

Civil Legal Remedies

Civil litigation is quickly developing as a source of financial compensation for survivors of sexual assault, either in addition to or in the absence of restitution and/or crime victim compensation. Civil litigation can compensate the victim for financial losses including but not limited to lost wages, medical or mental health costs, property loss and compensation for “pain and suffering” experienced by the victim due to the assault.

WHAT ARE CIVIL ACTIONS?

A civil action is a lawsuit filed by one citizen or entity against another. A civil wrong is called a tort and occurs when one citizen violates a duty owed to another and causes harm. Some of these torts are called personal injury torts. Civil actions include: assault, battery, wrongful death, negligent or intentional infliction of emotional distress, invasion of privacy, false imprisonment, sexual exploitation by a therapist, sexual exploitation by a member of the clergy, and inadequate security. Some civil actions may be filed against third parties on legal theories that make a third party liable for the acts of an individual, and some individuals or entities may have insurance that covers damages resulting from a sexual assault. These complicated theories of recovery should be discussed with an attorney. This fact sheet does not cover other types of civil actions, including: sexual harassment, family law, restraining orders, and probate.

WHAT IS THE DIFFERENCE BETWEEN CRIMINAL AND CIVIL ACTIONS?

Criminal Cases:

- The prosecutor decides whether to charge the perpetrator with a crime.
- The prosecutor makes decisions in the case.
- The prosecutor decides whether to enter into plea agreements or go to trial.
- The prosecutor must prove beyond a reasonable doubt that the charged crime occurred.
- A criminal conviction can result in prison, jail, and/or probation. Restitution to the victim can be also be ordered as part of the conviction.

Civil Cases:

- The survivor decides whether to file a civil action and can drop the action at any point.
- The survivor makes decisions in the case.
- The survivor makes settlement decisions.
- The survivor must prove by a preponderance of the evidence that the respondent engaged in the behavior forming the basis of the civil action (i.e., the behavior more likely than not occurred).
- Winning a civil case means gaining monetary compensation in some form.

THE IMPORTANCE OF CIVIL LITIGATION FOR SURVIVORS:

- Civil actions can feel empowering because they are driven by the survivor.
 - The perpetrator or those responsible for an assault can be held accountable.
 - Monetary damages may be available to compensate the survivor for losses suffered and to punish the responsible party.
 - Civil judgments may deter others from engaging in similar behavior.
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- Large verdicts reinforce the idea that sexual assault is serious and has life-long affects.
- Civil attorneys may take cases on a contingency fee basis, meaning that the attorney will be paid a percentage of a successful judgment. Survivors should always take care to fully understand costs, fees, and payment arrangements when hiring a civil attorney.
- The victim has a chance to tell their story and confront the perpetrator.
- The case can put the community on notice about the perpetrator.

DO CIVIL CASES HAVE STATUTES OF LIMITATIONS?

Yes. In general, for intentional torts, a person has up to three years after the tort within which to file a claim. However, for certain types of civil actions, the survivor may have more or less time within which to file a civil claim. For more information, please see WCASA's fact sheet on Statutes of Limitation or contact a private attorney.

DOES A CIVIL CASE INTERFERE WITH A CRIMINAL CASE?

A survivor may file a civil claim at any time before, during, or after criminal proceedings and may file a claim when no criminal charges are pursued. The timing of a civil action depends on many factors. The statutes of limitation may differ in civil and criminal cases. The civil action might benefit from a guilty verdict in a criminal case. Criminal defense attorneys may use the fact of filing a civil suit against the victim by inferring that the victim had a monetary motive for pursuing the criminal case. Victims should discuss the timing of a civil suit with both the district attorney and the civil attorney.

WHAT HAPPENS IN A CIVIL CASE?

In civil actions, the citizen wronged (the petitioner) must first prove that the respondent engaged in a wrong that caused injury and then must prove the extent of the damages incurred as a result of that wrong. It begins by filing a petition against another citizen or entity (the respondent) stating the basis of the claim and asking for monetary damages. The respondent will file an answer, ask for the claim to be dismissed, or assert counterclaims against the petitioner.

In civil cases, the pre-trial proceedings may take longer than in a criminal case and involve extensive discovery. Discovery is the process by which the parties obtain information relevant to the issues in the action. Discovery can involve written questions, records requests, and depositions, which are the in-person, recorded, sworn questioning of persons involved in the case.

Settlement negotiations are encouraged by the court to avoid the time and expense of trial. At any time in the process, the parties may settle the case. If not settled or dismissed, the case will go to trial.

The trial usually begins with jury selection occurs, followed by opening arguments, and the presentation of evidence by each party. The rules of evidence apply, and the judge may be asked to rule on objections. With respect to the respondent, some rights afforded to criminal defendants are unavailable to respondents in civil actions. Finally, closing arguments occur and the jury is given jury instructions and asked to render a verdict. The jury will also make a decision on damages. Most damages awarded in civil actions are compensatory, which compensate a survivor for present or future monetary loss, or punitive, which punish a responsible party's malicious actions.

Additionally, Wisconsin Statute §901.08(2) provides victim protections similar to the criminal rape shield law. Known as the “civil rape shield,” the statute states that certain evidence is not admissible as evidence in a civil trial, including: evidence or opinions of a victim’s past or present sexual conduct or reputation, and evidence of the victim’s “sexual predisposition.” There are a few narrow exceptions (see §901.08(2)).

DO I NEED A LAWYER?

Where the damages are easy to prove and the victim is certain that the damages will not exceed \$5,000, the victim may seek compensation in small claims court. Many pursue small claims without the assistance of a lawyer. However, if a victim is unsure about the extent of damages, if damage may total more than \$5,000, or the victim may have difficulty proving the case in court, it is probably best to consult with an attorney. Sexual assault claims can be complicated and an experienced attorney can help ensure success.

DRAWBACKS OF CIVIL CASES

- Civil cases may bring a survivor’s mental state into question, either to show injury or damages. This could mean that a survivor will have to share his/her mental health records or information about his/her mental state either during discovery or at trial. A good attorney will try to limit the scope of these inquiries.
- Civil cases take a long time and can be emotionally draining.
- Crime victim rights don’t apply in civil cases.
- Some survivors feel that even civil actions don’t give them enough control over the action.
- Sometimes, responsible parties have no financial resources from which to pay damages.
- Some survivors do not feel the expected sense of closure after a civil action.

For general information on civil actions, see (please note that this information may not be specific to WI law):

- National Crime Victim Bar Association: www.victimbar.org, with a brochure found at: <http://victimsofcrime.org/docs/NCVBA/standard-cj-bro-final.pdf?sfvrsn=2>
- Victim Rights Law Center: <http://www.victimrights.org/>

HIRING AN ATTORNEY:

For more information, please see WCASA’s fact sheet on this topic.

WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 56 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only. **This information does not constitute legal advice.**

Please note that this is an abridged information sheet; the statutes have not been printed in their entirety due to space restrictions.