Civil Justice for Victims of Crime in Maryland

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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 a means to financially restore a victim of a crime for the money spent as a direct result of the crime committed by the defendant. Under Maryland law, a court may order a defendant who is convicted in a criminal case to financially compensate a victim as restitution for injuries as a result of the crime. Upon sentencing, the court will assess any actual medical expenses, counseling, burial expenses, actual out-of-pocket expenses, losses of earnings, and rehabilitation expenses suffered by victims as a result of the criminal conduct. If a defendant does not pay restitution within the established timeframe, the court may withhold the defendant’s future wages in order to make the payments. Payment of restitution may also be a condition of the defendant’s probation or work release.

Crime Victim Compensation

Crime Victim Compensation is administered by Maryland’s Criminal Injuries Compensation Board and provides eligible victims of violent crime with financial assistance for certain out-of-pocket expenses resulting from the crime. Those eligible for access to the funds include victims who are physically, psychologically, or emotionally injured as a result of violent crime, spouses and parents of violent crime victims as well as anyone dependent on a homicide victim, and anyone who assumed the funeral expenses for a homicide victim. To qualify for compensation, a person must report the crime to the police within 72 hours of the crime. One must then file an application, located on the Criminal Injuries Compensation Board’s website, with the Compensation Program within three years of the date of the crime. For victims of child abuse, a claim must be brought within three years after turning 18 or the crime was discovered. Crime Victim Compensation funds may award reimbursement from a minimum of $5,000 to a maximum of $45,000 for medical expenses, disability, mental health counseling, funeral expenses, as well as complete or partial dependency on a victim.

Contact Information:

Maryland Criminal Injuries Compensation Board
Suite 206, Plaza Office Center
6775 Reisterstown Road
Baltimore, MD 21215-2340
(410) 585-3010
1-888-679-9347
(410) 764-3815 (fax)
http://www.dpscs.state.md.us/victimservs/FAQcicb.shtml

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, as opposed to a criminal case, where the victim is a witness but not a party to the case. In the civil case, the victim cannot be excluded from the courtroom, and has 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. In a civil case, typically the largest amount of damages is for pain and suffering which is not compensable through restitution or crime victim compensation.
The Civil Justice System

The civil justice system does not determine the innocence or guilt of an offender. Offenders are also not subject to being put in prison in a civil case. 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.

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 state, not the victim.

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 CASES

<table>
<thead>
<tr>
<th>In a CRIMINAL case</th>
<th>CIVIL LAWSUITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>...the goal is to hold the defendant accountable to the State.</td>
<td>...the goal is to hold the defendant accountable to the victim.</td>
</tr>
<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 prosecutor'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 important decisions about the case, such as settlement of the claim.</td>
</tr>
<tr>
<td>...the State must prove that the defendant is guilty “beyond a reasonable doubt.”</td>
<td>...the victim must prove that it is more likely than not that the defendant is liable.</td>
</tr>
<tr>
<td>...the defendant is presumed innocent until proven guilty.</td>
<td>...the civil system makes no presumption. The victim and the defendant 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 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.</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>

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.

**Family Members**
In a case where the victim is killed, family members who might bring a civil suit include the parents, spouse or children 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.
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.
- **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.

VI. Statutes of Limitations

In the state of Maryland, the statute of limitations will vary depending on the type of crime involved. For a personal injury claim, the statute of limitations is three years. Generally, for claims of injury to personal property, the statute of limitations is 3 years. The statute of limitations in the event of fraud is 3 years from when the fraud would have been reasonably discovered or when the fraud occurred. A claim of libel, slander or assault holds a 1 year statute of limitations. Therefore, a victim who believes they may have a case against the perpetrator should speak with a qualified attorney immediately.

For victims of child sexual abuse, the statute of limitations does not begin until they reach the age of majority, which in Maryland is 18 years-old. A claim must be brought within 7 years after turning 18.

Statutes of limitations can change and if you believe you have a claim you should speak to a qualified attorney immediately.
Defenses
There are several defenses that defendants of a civil lawsuit may use in an effort to avoid civil liability. These defenses include: contributory negligence, assumption of risk, and immunity.

- **Contributory Negligence** - The defendant claims that the victim’s negligent conduct caused or contributed to the victim's injuries. Maryland is a contributory negligence state, which prevents a victim from recovering from injuries if the victim is so much as 1% negligent.

- **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 through the process known as “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 other side 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 of eye witnesses 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. In Maryland, the number of interrogatories is limited to 30. 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 materials relevant to the case. Generally, the other party must respond to a document request within 28 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 Discovery has been completed, documents have been produced, interrogatories have been answered and depositions have been completed each side will know more about the other side’s case. At this point the parties often engage in negotiations which can lead to the settlement of the case without the need for a 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. Compensatory damages include past and future medical expenses, past and future lost earnings, property damage, disability, disfigurement, as well as physical and emotional pain and suffering (including grief due to the death of a family member.) The primary purpose of punitive damages is to punish and deter criminals or third parties. Punitive damages are very difficult to obtain in Maryland.

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 a competent lawyer who is knowledgeable of crime victims’ rights will always consider.

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 and complete 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 202-467-8716

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 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.

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 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, during the course of the suit or at the time of the resolution of the case, out of the money received from the settlement or judgment. 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, hold those responsible accountable for their actions and change the conduct of the perpetrator or corporation to keep others in the future from experiencing similar harm.