Civil Justice for Victims of Crime in New York

The National Crime Victim Bar Association
2000 M Street, NW, Suite 480
Washington, DC 20036
(202)467-8753
victimbar@ncvc.org
www.victimbar.org

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I. Purpose of This Booklet

Every crime victim has the right to file a civil lawsuit seeking financial compensation from the perpetrator or from other parties whose unreasonable conduct gave rise to conditions which allowed the crime to occur. The purpose of this handbook is to provide victims and service providers with a basic understanding of the civil justice system so that victims might consider this important option and know where to turn for help.

II. Victims’ Financial Losses and Potential Sources of Compensation

Almost nineteen million Americans are victimized by crime each year. The consequences of crime frequently extend far beyond the criminal act. All too often, victims are left with expenses for medical procedures, physical rehabilitation, counseling, lost wages, and property damage. It has been estimated that crime costs society $450 billion annually.

Restitution

Restitution is the money a judge orders the offender to pay to the victims to compensate for out-of-pocket expenses related to a crime. Restitution is part of the offender's sentence and can be ordered in both adult and juvenile cases following a conviction or plea of guilty. The amount of restitution ordered by the judge depends on the victims' expenses which may include medical and dental bills, counseling, transportation, lost wages due to injury, and stolen or damaged property. A criminal court cannot order restitution payments for physical pain, suffering, and emotional trauma.

Under New York law there are limits on the amount of restitution that can be awarded, and these limits cannot be exceeded unless the defendant consents to the additional amount, or the amount awarded is a condition of probation. For felony cases the maximum restitution awarded to a victim is $15,000. In non-felony cases, the maximum restitution awarded to a victim is $10,000. Additionally, an award of restitution survives the death of a victim and payments are made to the victim’s estate.

In cases where a defendant cannot pay restitution, the court may alter the amount of restitution required to be paid or change the time period required for payment.

When a defendant fails to pay restitution, the court can issue a warrant for the arrest of the defendant.

Crime Victim Compensation

Compensation may also be available to victims from the New York State Office of Victim Services. OVS’s compensation fund is designed to reimburse victims for certain losses and expenses resulting from crime, such as funeral expenses, medical bills, counseling fees, lost wages, and other out-of-pocket costs. A compensation award may be reduced by the amount of money that a victim received from insurance or other sources.

While there is no limit on the amount of money victims can be reimbursed for medical bills or mental health counseling, state law often limits how much money can be given for a particular type of loss. For example, the maximum reimbursement for funerals is $6,000 and the maximum award for lost wages is $30,000. There are also restrictions on eligibility for victim compensation.

Contact Information

New York State Office of Victim Services
AE Smith Office Building
80 S. Swan Street, 2nd Floor
Albany, NY 12210
1-800-247-8035
http://www.ovs.ny.gov

Civil Actions May Help Where Restitution and State Compensation Cannot

Both restitution and compensation, alone, often do not cover a victim’s full economic losses or hard-to-quantify damages such as pain and suffering. A civil lawsuit may provide more complete compensation to a victim.

III. Why File a Civil Suit

Some of the benefits of civil actions may include:

- **Control of the Case** - Victims have greater control in a civil suit than in a criminal case because they are a party to the civil case, cannot be excluded from the courtroom, and have final approval of settlement proposals.

- **Compensation** - Civil actions can provide greater compensation for victims for the monetary damages they suffered, such as medical expenses and lost income. Civil actions can also compensate victims for the emotional damage they have suffered.
Justice and Accountability - Civil suits can hold offenders directly accountable to victims. These suits give victims their “day in court,” regardless of whether there was a criminal conviction or any prosecution at all.

Crime Prevention - In addition to suing perpetrators, victims can often sue other responsible parties. Civil actions provide economic incentives for crime prevention. Businesses such as hotels, apartments, and shopping centers sometimes fail to enact proper security measures because they view such expenses as unnecessary. When businesses are held accountable for safety lapses, proper security becomes cheaper than the cost of defending lawsuits. Crime victims’ civil suits have resulted in increased security protection in public places, better oversight and supervision of daycare facilities, and countless other improvements.

IV. Civil Versus Criminal Justice

A significant difference between the criminal and civil court systems is that in a civil case, the victim controls essential decisions shaping the case. It is the victim who decides whether to sue, accept a settlement offer, or go to trial.

The Criminal Justice System
The criminal justice process begins after a crime has been committed and reported to law enforcement. If an arrest has been made and charges have been filed, the offender may be prosecuted. In a criminal prosecution, the crime is considered “a crime against the state.” The victim’s role is primarily defined as a witness for the prosecution. Although the prosecuting attorney may be very helpful to the victim and the victim’s family, the prosecutor’s primary responsibility is to represent the interests of the state, not the victim.

The civil justice process judges the guilt or innocence of accused offenders, and when offenders are found guilty, attempts to punish or rehabilitate them.

The Civil Justice System
The civil justice system does not attempt to determine the innocence or guilt of an offender. Offenders are also not put in prison. Rather, civil courts attempt to determine whether an offender or a third party is liable for the injuries sustained as a result of the crime.

A civil court’s finding of liability usually means that the defendant must pay the victim, or the victim’s family, monetary damages. The civil justice system can provide victims with monetary resources necessary to rebuild their lives. Furthermore, the civil justice system often provides victims and their families with a sense of justice that criminal courts fail to provide. Rather than holding defendants accountable for their “crimes against the state,” the civil justice system holds defendants who are found liable directly accountable to their victims.

Burden of Proof
In the civil justice system, liability must be proven by a fair preponderance of the evidence, which simply means that one side’s evidence is more persuasive than the other’s. In other words, the plaintiff must prove there is a fifty-one percent or greater chance that the defendant committed all the elements of the particular wrong. This standard is lower than the “proof beyond a reasonable doubt” required for a conviction in the criminal justice system. Therefore, it is sometimes possible to find the defendant liable in a civil case even though a verdict of “not guilty” was rendered in the criminal case. (A civil case can also be successful even if the offender was never prosecuted.)

A good example of this principle is the O.J. Simpson case. Simpson was prosecuted for the murder of his former wife, Nicole Brown, and her friend, Ronald Goldman. The jury in the criminal case found Simpson “not guilty” of the murders. Despite Simpson’s acquittal, the families of Nicole Brown and Ron Goldman filed a civil wrongful death lawsuit against Simpson. A trial was held in 1997 and Simpson was found liable for the deaths of Brown and Goldman. The jury in the civil case awarded the victims’ families $33.5 million in damages. While a criminal conviction may increase the chances of a perpetrator being held civilly liable, it is not a requirement for bringing a civil action.

V. Parties in a Civil Suit

Plaintiffs
The main parties in a civil suit are called plaintiffs and defendants. Plaintiffs are the individuals who file the suit. They control the action, are entitled to all information relating to the case, and make decisions, such as settlement. The plaintiff in a civil suit can be the victim, survivors of the victim, or persons responsible for the victim.
### CRIMINAL CASES

**In a CRIMINAL case**

- The goal is to hold the defendant accountable to the State.
- The State prosecutes and controls the case.
- The victim is a witness. Although the victim may have rights to participate in the criminal justice process, the victim does not have the right to direct the prosecution of the case or to veto the prosecutor’s decisions.
- The State must prove that the defendant is guilty “beyond a reasonable doubt.”
- The defendant is presumed innocent until proven guilty.
- If a perpetrator is found guilty in a criminal court, the perpetrator is subject to punishment, such as probation or jail, and is held accountable to the State. The victim will not obtain money unless the court orders the defendant to pay restitution for the victim’s out-of-pocket expenses. The court cannot order restitution for non-economic damages.
- If the perpetrator is found not guilty, the state cannot initiate a second prosecution.

### CIVIL LAWSUIT

**In a CIVIL lawsuit**

- The goal is to hold the defendant accountable to the victim.
- The victim initiates and controls the case.
- The victim is a party, and as such, is entitled to all important information relating to the case, and can make important decisions about the case, such as settlement of the claim.
- The victim must prove that it is more likely than not that the defendant is liable.
- The civil system makes no presumption. The victim and the defendant appear as equals.
- If the perpetrator is found liable in a civil court, the perpetrator owes an obligation to the victim, such as money to compensate the victim for medical and therapy expenses, psychological damage, damage to family relationships, and lost wages. A civil court can order the perpetrator to pay for non-economic damages, such as pain and suffering, damage to family relationships, and psychological injuries. The civil court can also order punitive damages.
- The victim can sue the perpetrator in a civil court regardless of whether the perpetrator has been found guilty in a criminal prosecution.

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**Family Members**

Family members who might bring a civil suit include the parents, spouse, children, or siblings of the victim.

**Defendants**

The defendants are the parties against whom a civil action is brought. The defendants in a civil suit can be the perpetrators, individuals who have assisted the perpetrators, or individuals or organizations whose negligence has in some way contributed to the commission of the crime known as “third parties.”

**Offenders**

The offenders are the individuals who committed the original offense, whether or not they were found guilty by a criminal court.

**Third Parties**

In some civil cases, a “third-party” defendant may be held liable. Third-party defendants are not the persons who actually commit the crimes, but instead are those parties who may have contributed to or facilitated the crimes. A few examples of possible third-party defendants in a victim’s case would include:
landlords who do not provide adequate security measures, such as locks on doors and windows and adequate lighting;

colleges that fail to provide adequate security for students or fail to notify students of campus assaults, leaving students vulnerable to victimization;

shopping malls that do not employ security guards or take other necessary measures, despite a likelihood of criminal attacks on customers;

people who allow children access to firearms or other dangerous instruments when the children, in turn, use the weapons to injure other people;

childcare centers, schools, and churches that do not properly check the backgrounds of their employees, or simply transfer employees to other locations following allegations of abuse; or

tavern owners or social hosts who continue to serve alcohol to inebriated persons who subsequently injure other people in drunk driving crashes.

VI. Statutes of Limitations

There are time limits for filing civil suits set by law. Any suit filed after the expiration of the statute of limitations is “time-barred” and cannot proceed. In New York, a civil suit based on wrongful death must be filed within 2 years of the victim’s death, while a lawsuit claiming personal injury or property damage caused by negligence must be filed within 3 years of the injury. Generally, an action to recover damages against the perpetrator for assault, battery, false imprisonment or other intentional act must be filed within 1 year of the injury. For fraud cases, an action to recover damages based upon the fraudulent act must be filed within 6 years of the criminal act.

New York has a special statute of limitations for civil cases arising out of criminal acts. A civil lawsuit filed by a victim of crime may be commenced against a perpetrator who has been convicted of the crime within 7 years of the date of the crime or within one year from the termination of the criminal action.

If the victim is a child under the age of eighteen at the time of the injury, then that child’s right to file a lawsuit is extended and does not begin to expire until the child turns 18. For example, if the victim of a crime is 14 years old, that victim’s right to file a lawsuit through a parent or guardian is immediate; however, if no lawsuit is filed the child/victim still has the right to start a lawsuit after he or she turns eighteen. At that time the victim would have 1 year to start a lawsuit against the perpetrator, and 3 years to start a lawsuit against a negligent third-party.

For a claim of sexual abuse, the statute of limitations requires an action against a perpetrator to be filed within 1 year. If the victim brings an action against an organization that employed the perpetrator, the action must be filed within 3 years. Additionally, if the action is based upon a sexual crime, including sexual abuse of a minor, the action must be filed within 5 years of the crime.

Statutes of limitations can change. If you believe you have a claim, you should speak to a qualified attorney immediately.

VII. Types of Civil Lawsuits

There are numerous claims under which civil actions may be brought. They include wrongful death, assault and battery, intentional or negligent infliction of emotional distress, and negligence. Some of these claims are described below.

In civil cases, the crime or wrongful act is referred to as a tort. For most criminal offenses, there is a corresponding tort for which a crime victim may bring a civil suit. Some examples of torts include:

- **Assault** - putting the victim in fear of immediate injury while the perpetrator has the ability to inflict such injury.

- **Battery** - intentional physical contact with a person without that person’s consent. Battery includes the crimes of sexual battery, rape, molestation, fondling, forcible sodomy, malicious wounding, and attempted murder.

- **Wrongful Death** - a death caused by another person which occurs without justification or excuse, including murder, manslaughter, and vehicular homicide.

- **False Imprisonment** - holding a victim against his or her will for any amount of time, no matter how brief. This often occurs in rape and kidnapping situations.
Defenses
There are several defenses that defendants of a civil lawsuit may use in an effort to avoid civil liability. These defenses include: self defense, comparative negligence, assumption of risk, and immunity.

- **Self Defense** - perpetrators claim their actions were justified because they were defending themselves or someone else.

- **Comparative Negligence** - The defendant claims that the victim’s negligent conduct caused or contributed to the victim’s injuries. In New York, the amount of money a successful plaintiff collects will be reduced by the plaintiff’s proportional share of the blame for the injury.

- **Assumption of Risk** - defendants claim they should not be held liable because the victims voluntarily and knowingly exposed themselves to the danger.

- **Immunity** - Under certain circumstances, the law provides immunity from civil liability to government agencies, government employees, and other parties.

VIII. Victim Privacy
Attorneys may employ various methods to protect victims’ privacy. Victims’ names and other personal information can be kept out of public records by filing suits under pseudonyms, such as Jane or John Doe. Victims can also use confidentiality agreements with the offender, or third-party defendant; file cases “under seal” (closed to the public); and videotape depositions. Each of these techniques allows victims to fight for their rights in a safer manner.

IX. Filing a Civil Lawsuit
A victim begins the civil case by filing a document that in most states is called the complaint. The complaint sets out the facts of the case and the legal claims being made. Defendants then have a certain amount of time to file a document called the answer. In this, defendants set forth their version of the facts and any defenses which apply. As a part of the process of the case, either side can request information from the other side. (For more information, see “Discovery.”) In addition, either party can file motions asking the court to throw out certain claims or defenses or dismiss the entire case.

- **Intentional or Reckless Infliction of Emotional Distress** - causing a victim emotional distress or anxiety through extreme and offensive conduct. Emotional distress is frequently seen in stalking cases.

- **Fraud** - an intentional misrepresentation of facts made to deceive the victim, resulting in damages. This is often seen in white collar or economic crimes such as criminal fraud, telemarketing schemes, or racketeering.

- **Conversion** - the theft or destruction of personal property or money. This includes larceny, concealment, and embezzlement.

- **Negligence** - the failure to use such care as a reasonably prudent person would use under similar circumstances, when such failure is the cause of the plaintiff’s injury. Examples include negligent security and negligent hiring.

- **New York’s “Son of Sam” Law** - Section 632-a of the New York State Executive Law, also known as New York’s “Son of Sam” Law, was enacted in 1977 to divert any “profits of a crime” a perpetrator may see to his or her victims. It has since been expanded to include the “funds of a convicted person,” i.e., all funds and property received from any source by a person convicted of a “specified crime.” The definition of “crime” was also expanded to include federal crimes committed in New York. Anyone paying or receiving “profits from a crime” or “funds of a convicted person” must notify OVS.

If the notice is given pursuant to “profits from a crime,” the crime may be any crime by a perpetrator in New York. If OVS is notified of the existence of “funds of a convicted person,” OVS must determine if the crime is in fact a “specified crime” (primarily serious felonies). OVS will notify the crime victims to inquire if they want OVS to freeze the “funds” or “profits,” in order to give the victim time to retain a lawyer and initiate a lawsuit. The victims have three years to sue the perpetrator from the discovery of “profits from a crime” or “funds of a convicted person.”
X. Discovery

In a lawsuit, each side can ask the other side for information and documents relating to the case. This process is called discovery. Civil discovery involves investigations of the facts and circumstances of the case, interviewing witnesses, obtaining relevant documents, and questioning parties and other witnesses under oath. The investigation may include a review of police records, informal interviews of eye witnesses, and photographing the location of the crime.

Request for Production of Documents

Document requests are a formal procedure by which one side can ask the other side to produce documents and other materials relevant to the case. Requests for production of documents must be answered in a specified amount of time. New York courts require that requests for production not be unduly burdensome, meaning the requested documents must be relevant to the case.

Interrogatories

Interrogatories are a list of questions sent to the opposing party. New York does not limit the number of interrogatories which may be requested. Both requests for production of documents and interrogatories must be answered in a specified amount of time. In New York, interrogatories and requests for production must be answered within 20 days.

Depositions

A deposition is a proceeding in which a party’s attorney has the opportunity to question opposing parties and potential witnesses under oath. Deposition testimony is transcribed. Depositions in New York state court require a twenty day notice, unless the court orders otherwise. A subpoena is required to depose someone who is not a party to the proceeding. The transcripts may be used at trial for various reasons, including if the witnesses are no longer available or if the witnesses offer trial testimony which conflicts with the deposition.

After documents have been produced, interrogatories have been answered, and depositions have been completed, each side should know much more about the other side’s case. At this point, the parties sometimes engage in negotiations which lead to settlement of the case.

XI. Trial

If a settlement is not reached, the case proceeds to trial. A plaintiff wins at trial if the plaintiff has met its burden of proof and the defendant has not successfully asserted a defense to the claim. If the plaintiff wins, the judge or jury awards damages and the matter is over unless the defendant appeals. A defendant wins at trial if the plaintiff has not met the burden of proof or the defendant has successfully asserted a defense. If the defendant wins, the case is finished unless the plaintiff appeals.

XII. Damages

Judges and juries have the power to decide how much money to award as damages if the plaintiff wins. There are two main types of damages, compensatory and punitive. The goal of compensatory damages is to pay for the losses suffered by the injured party. The primary purpose of punitive damages is to punish and deter criminals or third parties.

XIII. Judgment and Enforcement

A victim contemplating a civil lawsuit should understand that obtaining a civil judgment is only half the battle. In many cases, it may be difficult to collect the money awarded by the court. Some defendants do not or cannot pay judgments entered against them. However, there are potential sources of payment, such as insurance or various types of income, which should always be considered.

XIV. When a Perpetrator Sues a Victim

Occasionally, offenders may sue or countersue victims. Defendants may take this step in order to harass or intimidate victims into dropping charges or withdrawing their civil suits.

Sometimes these suits are filed in response to the victim’s civil complaint, along with answers to the complaint. Sometimes perpetrators file them in response to a criminal charge. Victims need to know that truth is an absolute defense to defamation and slander, which are the most common civil claims filed by perpetrators.
Victims should cooperate, as fully as possible, with their attorneys. Such cooperation is necessary for successful representation of their interests. By the same token, victims have the right to expect their attorneys to be understanding, respectful, and responsive to their needs. Attorneys have the right to expect their clients to be honest and willing to participate in building their own cases.

Information Your Attorney May Need
When crime victims consult with an attorney, they should be prepared to answer detailed questions about the case that will allow the attorney to conduct a proper evaluation. Attorneys might request information such as the following:

About the Criminal Event:
- Date and time of criminal occurrence
- Location of events, addresses, and description of premises
- How the perpetrator gained access to the victim
- Identification of witnesses to any stage of the occurrence
- Identification of known physical evidence
- Whether a police report was filed, and if so, identification of: the police department where the complaint was filed, the detective or officer assigned to the case, the complaint or report number, and statements taken as part of an investigation
- Whether there was or is a criminal case, and if so, identification of: the prosecutor, current stage of criminal case, and description of the case investigation conducted
- If a third party might bear some liability for the occurrence of the crime: details surrounding the crime, such as where it was committed become and whether there was any security.

About the Perpetrator:
- If the perpetrator is known to the victim: nature of relationship with victim, perpetrator’s name and aliases, address, date of birth and Social Security Number, employment information, and any information known about the perpetrator’s assets and insurance coverage
If the perpetrator is not known to the victim:
physical description of the perpetrator, identifying features

**About Damages Sustained by the Victim:**
- Medical information: degree of physical, emotional, and psychological injuries sustained, and extent and cost of anticipated treatment
- Identification of hospital, physician services
- Identification of property damage
- Lost amount of victim’s or victim’s spouse’s time from work, lost wages, money recouped from workers’ compensation, or state or private disability insurance
- Source of funds to cover damages or losses such as insurance (policy number), crime victims’ compensation, Medicare, and restitution

**Fees and Retainers**
Usually, the types of civil cases brought by victims of crime are billed by attorneys on a contingency fee basis. This means the attorney is only paid if the victim is awarded a monetary settlement or judgment. Attorneys will be paid a predetermined percentage of the total award.

There are also costs, such as filing fees, deposition fees, and service of process fees the victim might be responsible to pay before a suit is filed or during the course of the suit. Some attorneys require that plaintiffs pay a retainer fee. A retainer is money paid to an attorney, but kept in a special account from which the above-mentioned costs can be paid. Money not used in the retainer may be returned to the client at the conclusion of the suit.

**XVI. Conclusion**
The civil justice system offers victims of crime another opportunity to secure what they seek most—justice. Regardless of whether there was a successful criminal prosecution or any prosecution at all, victims can bring their claims before the court and ask to have the responsible parties held accountable. While money awarded in civil lawsuits can never fully compensate victims for the trauma of their victimizations or the loss of loved ones, it can provide valuable resources for crime victims to help rebuild their lives.