



Indiana

Post-Conviction Case Activity & Victims' Rights

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 to correct error based on jury misconduct, new evidence, legal errors at trial, or other problems with the proceedings
- 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 the right to attend public hearings.

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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 of sentencing to decide whether to appeal. If the convicted person appeals, the state [Attorney General's Office](#) assigns a lawyer to oppose the appeal for the state. The prosecutor and the convicted person'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 the right to a free trial transcript once the convicted person files an appeal.

Victims have the right to attend public hearings, including oral arguments. Victims do not have a right to speak at oral arguments.

Victims have the right to notification of the status of the appeal and the court's decision about the appeal.

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 Indiana are the following:

- Uniform Post-Conviction Procedure Act: A person convicted of a crime may file a petition under this Act to seek to invalidate their conviction or sentence based on new evidence, legal errors in the proceedings, or other claims.
- Petition to present new evidence: In death penalty cases, the convicted person may ask the court's permission to present previously undiscovered evidence that undermines confidence in the conviction or sentence. This remedy is available only after proceedings under the Uniform Post-Conviction Procedure Act.
- Motion for leave to file belated appeal: A convicted person may seek permission to file an appeal later than usual if they failed to file a timely one and that failure was not their fault.
- Motion for leave to file a belated motion to correct an error: A convicted person may seek permission to file an untimely motion to correct an error in the conviction or sentence if the failure to file a timely one was not the convicted person's fault.
- State habeas corpus: A convicted person may seek relief through a process called "habeas corpus." The scope of this remedy in Indiana is very limited. It allows an incarcerated person to seek relief only if (1) the convicting court lacked jurisdiction and (2) the person is entitled to immediate release.
- Rule 60(B) motions to attack juvenile delinquency proceedings: This rule allows individuals to challenge juvenile delinquency proceedings on various grounds, including clerical errors, newly discovered evidence, and fraud.

Victims' Rights

Victims have the right to attend public hearings.

Victims have the right to notification of the status of post-conviction proceedings and the court's decision about post-conviction proceedings.

DNA Testing

A convicted person may file a motion seeking DNA testing of physical evidence.

The court will not automatically grant the requested testing. Instead, the court may allow testing only if it finds that there is a reasonable probability the person would not have been prosecuted or convicted for the offense or received as severe a sentence for it had the evidence been available earlier.

If the court grants testing and the evidence supports the convicted person's claim, that person may seek to vacate their conviction, obtain a new trial, or other relief. 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 Indiana 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 or earning reductions to their sentences for good behavior or completion of rehabilitative, educational, or vocational programs (usually called "good-time credits").

Prosecutorial Review

People who have been convicted of offenses in Marion County, Indiana, and who have claims of actual innocence may ask for their case to be reviewed by the local prosecutor's [Conviction Integrity Unit](#).

Victims' Rights

Victims have the right to notification of the escape, release (including work release), or death of a person convicted of committing a crime against the victim.

Victims have the right to notification of probation revocation or termination.

Victims have the right to be heard at proceedings involving sentencing and post-conviction release decisions, including parole board hearings.

Victims have the right to have their safety considered in release decisions.

Victims have the right to notification of the terms and conditions of release.

Victims' Rights

Victims have the right to confer with the prosecution.

Clemency

The governor can grant clemency to people convicted under Indiana law. The [Parole Board](#) helps the governor in this process. Clemency typically takes one of three forms:

1. Special medical clemency: allows incarcerated people with terminal medical conditions or a medical condition that would be more effectively treated outside the prison to be released
2. Commutation: the reduction of a sentence to a less severe punishment
3. Pardon: an official act of forgiveness that frees a convicted person from punishment that erases the legal consequences of the crime

Compensation

Restitution is a court-ordered payment from the convicted person to the victim 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 the right to notification if the parole board submits a recommendation regarding commutation, pardon, reprieve, or remission of fine or forfeiture.

Victims' Rights

Victims have the right to notification of and assistance with their right to restitution. Victims have the right to pursue restitution.

Victims have a right to apply for up to \$15,000 in compensation for expenses and up to \$5000 for funeral costs through the Indiana [Violent Crime Compensation Office](#). Applications must be submitted within two years of the crime.

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.