

FEDERALISM

THE SYSTEM OF GOVERNMENT IN THE UNITED STATES

In the United States, we are governed by both national and state governments and our rights are protected by state and federal Constitutions. Basically, the same structure of government exists at both the state and federal level.

There are three branches of government – executive, legislative, and judicial. The president is head of the federal executive branch. The federal executive branch also includes various executive agencies such as the Department of Defense and the Office of Attorney General.

The federal legislative branch is known as Congress and is composed of the House of Representatives and the Senate. Each state has two senators, but the number of representatives from a state varies, depending on the population of the state. West Virginia now has three representatives, but beginning January 1, 2023, West Virginia will have two representatives.

The federal judicial branch of government is composed of the federal courts. The Supreme Court of the United States is the highest court in the federal system and has the last word on issues of federal law and the federal Constitution.

The courts just below the U.S. Supreme Court, the intermediate federal appellate courts, are known as circuit courts of appeal. There are 13 federal circuit courts in the United States. West Virginia is located within the jurisdiction of the Fourth Circuit Court of Appeals. Therefore, federal cases originating in West Virginia are appealed to the Fourth Circuit Court of Appeals.

The federal trial court in which federal lawsuits originate is the federal district court. West Virginia is divided into two federal districts, northern and southern.

Federal courts may constitutionally hear only two types of cases: 1) cases involving a federal law question; and 2) cases involving citizens of two different states when the amount in dispute is greater than \$75,000.

The governor is the head of the executive branch of state government. Just as in the federal government, the state executive branch also includes agencies such as the Department of Agriculture and the Department of Health and Human Resources.

The legislative branch of the state government is known as the West Virginia Legislature. It is composed of the House of Delegates and the State Senate. West Virginia is divided into both house and senate districts. Two senators are elected from each district. Currently there are 34 state senators. Delegates are elected based on the population of each district. Currently there are 100 state delegates.

The third branch of government in West Virginia is the judicial branch. West Virginia's judicial branch is derived from the West Virginia Constitution. Currently, West Virginia has four levels of courts: 1) the Supreme Court of Appeals; 2) the Intermediate Court of Appeals, 3) circuit courts and family courts; and 4) magistrate courts.

The highest state court is the Supreme Court of Appeals. The Supreme Court of Appeals is the final authority on matters of state law. However, decisions of the state Supreme Court on matters of federal law may be reviewed by the Supreme Court of the United States.

The five West Virginia Supreme Court justices are elected in nonpartisan elections to 12-year terms.

The Intermediate Court of Appeals (ICA) of West Virginia opened on July 1, 2022. The court hears appeals from circuit courts in civil cases and cases concerning guardianship or conservatorship; appeals from family courts, except for appeals from domestic violence proceedings, which go through circuit court; appeals from state agencies or administrative law judges; appeals from decisions or orders issued in Workers' Compensation cases; and appeals from the health Care Authority.

There are three judges on the ICA. The initial judges were appointed by the governor. To remain in office they will have to run for election; one will run in 2024, one in 2026, and one in 2028. The elected terms will be for 10 years.

The next level below the Intermediate Court of Appeals includes circuit courts and family courts. The circuit courts are trial courts for civil and criminal cases. Examples of civil cases are medical malpractice cases and property dispute cases. Examples of criminal cases are murder cases and robbery cases. The circuit courts are West Virginia's only general jurisdiction trial courts of record.

West Virginia is divided into 31 circuits with 75 circuit judges. Circuit judges are elected in nonpartisan elections to eight-year terms.

Family court judges hear cases involving divorce, annulment, separate maintenance, paternity, grandparent visitation, and issues involving allocation of parental responsibility and family support proceedings, except those incidental to child abuse and neglect proceedings.

There are 47 family court judges who serve 27 family court circuits. Family court judges are elected in nonpartisan elections to eight-year terms.

Circuit judges are assisted by judicial officers called mental hygiene commissioners. Mental hygiene commissioners are lawyers who preside over hearings on involuntary hospitalization, guardianship, and conservatorship. There is at least one mental hygiene commissioner in each of West Virginia's 31 circuits.

Magistrate courts comprise the fourth and final level of courts in West Virginia. Magistrate courts are also courts of limited jurisdiction. Magistrates hear such limited issues as misdemeanors, civil cases with \$10,000 or less in dispute, preliminary examinations in felony cases, and emergency domestic violence petitions.

Magistrates run for four-year terms in nonpartisan elections. They do not have to be lawyers. There are 158 magistrates statewide, with at least two magistrates in every county.

The jurisdiction of municipal courts is constitutionally limited to those cases involving ordinance violations. Municipal courts are administered locally and are not part of the West Virginia unified court system.

The United States Constitution provides minimum protection for our individual liberties. Neither the state nor the federal government can pass laws infringing on that minimum protection. However, a state through its own constitution may provide a citizen with greater protection than the federal Constitution. Therefore, although a state law or action may be constitutional under the federal Constitution, it may be unconstitutional under the state constitution.

Federal courts may rule on issues of state law when deciding a case that involves both federal and state law issues. On issues dealing with state law questions, the federal courts are bound by prior decisions of the state courts. Likewise, state courts may rule on issues of federal law, but as to those issues, the state courts are bound by prior decisions of the federal courts.

Examples of federal law questions are immigration issues, application of federal civil rights laws, and federal constitutional law, such as First Amendment free speech questions and Second Amendment right to bear arms questions. Examples of state law issues are property line disputes between neighbors, contract disputes, personal injury lawsuits, and state constitutional law issues, such as the right to a free and appropriate public education and the state constitutional right to free speech.