

CHAPTER 16

Civil Remedies

Victims of crime often suffer great physical, psychological and financial losses, and they are increasingly looking to the civil justice system for reparations. The tangible costs of crime to victims, such as medical expenses, mental health counseling, and lost productivity, are estimated at \$105 billion annually. The intangible costs—the price of the pain, suffering, and reduced quality of life victims must endure—are even greater: \$345 billion annually.¹ Although some victims are compensated through state victim compensation or through restitution ordered as part of a sentence, these sources frequently fall short of covering their total losses. In particular, restitution and state-funded compensation rarely, if ever, compensate victims for the diminished quality of life resulting from continuing pain and suffering. A judgment in a civil suit can provide such compensation as well as secure important preventative measures that would not result from a criminal action alone.

The 1982 President's Task Force on Victims of Crime did not address the use of civil litigation to secure relief for crime victims. The Task Force focused entirely on recommendations for the criminal justice system. It is primarily within the last decade that civil litigation has emerged as a meaningful option for crime victims and as a specialized area of attorney expertise. This progress has been due in large part to the legal research and advocacy efforts of the late Frank Carrington, a member of the Task Force. Throughout the 1980s, Mr. Carrington provided legal advice and advocacy to hundreds of crime victims. With support from the Office for Victims of Crime, he teamed up with the National Victim Center in 1990 to create the nation's first training series on civil legal remedies for crime victims. Over the next several years, more than 2,000 victims, service providers, and attorneys were introduced to victims' rights through this nationwide training series.

High-profile cases in recent years have highlighted the financial compensation and other benefits that are available to crime victims who pursue civil litigation. In one case, \$33.5 million was awarded to the families of two murder victims,³ and in another, \$5.2 million was awarded to a woman sexually assaulted at a Las Vegas convention.⁴ Other successful civil lawsuits were brought by the parents of a slain foreign exchange student,⁵ and by two adult sisters who were sexually abused as children.⁶ These cases have dramatically raised the consciousness of not only the public and the legal community about civil legal remedies for victims, but the victim service field as well.

[Victims' rights] litigation, if successful, vindicates the rights of the immediate victim. . . . Perhaps more importantly, if a body of victims' rights law develops, it will have the preventive aspect of putting would-be criminals and third parties who are responsible for victimization on notice that the law works to aid victims, in addition to punishing the wrong-doer.²

Frank Carrington,
 Founder, Victims' Assistance
 Legal Organization

In addition to compensating victims financially for their losses, civil remedies empower victims to exercise their rights. In a civil lawsuit, the victim rather than the state is in control of essential decisionmaking. Victims decide whether or not to pursue a civil suit, and they choose their own attorneys. The burden of proof is lower in civil cases than in criminal cases, requiring a less rigorous measure of the evidence to establish liability. A defendant can be required to testify at trial, if subpoenaed. Furthermore, victims have a voice in the outcome of a civil action by deciding whether or not to accept a settlement offer.

Civil litigation can have preventative effects as well. Civil suits may be brought against other parties involved in victimization. For example, a hotel or office building may be sued by a rape victim for security violations that allowed the attack to occur. This kind of lawsuit may change the way the defendant and others conduct business, reducing the possibility of further crimes.

By pursuing civil litigation claims, crime victims have often found the legal rights, the restitution and the sense of justice that eluded them in the criminal justice system.

Jay Howell,
Attorney and Victim Advocate,
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However, the ability of victims to seek civil remedies has been hampered by a lack of information about victims' options for pursuing a civil lawsuit, including how to contact an attorney to take on a case; by legislation limiting the period of time after victimization within which a case may be brought; and by the absence of legislation permitting a particular kind of case to be filed. Initiatives to overcome these barriers are discussed below.

Providing Critical Information to Victims

Historically, information about pursuing civil remedies has not been readily available to crime victims. Many attorneys did not understand the possibilities for recovery, and victim service providers and victims themselves were unaware of the relief available through a civil suit. Other victims have not known how to find an attorney to take on their case. In response, attorney networks have been established specifically to refer victims of crime to lawyers with experience in their particular kind of case.

- The Coalition of Victim Attorneys and Consultants (COVAC), a nationwide referral service for victims seeking to pursue civil lawsuits, has been established through the National Victim Center (NVC) in Arlington, Virginia. COVAC consists of attorneys with experience representing crime victims in civil matters and professionals from other fields who serve as experts or consultants in civil cases involving crime victims. The group is the membership arm of NVC's Carrington Victims' Litigation Project (CVLP), which helps attorneys provide sensitive representation. CVLP has compiled a Civil Justice Case Law Data Base, which contains over 9,000 case summaries of appellate decisions relating to civil litigation by crime victims.

- The organization One Voice in Washington, D.C. has compiled a database of attorneys who handle cases of child sexual abuse brought by adult survivors as well as custody cases in which the child has disclosed sexual abuse and the alleged abuser is seeking full custody or unsupervised visitation rights.

In order for any attorney network to be successful, however, crime victims must be informed of their right to bring suit and that knowledgeable attorneys are ready to help them. This obligation falls principally with those individuals who come into contact with victims most frequently: law enforcement officers, prosecutors, and victim service professionals. In the area of domestic violence, a number of providers have established connections with attorneys who are willing to handle the civil litigation needs of domestic violence victims.

Legislative Changes

Congress and state legislatures have enacted numerous laws to assist crime victims seeking civil remedies. Recent legislation in states across the country has focused on the need in child sexual abuse cases to extend the statute of limitations—the time within which people must file suit. Many states now extend the statute of limitations for bringing civil actions against abusers until many years after the child has reached the age of majority. Connecticut, for example, established one of the lengthier statutes at 17 years past the age of majority, or age 35. Civil actions in these cases are allowed regardless of the victim’s reason for not bringing the action earlier. Other laws enable adults who were sexually abused as children to collect monetary damages from the federal pensions of their abusers.⁷

Recent legislation has also made civil remedies available to victims of gender-based violence, stalking, and hate-motivated violence. The Violence Against Women Act (VAWA) of 1994 introduced a new civil remedy for victims of sexual assault, domestic violence, and child abuse, stating that “[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender.”⁸ Under this provision of the Act, anyone who commits a crime of violence motivated by the victim’s gender is liable to the victim for compensatory and punitive damages. VAWA allows restitution ordered for expenses such as medical fees, physical and occupational therapy, lost income, and attorney’s fees in criminal gender-motivated cases to be enforced like a civil damage award.

Moreover, all 50 states and the District of Columbia have enacted anti-stalking laws, most of which impose criminal sanctions against stalkers. A few state legislatures have also enacted laws that create a civil law tort of stalking allowing victims of stalking to sue perpetrators for monetary damages.⁹ Finally, many laws have been passed that provide legal recourse for hate-motivated violence based on a victim’s race, color, national origin, religion, gender, sexual orientation, disability, or age.¹⁰

Recommendations from the Field for Civil Remedies

CIVIL REMEDIES RECOMMENDATION FROM THE FIELD #1

Crime victims should be fully informed of their legal rights to pursue civil remedies.

It is always the victim's decision whether or not to pursue a civil action against a perpetrator. It is also solely the victim's decision to select a civil attorney. Victim service providers, however, can serve as a vital source of information to help victims make decisions that are well informed. When victims express an interest in filing a civil lawsuit, victim service providers should be prepared to discuss factors to consider when selecting an attorney and other referral-related information. Prosecutors and law enforcement officials should be able to provide crime victims with basic information about civil litigation options and materials on appropriate attorney referral networks.

According to a recent USA Today opinion poll, the American public is more knowledgeable about victims' civil legal rights resulting from both the increased attention at state and national levels, and more media attention afforded to victims' civil litigation.

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Litigation Quarterly
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CIVIL REMEDIES RECOMMENDATION FROM THE FIELD #2

State and local networks of civil attorneys who have experience representing crime victims should be expanded. Education and training on civil remedies for victims should be offered to attorneys to increase the pool of qualified lawyers in these networks and to maintain the level of expertise among member attorneys. Non-attorney experts and professionals should participate in these trainings and networks to educate attorneys on victim issues and make their representation more effective.

Victims need referrals to experienced civil attorneys. Membership organizations for attorneys such as the American Bar Association, the American Trial Lawyers Association, local bar associations, and state lawyer coalitions should encourage attorneys in the private sector who specialize in civil litigation on behalf of crime victims to establish and join attorney networks such as the Coalition of Victim Attorneys and Consultants. Bar associations should cosponsor trainings with service providers such as rape crisis clinics and domestic violence shelters to educate lawyers on the proper handling of victims' issues in civil cases.

Specialized continuing legal education classes on civil litigation for victims, as well as other products and services such as case digests and legal periodicals that deal specifically with civil litigation involving crime victims, should be developed to assist the lawyers in their work. In addition, these attorneys should receive training from victim service providers about the impact of victimization.

CIVIL REMEDIES RECOMMENDATION FROM THE FIELD #3

Increased efforts should be made to identify consultants with the expertise to testify on issues relevant to victimization in civil and criminal cases.

Expert consultants are often crucial to successful litigation and prosecution. Not only do they provide vital information as witnesses at trial, they are also invaluable in assisting with case preparation, mediation, and settlement negotiations. In addition, consultants can educate members of the legal profession on unique aspects of cases involving crime victims, including the psychological consequences of violence on victims, premises liability and security issues, repressed memory, and forensic evidence. Legal organizations and associations should encourage the development and recruitment of expert witnesses while forming better partnerships with their professional organizations (for example, the International Association of Professional Security Consultants and the International Association of Trauma Counselors).

CIVIL REMEDIES RECOMMENDATION FROM THE FIELD #4

Civil attorneys should work with victim service providers, law enforcement officials, and prosecutors in their communities to develop an easy-to-understand pamphlet about civil remedies for crime victims.

Most crime victims do not understand the criminal, let alone the civil, justice process. Before victims decide to pursue a civil lawsuit, they must know the advantages and disadvantages of bringing such a suit. At a minimum, brochures should be developed to help explain the civil justice and court system to victims, including how victims can access civil legal advocacy and assistance.

CIVIL REMEDIES RECOMMENDATION FROM THE FIELD #5

Civil attorneys should provide training to victim service providers on civil remedies for crime victims.

The Office for Victims of Crime has funded the development of a curriculum for victim service providers on civil remedies for crime victims. The training has been conducted in 15 states as either a 2-day training program or a workshop that is part of a larger statewide or regional conference. Training for victim service providers in civil litigation should be continued, using *Civil Legal Remedies for Crime Victims* as a basic text. This training should be held jointly with training for lawyers by victim service providers to cross-train these professionals.

CIVIL REMEDIES RECOMMENDATION FROM THE FIELD #6

Statutes of limitations for civil actions involving child abuse cases should be extended, as has been done in a number of states. States should also examine statutes of limitations for civil actions relating to other criminal acts to determine whether they should be extended to provide a meaningful opportunity for crime victims to obtain needed relief.

Many states have extended the statute of limitations for bringing cases involving child victims of sexual crimes.¹¹ Civil extensions for child sexual abuse cases are most often based upon the discovery rule that by the time the victim discovers the wrongdoing or the relationship of the conduct to the injuries, the time limitation may have expired. This “delayed discovery” is frequently due to emotional and psychological trauma and is sometimes accompanied by repression of the memory of abuse. Child victims frequently do not discover the relationship of their psychological injuries to the abuse until well into adulthood, often during the course of psychological counseling or therapy.

A second reason for extending the limitations period for victims of sexual assault is that they may fear intimidation or retaliation or face other psychological impediments to proceeding with a civil action during the normal period of limitations. This same rationale should be extended to other crimes, including sexual assault, domestic violence, and hate and bias crimes against adult victims.

The recommendations in this chapter were based upon input from participants at public hearings and reaction and working groups, as well as papers submitted by experts in the field, identified in Appendix A. The recommendations do not necessarily reflect all of the views of the contributors, nor do they necessarily represent the official views of the Department of Justice.

Endnotes

- 1 Miller, T., Cohen, A. M. and B. Wiersema, *Victim Costs and Consequences: A New Look*, Washington, DC: National Institute of Justice, U.S. Department of Justice, 1996:2.
- 2 Carrington, E., *Victims' Rights Litigation: A Wave of the Future?*, 11 U. RICH. L. REV., Spring:447, 454 (1977).
- 3 *Rufo, et al. v. Simpson, et al.*, SC 031947 (Cal. Super. Ct. 1997).
- 4 *Coughlin v. Hilton Hotels Corp.*, 879 F.Supp. 1047 (Nev. 1995), *aff'd* 112 E3d 1052 (9th Cir. 1997).
- 5 *Hattori v. Peairs*, 662 So.2d 509 (La. Ct. App. 1995).
- 6 *Sabia v. State of Vermont*, 164 Vt. 293, 669 A.2d 1187 (1995).
- 7 See *The Child Abuse Accountability Act of 1994*, Pub. L.No. 103-358, (codified at various sections of Title 5, U.S.C.).
- 8 See *The Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. No. 103-322, Title IV, Subtitle C, §40302, 108 Stat. 1941 (codified at 42 U.S.C. § 13981).
- 9 See CAL. CIVIL CODE §1708.7 and WYO. STAT. ANN. §1-1-26. California's law allows victims of stalking to sue perpetrators for punitive damages.
- 10 Representative statutes include: CAL. CIVIL CODE §51.7; FLA. STAT. ANN. §775.085; IOWA CODE §729A.5; MICH. COMP. LAWS §28.344; N.J. REV. STAT. 2A:53A-21 and OKLA. STAT. §21.850.
- 11 See e.g., CAL. CIVIL CODE §340.1; CONN. GEN. STAT. §52-557d; ME. REV. STAT. ANN. tit.14 § 752-C, and NEV. REV. STAT. §11.215.