

Civil Justice for Victims of Crime

Helping Victims Rebuild Their Lives



Civil Justice for Victims of Crime

— THE NATIONAL —
CRIME VICTIM
— BAR ASSOCIATION —

An Overview of the Justice System

The Criminal Justice System

- Crime is considered a “crime against the State” (The People vs. Smith)
- Judges the Guilt or Innocence of an offender; and attempts to punish or rehabilitate them through prison, probation, etc.

The Civil Justice System

- Defendants have committed an offense against a person. Civil Justice System holds offenders accountable directly to their victims
- Civil Justice System does not pursue criminal punishments – offenders will not be subject to prison time, etc.



A Brief Overview

The Criminal Justice System

- The Defendant
 - The Prosecution – “The State”
 - The Victim
 - The Judge/Jury
- ▶ Defendant held accountable to **STATE**
 - ▶ State must prove guilt **beyond a reasonable doubt**
 - ▶ Perpetrator is **presumed innocent**
 - ▶ If perpetrator is found not guilty, the state cannot initiate a second prosecution



Criminal Prosecution - Advantages and Disadvantages

Advantages

- Victims can obtain a sense of justice
- Victims are given the opportunity face their accuser and tell their story
- Society is protected

Disadvantages

- Victim has very little control
- Defendant's rights take precedence over victim's rights



Restitution in the Criminal Justice System

- Each State has their own way of handling restitution.
- For more information on your state you should begin by looking at your State's Office for Victims of Crime
- Generally:
 - This **MUST** be requested at the time of sentencing and cannot be raised after.
 - Restitution is the amount ordered by the judge as a part of the defendant's sentence.
 - Can be used to reimburse out of pocket expenses, medical bills, etc.
 - Court order does not guarantee payment.



The Civil Justice System

An Alternative for Victims of Crime



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A Basic Overview

The Civil Justice System

- The Plaintiff – This is the victim and his/her family. They control the case.
 - The Defendant(s)
 - There can be multiple Defendants, which we will explore later
- ▶ The victim must prove that it is **more likely than not** that the defendant caused the harm
 - ▶ The defendant is held accountable to the **VICTIM**
 - ▶ There is **no presumption of innocence**



Advantages of Civil Litigation

- Indemnification
- Accountability
- Answers
- Sense of Control
- Personal Justice
- Incentives for Crime Prevention
- Promote Change or Publicize Issue



Disadvantages of Civil Litigation

- Civil actions are expensive
 - Victims are responsible for most of the expenses that are incurred throughout the course of litigation:
 - Deposition Fees
 - Exert Witnesses
- Revictimization
 - Victims will have to re-tell the story of their Victimization multiple times
 - Medical and Mental health records may be accessed by defense attorneys
- Civil suits can be slow



The Civil Justice System

TORTS 101



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Potential Defendants



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The Usual Suspects...

First Party Defendants

- The Offender
- Co-conspirators
- Accomplices
- Parents/Supervising Custodians



Third Party Defendants

- Landlords, Hotels, Hospitals, Entertainment Venues
- Employers
- Nursing Homes
- Child Care Facilities
- Youth Serving Organizations
- Social Hosts and Tavern Keepers
- Corrections and Mental Health Officials
- The Government
- Etc.



Cause of Action

Torts Law

Elements of Intentional Torts

- INTENTIONAL ACT that causes harm
- Case is against the “tortfeasor” who has committed an offense against the victim (first party defendants)
- Most crimes have a corresponding tort

Negligent Torts

- Involves harm caused by acting or failing to act with due care where harm was foreseeable
- These suits usually arise against third party defendants
- The criminal justice system does not concern itself with Negligence, general, it is a concept more often recognized in Civil Justice



Intentional Torts

Elements of Intentional Torts

- The Act
- Intent
- Causation
- Damages

Affirmative Defenses to Intentional Torts

- Consent
- Self-Defense
- Defense of Others



Examples of Intentional Torts

- Battery
- Assault
- Fraud
- Domestic Violence
- Stalking
- Intentional Infliction of Emotional Distress



Negligent Torts

Elements of Negligence

- Existence of a duty of care
- Duty
- Breach of the Duty
- Breach Causes Harm
- Damages Result

Defenses to Negligence Claims

- Comparative Negligence
- Workers' Compensation Bar
- Statute of Limitation
- Comparative Fault
- Contributory Negligence
- Damages Unrelated
- Waiver



Negligent Torts

- Negligent Hiring
- Negligent Retention
- Negligent Supervision
- Negligent Entrustment
- Inadequate Security
- Title IX
- Negligent Infliction of Emotional Distress
- Negligence Per Se



Special Considerations for Victims Of Crime Legal Challenges



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Statutes of Limitation*

Generally for Most States:

- Injury to person: 2 years
 - Often times adult sexual assault will fall under personal injury claims
- Libel / Slander / Defamation: 2 years
- Fraud: 6 years
- Professional Malpractice: 2 Years

Statutes of Limitation are State Specific and can vary greatly between states. It is critical to consult with an Attorney who is licensed in specific state for any SOL questions



Civil Statutes of Limitation for Child Sex Abuse

States that have passed “Revival Windows” for expired claims:

- Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New York, Oregon, Rhode Island, Utah, Vermont, District of Columbia

States that have no Civil Statutes of Limitation for some claims:

- Alaska, Connecticut, Delaware, Florida, Illinois, Maine, Minnesota, Nebraska, Utah, Vermont

States that passed new legislation effecting Statutes of Limitation:

- Alabama, Arizona, Connecticut, Illinois, Iowa, Maine, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, Washington D.C.

Information pulled from The Sean P. McIlmail Statute of Limitations Research Institute: 2019 Summary of Child Sexual Abuse Statutes of Limitations

- <https://www.childusa.org/2019sol/#f>



Proving Damages in Civil Cases

Compensatory

- All about the harm the victim has and will suffer; the greater the harm, greater the compensatory damages.
- Economic damages: past and future can be objectively determined.
- Some States do impose Caps on non-Compensatory Damages

Punitive

- These are the intangibles; they are meant to punish.
- Notably, sometimes these damages are hard to prove and then quantify because they can't be seen.
- These are not available in all States



Satisfying a Judgment Against a First Party Defendant

- Insurance Policies
- Credit Against Property Settlement
- Wages
- Benefits—lien against pension
- Dispersal from trust funds, royalties, and rent (Son of Sam law)
- Tax refunds and government entitlements
- Windfalls—inheritance, civil judgments, even lotteries!



Your Role as Service Providers

You are the cornerstone of increasing awareness – and oftentimes a victim’s primary contact. You can:

- Advise victims of the possibility of civil remedies
- Refer victims to qualified counsel
- Refer victims to the National Crime Victim Bar Association to find the right attorney



Considerations for Advocates

- **Be aware of any privilege laws in your state:**
 - Be careful in discussing any civil lawsuits until you have sought legal advice regarding what can be discovered.
 - In some states Victim Advocates have absolute privilege covering any confidential communications held with victims.
 - Consult with your employer and general counsel regarding privilege laws and whether your employer has specific policies in place regarding your discussions
- **Do not give victims legal advice or and guarantees**



The Importance of Finding the Right Attorney...

- With the interest and experience to take the case
- Who understands the victim's needs and won't make it worse
- Who will employ the strategy and techniques that will protect the victim's privacy and boundaries
- Who will discuss all options with their clients and help them make critical decisions



Special Considerations in Victim Advocacy

Attorney Interview Tactics

- Allow the victim to explain what he or she remembers, even seemingly insignificant details
- Pay attention to question phrasing
- Assume nothing about a victim's experience
- Understand that PTSD may lead to emotional issues
- Understand what can result in retraumatization

