

7.4: Structure of the Courts- State Courts

State Court Systems

Each state has its own independent judicial system. State courts handle more than 90 percent of criminal prosecutions in the United States. Although state court systems vary, there are some common features. Every state has one or more level of trial courts and at least one appellate court. Although there is no federal constitutional requirement that defendants be given the right to appeal their convictions, such a right is arguably implicit in the due process clause of the Fourteenth Amendment. Moreover, every state has some provision, usually within its own constitution or statutes, that provides defendants at least one appeal. Most state courts have both courts of general jurisdiction, which conduct felony and major misdemeanor trials, and courts of limited jurisdiction, which conduct violations, infractions, and minor misdemeanor trials. Similar to the U.S. Magistrate Courts, states' courts of limited jurisdiction will also handle pre-trial matters for felonies until they are moved into the general jurisdiction court. Most states have intermediate courts of appeals and some have more than one level of these courts. All states have a **court of last resort**, generally referred to as the Supreme Court. Some states court systems are streamlined, and some are complex, with most states fall between the two extremes.

Hierarchy of State Courts

State trial courts tend to be busy, bustling places with lots of activity. Appellate courts, on the other hand, tend to be solemn and serene, formal places. Scheb noted,

“Appellate courts are different than trial courts, both in function and ‘feel.’ Unlike a trial court, which is normally surrounded by a busy atmosphere, an appellate court often sits in the state capitol building or its own facility, usually with a complete law library. The décor in the building that house appellate courts is usually quite formal, and often features portraits of former judges regarded as oracles of the law. When a panel of judges sits to hear oral arguments, they normally emerge from behind a velvet curtain on a precise schedule and to the cry of the court’s marshal. When not hearing oral arguments, appellate judges usually occupy a suite of offices with their secretaries and law clerks. It is in these individual chambers that appellate judges study and write their opinions on cases assigned to them.” ^[1]

Kerper describes the flow of a case through the hierarchical structure of the courts as follows:

“When the specialized courts are put to one side, we find that a judicial system typically has three or possibly four levels of courts. This will be the hierarchy commonly applicable to criminal cases.

At the bottom level in the typical hierarchy will be the magistrate court. Judges on that level will try minor civil and criminal cases. They will also have some preliminary functions in the more serious felony cases that will eventually be tried in the general trial court. Thus a person arrested on a felony charge initially will be brought before a magistrate who will inform the arrestee of the charge against him, set bail, and screen the prosecution’s case to ensure that it is sufficient to send on to the general trial court.

At the next court level is the general trial court, which will try all major civil and criminal cases. While this court is predominantly a trial court, it also serves as an appellate court for the minor cases tried in the magistrate court. Thus, if a defendant is convicted on a misdemeanor charge in a magistrate court, his natural route of appeal is to the general trial court as the next highest court. The appellate review in the general trial court will take a special form where the magistrate court is one described as a court “not of record.” In most instances, however, the general trial court will review the record in the magistrate court for possible error in the same way that the appellate court at the next tier will review the trial decisions of the general trial court in major cases.

The court at the next level may be either the first of two or the only general appellate court in the judicial hierarchy. In almost half of the states and the federal system, there are two appellate tiers. The first appellate court, which would be at the third level in the hierarchy, is commonly described as the intermediate appellate court. The next level of appellate court is the appellate court of last resort; it is the highest court to which a case can ordinarily be taken. These highest appellate courts frequently are titled, “supreme courts.” . . . Where a judicial system has two tiers of appellate courts, the supreme court will be at the fourth level of the hierarchy. In those states that have only one tier, there is no intermediate appellate court. The supreme court is the court at the third level of the hierarchy.

In most jurisdictions, the losing party at trial is given an absolute right to one level of appellate review, but any subsequent reviews by a higher appellate court are at the discretion of that higher court. Thus, in a system that has no intermediate

appellate court, a defendant convicted of a felony in a general trial court has an absolute right to have his conviction reviewed by the next highest court, the supreme court. In a system that has an intermediate appellate court, the felony defendant's absolute right to review extends only to that intermediate court. If that court should decide the case against him, the defendant can ask the supreme court to review his case, but it need do so only at its discretion. The application requesting such discretionary review is called a petition for certiorari. If the court decides to review the case, it issues a writ of certiorari directing that the record in the case be sent to it by the intermediate appellate court. Those supreme courts having discretionary appellate jurisdiction commonly refuse to grant most petitions for certiorari, limiting their review to the most important cases. Consequently, even where a state judicial hierarchy has four rather than three levels, most civil or criminal cases will not get beyond the third level.

Our description of the hierarchy of the courts has assumed so far that all trial courts are “courts of record,” and appellate review accordingly will be on the record. There is one major exception to that assumption which we should note—the court “not of record.” The division between courts of record and courts not of the record originally was drawn when many trial courts lacked the mechanical capacity to maintain a complete record of their proceedings. If a court could provide such a record, the losing party could readily gain an appellate review of the trial decision before the next highest court. If the record was not available, however, the higher court had no way of examining the proceedings below to determine if an error was committed. Without a court of record, a second look at the case could only be provided by the higher court giving the case de novo consideration (i.e., fresh consideration). This was done by conducting a new trial called a trial de novo. The trial de novo was not in fact appellate review, since it did not review the decision below, but proceeded as if the case had begun in the higher court. The trial de novo simply was a substitute for appellate review, necessitated by the absence of a record.” ^[2]

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1. Scheb II, J.M. (2013). *Criminal Law and Procedure* (8th ed., pp. 43). Belmont, CA: Cengage. ↩
 2. Kerper, H. B. (1979). *Introduction to the criminal justice system* (2nd ed., pp. 38-39). West Publishing Company. ↩
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