

Civil Versus Criminal Justice

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

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, and the victim's role is primarily defined as a witness for the prosecution. The criminal 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** 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. 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.



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 visit attorneyreferrals@victimsofcrime.org.

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Civil Justice for Crime Victims

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Information Attorneys 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 and description of premises
- How the perpetrator gained access to the victim
- Identification of witnesses to the occurrence
- Identification of known physical evidence
- Whether a police report was filed
- If a third party might bear some liability for the occurrence of the crime

About the Perpetrator:

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

About the Damages:

- Medical information: degree of injuries sustained and cost of anticipated treatment
- Identification of hospital, physician services
- Identification of property damage
- Lost amount of victim's time from work, lost wages, money recouped from workers' compensation, or disability insurance
- Source of funds to cover damages or losses such as insurance, crime victims' compensation, Medicare, and restitution prove, such as things for which a victim might have a bill or receipt.

Victims' Financial Losses and Potential Sources of Compensation

Almost 19 million Americans are victimized by crime each year, and 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

The term "restitution" in the criminal justice system means payment by an offender to the victim for the harm caused by the offender's wrongful acts. Courts have the authority to order convicted offenders to pay restitution to victims as part of their sentence. Restitution may cover any out-of-pocket losses directly related to the crime, including medical expenses, therapy costs, prescription charges, counseling costs, and lost wages. Restitution will not cover such things as pain and suffering or emotional distress. It only covers damages that are easy to prove, such as things for which a victim might have a bill or receipt.

Crime Victims Compensation

Crime Victims Compensation is a government program that reimburses victims of violent crimes – assault, homicide, rape, and, in some states, burglary – as well as their families for many of their out-of-pocket expenses. Every state has a crime victims compensation program. To apply for Crime Victims Compensation, victims or families must file a claim in the state where the crime occurred. For more information about your state program, visit the National Association of Crime Victim Compensation Boards at www.ncavb.org.

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 hard-to-quantify damages such as pain and suffering. A civil lawsuit may provide more complete compensation to a victim.

Types of Civil Lawsuits

There are numerous claims under which civil actions may be brought. They include wrongful death, assault and battery, and negligence. 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 Assault - putting the victim in fear of immediate injury while the perpetrator has the ability to inflict such injury. 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 rape, sexual battery, molestation, fondling, forcible sodomy, malicious wounding, and attempted murder.
- **Wrongful Death** - a death caused by another person that 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.

Filing A Civil Lawsuit

A victim begins the civil case by filing a document that, in most states, is called the complaint. The complaint outlines 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. Additionally, either party may file motions asking the court to throw out certain claims or defenses, or dismiss the entire case.

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, and the primary purpose of punitive damages is to punish and deter criminals or third parties.

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.

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 may 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 allow victims to fight for their rights in a safer manner.

Third Party Liability

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
- **Tavern owners or social hosts who continue to serve alcohol to inebriated persons** who subsequently injure other people in drunk driving crashes

Statute of Limitations

Statute of limitation legislation refers to the time limit that plaintiffs have to file a civil lawsuit with regards to an injurious incident. Victims should speak to an attorney immediately to determine the statute of limitations that applies to their case and to protect their right to a recovery.