

# *Victims' Rights and Criminal Appeals*



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## **Wisconsin Victims' Rights Constitutional Amendment**

This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law:

- timely disposition of the case;
- the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant;
- reasonable protection from the accused throughout the criminal justice process;
- notification of court proceedings;
- the opportunity to confer with the prosecution;
- the opportunity to make a statement to the court at the disposition;
- restitution;
- compensation; and
- information about the outcome of the case and the release of the accused.

The legislature shall provide remedies for violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law.

--ratified April, 1993

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## Introduction

In Wisconsin, a convicted criminal defendant has a right to appeal his or her conviction. While this is one of the many protections afforded by law to criminal defendants, many have asked, "What about a crime victim's rights?"

In 1993, Wisconsin took a major step forward in protecting victims' rights. The Wisconsin Victims' Rights Amendment spells out the basic protections that will be afforded to crime victims. These rights include assistance at all stages of the court process, including services to crime victims during a criminal appeal.

Crime victims now have the opportunity to be notified when a case is appealed. Victim services are also available during an appeal. Depending on the particular crime and circuit court where the appeal originated, victims should contact either the district attorney's office, the county victim/witness coordinator, or the Wisconsin Department of Justice's Office of Crime Victim Services.

## What is an Appeal?

An appeal is a procedure through which the losing party in the circuit court seeks to have that court's judgment or order overturned by a higher court because of some alleged error in the proceedings. Some appeals are "permissive," or accepted at the choice of the appellate court. Other appeals are "appeals of right." These are appeals which are guaranteed, such as a defendant's right to appeal a criminal conviction.

Sometimes an appeal may be taken before the case even goes to trial. A party can appeal unfavorable pre-trial rulings (like suppression of evidence). These are called "interlocutory appeals" and the case is put on hold until these questions are answered. As most interlocutory appeals are permissive, appellate courts often do not accept them.

Generally, the issues raised on appeal involve complex interpretations of the law. Occasionally, appeals involve questions of fact--what actually happened--but this does not occur often because appellate courts must usually rely on the factual determinations that the circuit court or jury has already made.

An appellate court is by definition a court that reviews decisions made by other courts. **It is not the place to start a case or introduce new evidence.** The appellate court considers only the written record of what occurred in the circuit court. This means that victims and witnesses will not need to testify during the appeal.

The final appellate court decision will either: (1) affirm, (2) reverse, or (3) modify a judgment or order of the lower court. Sometimes a criminal prosecution will be terminated if the judgment or order is reversed, but usually the case will be sent back to the circuit court for further proceedings such as a new trial.

## **The Wisconsin Appellate Court System**

The Court of Appeals is divided into four districts, each approximately equal in population and the number of appeals taken:

- District I covers only Milwaukee County;
- District II covers the rest of southeastern Wisconsin;
- District III covers the northern part of the state; and
- District IV covers southwestern Wisconsin.

Each district has three to five elected judges who sit singly or in panels of three depending on the kind of case being heard.

Though there are four districts, the Court of Appeals functions as one court with published decisions in one district binding over the others. All appeals are filed through a single clerk of courts in Madison. The county from which the appeal originates determines the district to which the case is assigned.

On the rare occasion that the Court of Appeals requests to hear oral arguments, those proceedings can take place in a county in which the court has chambers or, if it is a single judge case, the county where the case originated.

The Supreme Court has seven elected justices who participate in deciding every case heard in the Supreme Court. Oral arguments are more frequent here and usually are held at the State Supreme Court Chambers at the Wisconsin State Capital in Madison.

## **Who Can Appeal?**

In most criminal cases, an appeal is brought by a defendant after a court or jury finds him or her guilty.

Appeals by the state after certain circuit court judgments (such as not guilty) are limited by the United States Constitution. The 5th Amendment's "double jeopardy" clause protects against multiple prosecutions for the same offense. Therefore, if the defendant is acquitted, the state cannot appeal.

There are limited instances, however, when the state can appeal. The state may appeal court rulings which grant a defendant postconviction relief (e.g., the reversal of a conviction). It may also appeal circuit court decisions on certain pre-trial motions (e.g., the suppression of evidence).

## **Who Represents the State on Appeal?**

When misdemeanor convictions are appealed, the case is heard by a single appellate court judge. In these single-judge appeals, the district attorney will generally continue representing the state.

Felony appeals are heard by the Court of Appeals three-judge panel. The Department of Justice's Criminal Appeals Unit represents the State in most three-judge appeals.

The Department of Justice represents the State in almost all Supreme Court cases.

## **Who Represents the Defendant on Appeal?**

A criminal defendant has a constitutional right to an attorney at both the circuit and appellate court level.

Those defendants who can afford to pay for an attorney may hire the attorney of their choice. Those defendants who are determined to be indigent (unable to afford an attorney) are appointed an attorney by the State Public Defender's office.

## **Criminal Appellate Procedure**

Criminal appellate procedure is a complex set of rules and time limits which guide a case through the appellate process. The appeal of a defendant convicted by a circuit court can be simplified into four very general steps.

### **I. Notice of Intent to Pursue Postconviction Relief**

At the time of sentencing, the circuit court must inform the defendant of his or her right to pursue postconviction relief. Postconviction relief can be either: (1) "postconviction motions" which are filed in the circuit court or (2) an "appeal" which gets assigned to a District Court of Appeals.

If the defendant is considering requesting a review of any decisions made by the circuit court, he or she must file a "notice of intent to pursue postconviction relief." This must be done within 20 days of the sentencing and basically preserves the defendant's right to seek postconviction relief. In many instances a defendant who files this notice will not continue to pursue the appeal.

## **II. Motions for Postconviction Relief**

The defendant may choose to file motions seeking postconviction relief before taking an appeal. Examples of these motions are: a motion to withdraw a plea of guilty; a motion to reverse the conviction; or a motion to modify the sentence. The circuit court must decide these motions within 60 days or they are automatically denied.

Because these motions are heard in the circuit court, the state is represented by the district attorney and the Department of Justice is not yet involved.

## **III. Notice of Appeal**

The defendant can appeal the conviction, any unfavorable rulings on motions, or both. The defendant must first file a “notice of appeal.” It is at this point that the case is assigned to a District Court of Appeals.

The defendant, now also referred to as the “appellant,” must file an “appellant's brief.” A brief is a written legal argument which conveys the case to the court. On the average, it takes about one year for a case to move from the sentencing to the filing of the appellant's brief.

Once the appellant's brief is filed in a case to be decided by a three-judge panel, the Department of Justice becomes formally involved and represents the state as the “respondent.” An assistant attorney general is assigned the case, the district attorney is asked for his or her input, and a “respondent's brief” is filed. In a case to be decided by a one-judge panel, the district attorney prepares the brief. The respondent's brief is an answer to the challenge made by the defendant. The defendant may file an “appellant's reply brief” before the Court of Appeals considers the case.

Appeals are almost always decided on consideration of the briefs and written record only. Occasionally, the Court of Appeals will call for oral arguments. These are legal arguments given by attorneys and are meant to answer any questions that the judge or judges may have. Oral arguments generally last about an hour and each side has a chance to advance its view of the case.

## **IV. Court of Appeals Decision**

After the Court of Appeals receives the briefs, it may take several months or more to make a decision. Victims who are registered for appellate notification will be informed of what the decision is and the effect it has upon the original judgment and sentence.

In over 90% of appealed criminal cases, the decision favors the criminal conviction.

## **Review by the Wisconsin Supreme Court**

After the Court of Appeals decision, there is a possibility of the case being reviewed by the Supreme Court. The Supreme Court decides whether or not to hear a case and the odds of having a case accepted for review are very low. A petitioner must ask for this review within 30 days from the date of the Court of Appeals decision.

## **Release on Bond During Appeal**

When the defendant files the notice of intent to pursue postconviction relief, he or she may ask the circuit court for “release on bond” during the appeal. Those convicted of misdemeanor offenses are usually released on bond because the length of the sentence (less than one year) is shorter than the average length of appeal (more than one year).

Those convicted of felony or misdemeanor offenses may be released only upon the judge finding that: the defendant poses no threat to the community, victims or witnesses; the defendant will not fail to appear; and the appeal is being taken in good faith and not for delay. **Very seldom are convicted felony defendants released on bond.**

## **How Long Does an Appeal Take?**

The average felony case takes approximately two years from sentencing to the final Court of Appeals decision. Misdemeanors usually take less time. While this may seem like an inordinately long time, it is helpful to understand why these delays occur.

There may be times when it appears that there is nothing happening with a case. Yet, there are a considerable number of procedural steps which must occur--each subject to time limits that may be extended. A large record needs to be compiled, complex and lengthy briefs (up to 50 pages each) must be written and one party may wait months for another to complete a step. This is just a sampling of the events that must take place before the Court of Appeals reads the briefs, examines the record, conducts research on case law, discusses and finally decides the case. Furthermore, in the interests of justice, fairness and thoroughness, time extensions are often granted.

## **Possibility of Post-Appeal Action**

If a defendant loses an appeal, he or she may seek further review in both state and federal court. These appeals generally take the form of motions and civil actions

challenging the constitutionality of the state criminal conviction. Once a defendant has lost an appeal, however, it becomes more difficult to win in future actions.

## **Victim Appellate Notification Services (VANS)**

Upon the Department of Justice receiving the appellant's brief, the district attorney's office or victim/witness coordinator will be requested to instruct victims on how to register for appellate notification. To register, both the district attorney's office and the victim must complete a Victim Notification Card. Prior to registering, information regarding the case can still be requested through the district attorney's office or victim/witness coordinator.

Registered victims will be informed of: (1) the appeal; (2) whether an oral argument is scheduled; and (3) the final decision of the Court of Appeals and the effect it has on the circuit court judgment. Upon request, victim services will be provided through the district attorney's office, the victim/witness coordinator or the Department of Justice's Office of Crime Victim Services. Victim Services include the option of being accompanied to the oral argument by a victim services professional.

## **Glossary**

**ACQUITTAL:** the **defendant** is found not guilty by a circuit court or jury and released without any further prosecution for the previously charged act.

**AFFIRM:** the decision of an **appellate court** that the **judgment** of the lower court is correct and should stand.

**APPEAL:** requesting a higher court to review a lower court decision in order to **reverse** the lower court's **judgment** or order.

**APPELLANT:** the party who **appeals** a decision.

**APPELLATE COURT:** a court of review which determines whether or not the rulings and **judgment** of the lower court are correct; not a court in which to make a new case.

**BOND:** a monetary or other form of security given in exchange for release from jail or prison; meant to insure the appearance of the **defendant** at further proceedings.

**CIRCUIT COURT:** refers to Wisconsin state courts that have original jurisdiction, where matters are to be litigated first and where all evidence in a case is received and considered. In Wisconsin, circuits are comprised of one county each, except that Buffalo-Pepin, Forest-Florence and Shawano-Menominee counties are combined. Most circuits have a number of branches with one judge assigned to each branch.

**DEFENDANT:** in criminal proceedings, the person charged with having committed a crime.

**DISPOSITION:** the **judgment** of a case; the sentencing and any subsequent decision which “disposes” of a case in a given court.

**DISTRICT ATTORNEY:** an elected officer with the duty to charge and prosecute those accused of committing crimes in their jurisdiction. District attorneys frequently appoint and supervise assistants who have similar charging powers. In Wisconsin, there is a district attorney in every county, except that Shawano-Menominee counties are combined.

**FELONY:** a crime that may be punishable by imprisonment of more than one year.

**INTERLOCUTORY APPEAL:** an appeal taken prior to the court's **judgment**. A judge suppressing evidence may lead to an interlocutory appeal.

**JUDGMENT:** the determination of a court upon matters submitted to it; the final decision in a case.

**MISDEMEANOR:** a crime that may be punishable by a jail term of less than one year.

**PETITIONER:** a party who presents a petition to the Supreme Court requesting review of their case

**POSTCONVICTION MOTIONS:** an application to the court taken after conviction which requests an order or ruling in favor of the **defendant**; such as motions to withdraw a plea of guilty, to modify the sentence, or a motion to **reverse** the conviction.

**POSTCONVICTION RELIEF:** a remedy the **defendant** may seek after a criminal conviction, attempting to reduce a sentence or **reverse** a lower court's decision; includes **postconviction motions** filed in the **circuit court** or **appeals** filed in the Court of Appeals.

**QUESTION OF FACT:** disputed factual issues which are traditionally left for the jury to decide. Whether or not an event happened is a question of fact.

**QUESTION OF LAW:** disputed interpretations of law or legal standards which are left for the judge to decide. Suppression of evidence is a question of law.

**REMAND:** to send a case back to the court from which it came, generally for further action consistent with the opinion of the higher court.

**RESPONDENT:** party against whom an **appeal** is brought; the party responding to the appeal.

**REVERSE:** the setting aside or overturning the decision of a lower court.

# Wisconsin Appellate Procedure Flow Chart

