



West 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:

- For a new trial based on new evidence, legal errors in the proceedings, or misconduct by the jury or prosecution
- To arrest the judgment
- To withdraw the plea
- To modify the sentence

The prosecution may also seek 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 notification of criminal justice proceedings.

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

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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 they decide to appeal, the [Attorney General's Office](#) assigns a lawyer to oppose the appeal. The state's lawyer 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.

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

- Writ of habeas corpus: This is a very old remedy that requires state officials to justify a person's detention. A person may seek relief from their conviction or sentence based on legal errors in the proceedings, new evidence, or a change in the law.
- Writ of error coram nobis: This is another old remedy that allows people to seek relief from their convictions based on evidence outside the record.

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DNA Testing

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

The court will not automatically grant the requested testing. Instead, the court may allow testing only if the convicted person swears they are innocent and the court finds that the identity of the perpetrator was or should have been at issue in the case and that there is a reasonable probability that the convicted person's verdict or sentence would have been more favorable if the DNA testing results had been available at the time of conviction.

If the court grants testing and the results exculpate the convicted person, then the person may file a motion for a new trial, to vacate the conviction or for other relief. If the court grants a new trial, the case starts over.

Federal Habeas Corpus

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

Victims have a right to notice of post-conviction proceedings and victims may request a Criminal Appeal Notification. Victims may also request not to receive notification.

Victims may attend and listen to the presentations (called oral arguments) to the judges in direct appeal.

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 earlier than expected through one of these programs in West Virginia: earning "credits" for good behavior in prison, for completing certain educational or vocational programs, or for meritorious acts of service; medical respite; or parole.

Victims' Rights

Victims have the right to notification of an incarcerated individual's release, placement in a facility with lower security, or escape from custody if requested.

Victims have the right to receive notification of parole hearings and notification of release on parole if requested.

Victims have the right to give a written or oral statement before the hearing or an oral statement during the parole hearing.

Victims have the right to give input before medical release.

Victims have the right to notification if the convicted individual requests expungement of their criminal record.

Clemency

The governor can grant clemency to people convicted under West Virginia law. The [Parole Board](#) helps the governor in this process.

In West Virginia, clemency typically takes one of four 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
3. Remission: the cancellation or reduction of court-ordered fines
4. Medical Clemency: release due to extreme life-threatening medical conditions

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 seek restitution and the right to apply for the [West Virginia Crime Victims Compensation Fund](#).

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.