as cases involving accused individuals who are minors and cases involving sexual offenses, domestic violence, and child victims.*