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Civil Justice for Victims of Crime in South Carolina

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The National Crime Victim Bar Association is an affiliate of the National Center for Victims of Crime, a 501(c)(3) not-for-profit corporation.

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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 that allowed the crime to occur. The purpose of this booklet 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

More than 23 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 an offender to pay to the victims to compensate them for out-of-pocket expenses related to the 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, or emotional trauma. Victims who seek financial compensation for these types of losses must have an attorney pursue a civil lawsuit against the perpetrator or other responsible parties as described in this booklet.

South Carolina law allows a court to require an offender to pay restitution to the victim, generally for his or her past medical expenses. The offender must also pay other fines, such as court fines and probation costs, and these fines are often paid before the victim is paid. A court order does not guarantee payment of ordered restitution from the offenders. Victims seeking restitution should obtain a restitution form from the solicitor or victim service advocate.

South Carolina Victims of Crime Compensation Program

Crime Victims Compensation assists eligible innocent victims of violent crime with actual expenses caused by the crime that are in excess of $100. Crime Victims Compensation is a payer of last resort and does not cover expenses that have been covered by a third-party payer (e.g., insurance, sick leave, worker’s compensation). The maximum total award amount in South Carolina is $15,000. Victims may apply for additional financial assistance, but they must demonstrate financial need. Reimbursable expenses include: medical expenses, counseling bills, funeral expenses (up to $4,000), and lost wages or support. (Victims must miss two consecutive weeks of work to be eligible for lost wages.)

To learn about other eligibility requirements or for more information, contact: State Office of Victim Assistance, Office of the Governor, 1205 Pendleton St., Room 401, Columbia, SC 29201; 1-800-220-5370; or visit www.sova.sc.gov.

Civil Actions May Help Where Restitution and State Compensation Cannot

Restitution and compensation often do not cover a victim’s full economic losses, and neither source pays anything for hard to quantify damages such as pain and suffering. A civil lawsuit may provide more complete compensation to a victim. Victims do not have to choose among restitution, compensation, and filing a civil lawsuit. Victims may receive funds from all three sources, although there are checks and balances in each system to ensure that no victim is compensated for the same loss more than once. Victims may decide to pursue all three financial options at the same time to have the best chance of receiving just compensation from the appropriate source as soon as possible.

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, can-
not be excluded from the courtroom, and have final approval of settlement proposals.

**Compensation** - Civil actions can provide compensation for victims for the monetary damages they suffered, such as medical expenses or 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. Comparing Civil and Criminal Justice

Both the civil and criminal justice systems have important roles in securing justice for victims of crime. These systems are not mutually exclusive, so victims do not have to choose one system over the other. Many victims choose to go through both systems. Because the criminal and civil justice systems were designed to address different needs, victims are best served when these systems work together. 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 enforce-
### CRIMINAL CASES

**In a CRIMINAL case**

<table>
<thead>
<tr>
<th>...the goal is to hold the defendant accountable to the State.</th>
<th>...the goal is to hold the defendant accountable to the victim.</th>
</tr>
</thead>
<tbody>
<tr>
<td>...the State prosecutes and controls the case.</td>
<td>...the victim initiates and controls the case.</td>
</tr>
<tr>
<td>...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 solicitor’s decisions.</td>
<td>...the victim is a party, and as such, is entitled to all important information relating to the case, and can make decisions about the direction of the case, such as settlement of the claim.</td>
</tr>
<tr>
<td>...the State must prove that the perpetrator is guilty beyond a reasonable doubt.</td>
<td>...the victim must prove that it is more likely than not that the perpetrator is liable.</td>
</tr>
<tr>
<td>...the perpetrator is presumed innocent until proven guilty.</td>
<td>...the civil system does not presume a person is innocent or guilty. The victim and the perpetrator appear as equals.</td>
</tr>
<tr>
<td>...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.</td>
<td>...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 economic costs, including medical expenses, mental health counseling, 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.</td>
</tr>
<tr>
<td>...if the perpetrator is found not guilty, the State cannot initiate a second prosecution.</td>
<td>...the victim can sue the perpetrator in a civil court regardless of whether the perpetrator has been found guilty in a criminal prosecution.</td>
</tr>
</tbody>
</table>

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 Ronald Goldman. The jury in the criminal case found Simpson “not guilty” of the murders. Despite Simpson’s acquittal, the victims’ families filed and won a civil wrongful death lawsuit against Simpson. The jury in the civil case awarded the victims’ families monetary 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.

### CIVIL LAWSUITS

**In a CIVIL lawsuit**


### V. Parties in a Civil Lawsuit

**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 whether to accept a settlement. The plaintiff in a civil suit can be the victim, survivors of the victim, or persons responsible for the victim.
VI. Statutes of Limitations

The law sets time limits for filing civil suits, called “statutes of limitation.” Any time after the expiration of the statutory period, unless a legal exception applies, the right to file a civil suit is “time-barred” and cannot proceed.

Although people often speak of “the statute of limitations,” there are many statutes that apply limitation periods to different types of civil actions. Sometimes it is difficult to keep track of the various statutes and their exceptions. **Therefore, a qualified attorney should be consulted to determine which statute applies and help preserve your right to recover damages.**

In South Carolina, *generally speaking*, an action for any form of personal injury caused by a private citizen or non-governmental entity is three years; that is, a lawsuit must actually be filed within three years of the injury-producing event. There are some exceptions, however, to the three-year rule.

Under South Carolina law, a child who is injured may file a lawsuit up to one year from his or her eighteenth birthday or three years from the date of the injury producing event, whichever comes later. Also, South Carolina’s special statute of limitations for childhood sexual abuse provides that victims may bring civil actions within 6 years of age 21, or within 3 years from the time the victim realizes that his or her injuries were caused by the child sexual abuse, whichever comes later (South Carolina Code §15-3-555).

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.
**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 is called the complaint. This document 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 the answer, defendants set forth their version of the facts and any defenses that 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 to dismiss the entire case.

**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.
Compensatory or special damages are direct damages that can be proven with certainty, such as medical bills and lost wages. They are awarded to pay back the victim for actual monetary damages they suffered. General damages are more discretionary and include damages for physical and emotional pain and suffering; the amount of general damages is typically left to the discretion of the jury. Although rarely awarded, punitive or “vindictive” damages may be awarded in special circumstances to punish the defendant and deter the defendant or any other person from engaging in similar conduct.

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, that should always be considered.

XIV. When a Perpetrator Sues a Victim

On very rare occasions, offenders may sue or counter-sue victims. Defendants may take this step 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. Victims need to know that truth is an absolute defense to defamation and slander, which are the most common civil claims filed by perpetrators.

XV. About Lawyers

Finding a Lawyer

The National Center for Victims of Crime established the National Crime Victim Bar Association (NCVBA) to facilitate civil suits by crime victims. The NCVBA offers victims free referrals to attorneys for consultation.
Victims seeking more information or attorney referrals should call the NCVBA at 1-800-FYI-CALL/1-800-394-2255.

Selection Considerations
More attorneys than ever are representing crime victims in civil lawsuits, though relatively few specifically list themselves as “crime victim” attorneys. Typically, these attorneys can be found handling premises liability, personal injury, wrongful death, or professional malpractice claims on behalf of plaintiffs. Finding qualified attorneys to represent victims in civil lawsuits often requires diligence.

A productive attorney-client relationship is based on the ability of both sides to communicate fully and effectively with each other. Although relating sensitive details can be difficult for crime victims, they should feel as comfortable as possible in fully disclosing all details and information to their attorneys. Attorneys should be able to effectively explain all aspects of legal proceedings to victims, and they should be responsive to victims’ needs and requests.

Victims should fully understand all the details of any retainer agreement (contract to hire the attorney) prior to signing it. If victims have questions, they should feel comfortable discussing them with their attorneys. If questions persist, local bar association personnel may be able to explain laws, regulations, and common practices pertaining to contracts with attorneys.

Victims should be clear about what they wish their attorneys to do, and attorneys should be clear about what services they are providing. Understanding each other’s expectations—as well as avoiding unrealistic expectations—can minimize the possibility of disappointment and frustration.

Victims should consult with several lawyers before selecting one. Lawyers are professionals, and it is good consumer practice to obtain a second opinion in selecting professional legal counsel.

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 the following information:

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 solicitor, current stage of the 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 and where it was committed, such as 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, 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 worker’s 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 method of payment means the attorney is only paid if the victim is awarded a monetary settlement or judgment. In this case, 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, that the victim might be responsible for paying 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. Protecting Victims’ Rights in the Criminal Justice System

For years, crime victims enjoyed no significant legal protection. Moreover, few services were available to victims. Since the 1998 passage of the South Carolina Constitutional Amendment establishing crime victims’ rights, legal protection and basic services are mandated in every jurisdiction in the state.

Even though the constitutional amendment and statutory laws for crime victims are in place, victims’ rights are still often not secured. Historically, victims have been left out of the criminal justice system because they have not been considered a party to a criminal action. Legal issues surrounding victims’ rights laws have neither been explored nor interpreted through South Carolina courts.

In response to this inequity, the Crime Victim Legal Network (CVLN), a program of the South Carolina Victim Assistance Network, was established in 2004. Funded by the U.S. Department of Justice through the National Crime Victim Law Institute, the CVLN seeks to guarantee the availability of equal justice for victims through the enforcement of victims’ constitutional rights in South Carolina’s criminal and appeals courts. The CVLN addresses this systemic problem using a dual approach: education about victims’ rights in criminal proceedings and direct legal representation for crime victims. Employing a full-time lawyer and 14 volunteer attorneys who have been trained in victims’ rights law, crime victims across the state are afforded free legal information, advice, and representation to assist in the enforcement of victims’ rights or to seek a remedy when their rights are denied. In some cases, the volunteer attorneys may also represent crime victims seeking civil legal remedies.

XVII. 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 victimization or the loss of loved ones, it can provide valuable resources for crime victims to help rebuild their lives.