



CIVIL DAMAGES FOR SEXUAL VIOLENCE

The purpose of this fact sheet is to outline the issues that arise in seeking justice through civil litigation. It is important to remember, however, that the only way for a survivor to know for certain whether she has a viable civil legal claim against the perpetrator or any another party is to contact a lawyer to discuss the specifics of the case. Non-lawyers should always be cautious not to give legal advice.

<p>Civil Claims</p> <p>Examples of claims:</p> <p>Assault Battery False Imprisonment Sexual Harassment Negligence Intentional Infliction of Emotional Distress Defamation Privacy Violations</p>	<p>There is no exact equivalent to the criminal definition of “rape” or “sexual assault” in the civil legal area. Depending on the nature of the act, a perpetrator may be liable for:</p> <ul style="list-style-type: none"> • assault (to cause one to fear physical harm), • battery (physical touch without consent), • false imprisonment (preventing someone from escape), or • other claims, called “common law” claims. <p>The proof issues vary, but generally victim/survivor consent remains the primary issue for a survivor and his or her attorney to address in a civil suit. Like the criminal defendant, the civil defendant usually claims that whatever sexual conduct did occur was consensual.</p> <p>Third Party Liability – In addition to the perpetrator, it is possible that other parties (“third parties”) may be liable for sexual violence committed by the perpetrator. Examples of parties who could be held liable include employers, landlords, schools, and business owners. To hold a third party liable, the issue is usually whether there was a person or business that was somehow in a position to prevent the violence or protect the victim or survivor, but failed to do so.</p> <p>Related Causes of Action - A victim or survivor may have other claims against a perpetrator separate from the actual act of violence. These kinds of claims may include defamation (where the perpetrator is saying harmful, untrue things about the victim), workplace harassment (where the perpetrator is the victim’s employer or supervisor), or negligent and intentional infliction of emotional distress.</p>
<p>Available Remedies</p>	<p>In the <i>criminal</i> system, the focus is on punishment and rehabilitation of the perpetrator.</p> <p>In the <i>civil</i> system, the focus is on “making the plaintiff whole,” which almost always involves only the award of money that the defendant must pay to the plaintiff.</p> <p>Although monetary damages are the primary form of recovery in a civil case, they are not always the <i>only</i> remedy available. In some cases, a survivor’s attorney can negotiate in pre-trial settlement to have the perpetrator or third-party add non-monetary items to a settlement agreement. Common examples include apology statements, non-disparagement clauses or mandatory education. If the case goes to trial and a judge or jury awards damages - the remedy will be limited to monetary recovery.</p>

	<p>The amount of a damage award varies considerably and depends on many factors. Damage awards can be based on out-of-pocket losses such as lost wages or medical costs and less calculable losses such as damages for emotional distress. Determining the so-called “worth” of an injury due to sexual violence is a difficult task for the civil justice system, and there is no easy way to quantify the loss.</p>
<p>Terminology</p>	<p>The victim/survivor who files a civil complaint is called the plaintiff. The perpetrator who is being sued is called the defendant. The third party who is also being sued is called the third party defendant or defendant. The document filed in court which sets out the plaintiff’s claims is the complaint. The document filed by the defendant in response is called the answer.</p>
<p><u>Q & A</u></p> <p>How can I find a lawyer to help me determine whether I have a legal claim?</p>	<ul style="list-style-type: none"> • Finding the right lawyer can be difficult in any case, but even more so where the issues involve sexual violence. Lawyers are cautious about giving advice or analyzing a potential case (of any kind) over the telephone. • In searching for a lawyer it is always best to start with referrals from friends, family and others you know. Even if that lawyer can’t help you, he often can refer you to someone who can. • There are few attorneys who specialize in so-called civil “sexual assault” cases. However, attorneys who regularly practice plaintiff’s personal injury or employment law litigation are knowledgeable in these kinds of claims. • Some attorneys will provide a consultation to see if they might be able to provide representation. Others will have paralegals or legal assistants perform an intake evaluation over the telephone to determine whether someone in their firm might be able to provide assistance. • If the first attorney you speak with is uninterested or unable to help, she will often provide a referral to someone else. It is always worthwhile to contact more than one lawyer. • If you don’t have a starting place – there are lawyer referral systems in Minnesota designed to help people find an attorney in the right practice area: <ul style="list-style-type: none"> • National Crime Victim Bar Association www.victimbar.org or 800-FYI-CALL • Minnesota State Bar Association www.mnfindalawyer.com/index.htm • County bar associations may also provide a referral service, including Hennepin County: www.hcba.org/Legal-services/LRIS.htm 612-752-6666
<p>How much will it cost to hire a lawyer? – I don’t think I can afford one.</p>	<p>There are various options for determining an attorney’s fees for pursuing a case.</p> <ul style="list-style-type: none"> • Hourly or Flat Fee – Attorneys often charge an hourly rate for their time or give an over-all fee called a flat fee. It is nearly impossible for most crime victims to afford an attorney with these fees, so this would likely not be the method of billing in sexual violence litigation. • Contingency – Lawyers who work on contingency take a case without charging attorney’s fees upfront. If they are successful at obtaining a settlement or jury award they will then take a portion of that – usually between 30% and 50% of the total award. Since the attorney’s fee depends on whether the perpetrator or the third party can actually <i>pay</i> the money awarded, lawyers are not likely to pursue a case unless the defendants have the ability to pay, or there is insurance coverage

	<p>for some reason. Accordingly, it may take a few contacts and phone calls to find an attorney interested in taking the case. Different lawyers and law firms have drastically different standards and requirements for what kind of case they can take on a contingency basis.</p> <ul style="list-style-type: none"> ● Pro Bono – Lawyers do occasionally take cases free of charge in cases that involve social issues that are important to them, or deserving clients who simply can't pay. Most large law firms have a pro bono committee who helps determine appropriate cases for pro bono work. ● Costs and Fees - No matter what kind of fee arrangement a client has with an attorney, she needs to make sure to understand how filing fees and administrative costs will be handled. Even in pro bono cases, lawyers will sometimes require that out of pocket expenses like filing fees and other costs be paid by the client. These add up quickly and can be substantial.
<p>I have heard that the “burden of proof” is different for a civil claim – what does that mean?</p>	<ul style="list-style-type: none"> ● In <i>criminal</i> cases, in order to convict, the prosecutor must convince the jury “beyond a reasonable doubt” that the alleged perpetrator committed the crime. In a civil case, however, a survivor’s attorney would only need to convince the jury of the claim by a “preponderance of the evidence.” ● Although the distinction does not always seem clear, <i>the civil standard is much easier to meet</i>. The civil lawyer can explain to a jury in the civil case that they only need to believe it is more likely true than not that the allegation occurred, or that the greater weight of the evidence supports the claim.
<p>I was sexually assaulted several years ago, but was afraid to talk about it then, can I still sue now?</p>	<ul style="list-style-type: none"> ● The statutes of limitations, or time limits, for filing a civil claim in court vary considerably for all the above-described claims. The time limits for some claims may be as short as one year or as long as six or more years, depending on the situation. Other considerations include whether the perpetrator or others have continued to harass or otherwise hurt the victim since the original assault. The only way to know for sure whether a claim can still be filed is to seek legal advice.
<p>I live in a small town and I am afraid my call to a lawyer might not be confidential?</p>	<ul style="list-style-type: none"> ● Remind the lawyer you are calling that this is a sensitive issue, that you are talking to the for the purpose of seeking legal advice and that you are concerned about the confidentiality. He or she should be able to set you at ease that they will abide by the ethical requirements and treat your information as private. ● No matter where you live – a good lawyer should always do what is called a “conflict check” <i>before</i> getting information from you about your case. In a “conflict check” the lawyer takes the names of all potentially involved parties and makes sure no one in his or her firm has represented or is representing them. Don’t be surprised if you are asked for information like the names of the parties in advance of any conversation with a lawyer.

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Updated May 2010

*SVJI would like to thank attorney Leondra Hanson for preparing this fact sheet.