



Kentucky

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 the judgment against them. For example, they may file:

- A motion for a new trial based on jury misconduct, new evidence, legal errors at trial, or other problems with the proceedings
- A motion for an acquittal
- A motion to withdraw a plea

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 timely notice of all proceedings.

Victims have the right to be present at all proceedings other than Grand Jury proceedings.

Victims have the right to prompt return of property that was used 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 person generally has 30 days after sentencing to decide whether to appeal. If the convicted person appeals, the [Office of Criminal Appeals](#) in the 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 notification by the Attorney General if the convicted person pursues an appeal.

Victims have the right to proceedings free from unreasonable delay.

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 Kentucky are the following:

- Motion to correct a sentence: If the convicted person is sentenced to prison or is on probation, parole, or conditional discharge, they may file a motion to set aside or correct their sentence.
- Petition for a belated appeal: If the convicted person lost the ability to appeal because they had an inept attorney, they may seek permission to file an untimely appeal.
- State habeas corpus: A convicted person may seek relief through a process called “habeas corpus.” In Kentucky, state habeas corpus relief is available only when the person has no other avenue to obtain post-conviction relief.
- Motion for relief from the judgment: A person may seek relief based on facts outside the trial record, such as newly discovered evidence, proof of perjury, or falsified evidence.

DNA Testing

A person convicted of certain felony or violent offenses in Kentucky may file a motion seeking DNA testing of physical evidence.

The court will not automatically grant the requested testing. Instead, the court will allow testing only if it finds a reasonable probability that the individual would not have been prosecuted or convicted if exculpatory results had been obtained through earlier DNA testing.

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.

Victims’ Rights

Victims have the right to notification by the Attorney General if the convicted person pursues an appeal.

Victims have the right to proceedings free from unreasonable delay.

Victims’ Rights

Victims have the right to consult with the prosecution.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Kentucky 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: parole, medical parole, or earning reductions to their sentences for good behavior or completion of rehabilitative, educational, or other programs (usually called "good-time credits").

Victims' Rights

Victims have the right to timely notice of proceedings involving a release including parole hearings.

Victims have the right to notice of escape, furlough, and transfer of the incarcerated individual.

Victims have the right to submit a statement to the parole board.

Clemency

The governor can grant clemency to people convicted under Kentucky law. Clemency typically takes one of two forms:

- Commutation: the reduction of a sentence to a less severe punishment
- 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 timely notice of proceedings involving the consideration of any pardon, commutation of sentence, or granting of a reprieve.

Victims have a right to notice regarding applications for expungement of a conviction.

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 full restitution if ordered by the court.

Victims may be entitled to \$30,000 in funds from the [Crime Victims Compensation Board](#).

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.