Civil Justice for Victims of Crime in Idaho

For referrals to an Attorney or for More information, Please Call the National Crime Victim Bar Association at 202-467-8716 or Toll Free (844) LAW-HELP

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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 wrongful 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

According to Idaho law, the victims are entitled to restitution from the guilty party for expenses directly related to the crime. Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or pre-sentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the pre-sentence report, victim impact statement or otherwise provided to the court. The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution. The court may order the defendant to pay restitution to the victim in any case, regardless of whether the defendant is incarcerated or placed on probation. The court may order the defendant to pay all or a part of the restitution ordered to the court to be distributed by the court to the victims in a manner the court deems just.

Crime Victim Compensation

The Idaho Crime Victims Compensation Program was established in 1986 to provide assistance to innocent victims of crime for financial losses associated with a crime when other resources are not available to cover those expenses. The program believes that offenders should be held accountable for costs associated with their criminal activity, and actively pursues restitution for crime-related costs. To be eligible to receive compensation, the crime must be reported to law enforcement officials within 72 hours of the crime or there must be documented good cause why it is not. The victim must fully cooperate with law enforcement officials in the investigation and prosecution of the crime. The victim must file the claim within one year of the crime or show good cause why they did not. The Crime Victims Compensation Program provides funds for treatment expenses to the victim after all other sources of payment have been exhausted, up to a maximum of $25,000. When a claim is approved, payment may be made for reasonable expenses which are the direct result of the crime, including hospital and medical services, mental health treatment, counseling for family members of victims, lost wages, dependent death benefits, and funeral expenses.

Contact Information:

Idaho Crime Victim Compensation Program
700 South Clearwater Lane
Boise, ID 83712
(208) 334-6080
Toll Free: 1-800-950-2110
Fax: (208) 334-5145
https://crimevictimcomp.idaho.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, nor general 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 power and control in a civil suit than in a criminal case because they are a party to the civil case, can serve written
The criminal justice process judges the guilt or innocence of accused offenders, and when offenders are found guilty, attempts to punish or rehabilitate them.

Criminal defendants have many more protections in criminal cases, including constitutional protections, while in civil cases they have fewer. For example, a criminal defendant can refuse to give testimony. A civil defendant cannot. (A civil defendant can plead the 5th Amendment under limited circumstance, but such a plea can be used against them). This makes good sense, because a criminal defendant is at risk of losing his/her liberty, while a civil defendant is only at risk of incurring financial liability.

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 and damages incurred as a result of the wrongful conduct.

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 empowerment and 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
### 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 LAWSUITS

**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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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.

Another significant difference is usually the number of jurors who must agree on a verdict. In Idaho state court, only nine out of twelve jurors in a district court action need to agree on a verdict. In criminal cases, there must be unanimous agreement (12 jurors in a felony case and six jurors in a misdemeanor case). In federal court, six jurors must reach a unanimous verdict in civil cases.

### 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 include the victim; heir of a deceased victim; parent, spouse or child of the victim; or persons responsible for the victim.
VI. Civil Statutes of Limitations

For a personal injury claim in Idaho, the statute of limitations is 2 years. For claims of injury to property, the statute of limitations is 3 years. In addition, libel or slander holds a 2 year statute of limitations, fraud is a 3 year period, medical malpractice is a 2 year period and the trespass statute of limitations in Idaho is a 3 year period. The civil statute of limitations for sexual abuse of a child or lewd conduct with a child in Idaho can be as late as five years “of the time the child discovers or reasonably should have discovered the act, abuse or exploitation and its causal relationship to an injury or condition suffered by the child.”

In addition to statutes of limitations, there can be other time deadlines that apply, such as notice requirements against governmental entities or to dram shops.

Statutes of limitations and notice requirements can change frequently and depend on the facts of the individual case. If you believe you have a claim you should speak to a qualified attorney immediately. The basic principal is that you should not delay consulting with an attorney.

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, negligence and recklessness. 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 of these claims are described below.

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’s wrongful conduct, including murder, manslaughter, and vehicular homicide.
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); or seek a protective order from the court. 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.

X. Discovery

As part of the legal process, each side can ask the opposing party for information and documents relating to the case. This process is called discovery. Civil discovery involves investigation of the facts 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, eyewitnesses, and photographing the location of the crime. Parties may seek all non-privileged information, even information that will be inadmissible at trial, if that information seems likely to lead to the discovery of admissible evidence.

Interrogatories

Interrogatories are a list of written questions sent to the opposing party. They are usually limited in number by the court rules of the jurisdiction where the case has been filed. In Idaho, a party on whom an interrogatory has been served must respond within 30 days.

Request for Production of Documents

As with interrogatories, one side can formally request the other to produce documents and things relevant to
the case. Generally, the other party must respond to a document request within 30 days.

**Depositions**

An additional way to collect information in the pretrial portion of the civil case is a deposition. 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, usually by a court reporter. The transcripts may be used at trial for various reasons, including if the witnesses are no longer available to testify or if the witnesses offer testimony at trial that conflicts with the deposition.

After documents have been produced, interrogatories have been answered and depositions have been completed each side should know more about the other side’s case. At this point the parties sometimes engage in negotiations which can lead to the settlement of the case without the need for a trial. Often negotiation occur in “mediation”, a non-binding process where the parties meet on a given day, at a given date, and try to resolve their differences through a mediator. (Not to be confused with “arbitration”, which is a private trial).

**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 deter the defendant and those similarly situated from engaging in like conduct. For example, punitive damages awarded against a defendant who has a history of driving drunk are meant to deter him and others like him from driving drunk in the future.

**XIII. Judgment and Enforcement**

A victim contemplating a civil lawsuit should understand that obtaining a civil judgment does not mean you can collect the amount awarded. If the defendant has insurance, there is a much greater likelihood of collecting a judgment than if the defendant is not insured. Many uninsured defendants do not or cannot pay judgments entered against them. However, there are tools available to collect on judgments including liens on real property, attachment of personal property and others.

**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, and there are other protections for a victim who makes “allegations” in a complaint.

**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 (844) LAW-HELP

**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, sexual abuse 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 and trust. 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. A good attorney tells the client both the good and the bad. An attorney is hired to tell the client what they should know, not what they would like to hear. A well-informed victim can confidently make decisions.

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 attorney or another attorney. If questions persist, local bar association personnel may be able to explain laws, regulations, and common practices pertaining to contracts with attorneys. Good attorneys entertain any question of a client, including those about the fee agreement.

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. The attorney generally informs and guiding the client and can make day-to-day decisions that do not substantially affect the rights of the client. However, the client is in charge when it comes to decisions substantially affecting their rights, such as whether or not to proceed with a case, enter into a settlement or appeal.

Victims should feel free to 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. It is important that a victim trusts and feels comfortable with their attorney. This does not mean a victim will always like or agree with what their attorney says.

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 amount for costs. 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 is returned to the client at the conclusion of the suit. However, most attorneys “advance costs”, meaning they pay the costs but recoup them from the recovery. An important question to ask an attorney who advances costs is: “Do I have to reimburse you for the advanced costs if there is not recovery.” In most cases, the answer is “no”.

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.