



Virginia

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:

- To reopen the case (if the person has been convicted of a non-felony offense)
- To set aside the verdict
- To withdraw the plea
- To modify the sentence

The prosecution may also file a motion to modify the sentence in certain situations.

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 protection from further harm.

Victims have the right to timely notice of court proceedings.

Victims have the right to be informed of their rights.

Victims have the right to prompt return of property when it is no longer needed as evidence.

Victims have the right to notification before the convicted individual is released pending appeal.

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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 person generally has 30 days after judgment to decide whether to appeal. If the person decides to appeal, the state [Attorney General's Office](#) assigns a lawyer to oppose the appeal. The state lawyer & the convicted person's lawyer 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 notice of the filing and result of any appeal.

Victims have the right to be present at oral arguments.

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. In Virginia, the main forms of post-conviction relief are:

- Writ of habeas corpus: Convicted people may also seek a writ of habeas corpus, which is a very old remedy that requires state officials to justify the person's detention. Relief may be sought based on legal errors in the proceedings.
- Writ of actual innocence: People convicted of felonies may seek to vacate their convictions based on new evidence.
- Motion for a delayed appeal: If the convicted person failed to pursue a timely direct appeal, they may seek permission to file one later if they can show the failure was not their fault.

DNA Testing

A person convicted of a felony under Virginia law may seek DNA testing of biological material obtained in the case.

The court will not automatically grant the requested testing. Instead, the court must allow testing only if the convicted person claims to be innocent and the court finds that the testing is materially relevant, not cumulative, and necessary and may prove the convicted person's innocence.

If the court grants testing and the results exculpate the convicted person, then generally the person will file a petition for a writ of actual innocence. The court may vacate the conviction or grant a new trial or other relief. If the court grants a new trial, the case starts over.

Victims' Rights

Victims have the right to notice of the filing and result of any habeas corpus proceeding.

Victims have the right to be present at post-conviction hearings.

Victims' Rights

Victims of sexual assault have the right to request and receive information about the submission of any physical evidence that was collected from the victim for testing, the status of the testing, and the results of any testing.

Federal Habeas Corpus

After seeking post-conviction relief in state court, a person convicted under Virginia 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.

Victims have the right to notice of the filing and result of any habeas corpus proceeding.

Early Release Programs

If someone is sentenced to a term of imprisonment, they may be released earlier than expected through one of these programs in Virginia: earning “credits” for participation in certain programs in prison (such as substance-abuse treatment), parole, conditional release of elderly prisoners, or conditional release of terminally ill prisoners.

Victims’ Rights

Victims have the right to notification of parole interviews or hearings and notification of the parole decision if requested.

Victims have the right to attend parole hearings and participate in parole hearings if requested.

Victims have the right to notice of transfer, change of name, release from custody, discharge, or escape of the convicted individual.

Victims have the right to notification of requests for geriatric release and the right to provide their opinion on geriatric release.

Victims have the right to have their privacy protected including the confidentiality of their address and telephone numbers.

Prosecutorial Review

In certain parts of Virginia – specifically, [the County of Arlington and the City of Falls Church](#) – the local prosecutor’s office has established a Conviction Review Unit to review post-conviction claims of factual innocence, claims challenging the integrity of the investigation or prosecution of the case, and requests for post-conviction forensic testing.

Victims’ Rights

Victims have the right to communicate with the prosecution about the case.

Clemency

The governor can grant clemency to people convicted under Virginia law. In Virginia, clemency typically takes one of three forms:

1. Simple Pardon: forgives someone for a crime but does not remove it from their record
2. Conditional Pardon: modifies or ends a person's current term of incarceration
3. Absolute Pardon: removes a conviction from a person's record when the governor is convinced of their innocence.

Victims' Rights

Victims have the right to submit letters of opposition or support during the clemency process.

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 request restitution and the right to apply for the [Virginia Victims Fund](#).

The attorney for the state must provide victims with information on the offices to contact if restitution is not paid by the convicted individual.

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.