

Civil Justice for Crime Victims in Illinois

AN OVERVIEW



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Civil Justice for Crime Victims in Illinois: An Overview

There are three potential types of compensation available to crime victims:

1. Crime Victim Compensation (740 ILCS 45/)

- Crime victims must apply with the Illinois Attorney General's office for *limited* compensation. Click [here](#) for more information and to download application.
- Maximum recovery is \$27,000 – limited to expenses such as medical, counseling, funeral and burial, crime scene cleanup, relocation, lost tuition, etc.
- To qualify, crime must have been reported to law enforcement within 72 hours or seven days for sexual violence; application for compensation must be filed within 2 years

2. Criminal Restitution (730 ILCS 5/5-5-6)

- An amount ordered by judge as part of criminal sentencing to be paid by defendant to victim for out-of-pocket expenses incurred by victim as a result of crime, such as medical bills, property damage, lost wages, etc.
- Restitution order does not guarantee payment; still must be able to enforce and collect judgement against defendant (enforceable in the same manner as a civil judgment)

3. Civil Litigation

- The remainder of this document will discuss civil litigation – civil causes of action or lawsuits that may be brought by crime victims against those responsible to recover damages.

NOTE: Your victim advocate and criminal prosecutor should be able to help determine whether Crime Victim Compensation or Criminal Restitution is available; however, you must contact an experienced attorney to help you determine whether a viable Civil Lawsuit may be available to recover full compensation for the damage caused.

Before discussing civil litigation, we must first distinguish our Two Systems of Justice:

1. Criminal Justice System

- a. Crimes are considered offenses “against the state,” which is why the prosecutor is from the State's Attorney's Office (or US Attorney's Office if it's a federal violation); typically for violations of statutes (written laws).
- b. Crime victims have limited rights and limited involvement (see Rights of Crime Victims and Witnesses Act, 725 ILCS 120/)

2. Civil Justice System

1. Considered offenses “against an individual,” which is why the injured victim (“plaintiff”) brings the action against those individuals or entities responsible for causing damage; typically for violations of “common law” (unwritten laws we brought over from England)

Before deciding to pursue civil litigation, one should consider certain advantages and disadvantages of civil litigation:

Benefits to Civil Litigation

1. Broader Compensation Available

- a. Crime victims often incur a substantial financial burden – putting aside the physical and emotional toll – lawsuits can provide the financial resources to help victims rebuild their lives

2. Hold Those Responsible Accountable

- a. Criminal system holds offenders accountable to society; civil system holds perpetrators – as well as other responsible parties that likely were never held accountable in the criminal court – directly accountable to victims for the harm they caused.
- b. Regardless of what happens in the criminal case, victim always has an independent right to bring a civil action. The burden of proof in a civil case (“preponderance of the evidence”) is lower than it is in a criminal case (“beyond a reasonable doubt”).

3. Control

- a. In civil lawsuit, the crime victim is the plaintiff and therefore can always be in courtroom, must approve any settlement, can choose his or her attorney, and the attorney represents the victim’s interests

4. Lawsuits Make Society Safer by Promoting Change

- a. Individuals and businesses are incentivized to adopt common sense crime prevention measures to reduce their civil liability exposure. For example, change in the practices of the Catholic Church was brought about by civil lawsuits exposing sexual abuse of priests rather than by criminal prosecution.

Drawbacks to Civil Litigation

1. Civil Actions can be Expensive

- a. Litigation expenses include things like filing fees, deposition expenses, hiring investigators and expert witness fees – which, depending on the case, often amount to tens of thousands of dollars.

NOTE: Who pays the litigation expenses? Typically, the lawyer you hire will be paid based on a “contingent fee,” a certain percentage of the settlement or judgment your lawyer will receive only if you prevail in the lawsuit. The lawyer should pay all litigation expenses (out-of-pocket case expenses), which will be deducted from client’s share of settlement or judgment at the end of the case, and the repayment of which may be contingent on the outcome of the matter (see Illinois Rule of Professional Conduct 1.8). In other words, if there is no recovery, the attorney may still pay the expenses.

- b. The problem with civil litigation being expensive is that some cases are not economically feasible for litigation. Before accepting a case, the lawyer must balance the likely time and expense associated with pursuing civil litigation versus the likely recovery.

2. Lawsuits Can Seem Invasive

- a. Victims who pursue a lawsuit likely will have to give a deposition where they will be asked personal, and sometimes difficult questions about the traumatic event(s) and the victim’s background. When victims put their mental health or financial health at issue, their medical, counseling and financial records may be analyzed by the other side.

NOTE: A lawyer with experience representing crime victims and others victims of traumatic events should prepare the victim for what the process will be like and how invasive it can be so they can make an informed decision as to whether litigation is right for them. Our experience has been that substantial repeated preparation with our clients on what to expect, and how to deal with difficult issues, have put their fears and concerns with the process at ease.

3. Civil suits can be slow

- a. In Cook County, once a civil case is filed it usually takes three to four years before the case comes to trial, if the case has not settled before then.

NOTE: Which case should go first? Civil or criminal? Prosecutors nearly always prefer a civil claim to be delayed until a criminal case is resolved. They fear a victim's interest in a civil case may be used to impeach the victim's credibility in the criminal case testimony. This concern is greatest in cases where the victim's credibility is paramount, such as prosecutions for domestic violence or sexual assault. In general, plaintiff attorneys should wait to file the civil action until after the criminal case has concluded. However, sometimes they are limited because of a particular claim's "statute of limitations," the time period in which certain claims must be filed. Yet another reason why it is critical to be represented by an experienced attorney, such as those at Passen Law Group.

Who does the victim sue? There are two categories of potential defendants:

1. First-Party Defendants – the people who actually committed the criminal acts

- **Perpetrator**

- The perpetrator is always a potential defendant in any civil action arising out of criminal conduct. However, collecting a substantial judgment is often difficult, if not impossible, against the perpetrator who does not have significant assets from which to collect.

NOTE: There are sometimes creative ways to frame a complaint (lawsuit) to trigger the perpetrator's insurance coverage – homeowner's, motor vehicle, umbrella, etc.

- **Co-Conspirators or Accomplices**

2. Third-Party Defendants – other people or entities who can also be held civilly liable for the acts, which resulted in significant injury or death to the victim

- **Parents and Legal Guardians**

- Under the Parental Responsibility Law (740 ILCS 115/5), the parents or legal guardians of a minor may be held liable for actual damages – up to \$30,000 – for the willful or malicious acts of the minor which cause injury to a person or property.
- Parents may also be held liable for their own negligence, which contributes to the injury. For instance, a parent may be liable for "negligent entrustment" in giving their car keys to their intoxicated child who is involved in a fatal car crash. *See also* below, "Alcohol and Drug-Related Crimes" for other possible causes of action against parents and legal guardians.

- **Employers**

- In certain cases, employers may be held "vicariously liable" for negligent or intentional conduct of their employees committed "within the scope of their employment." For instance, we were successful in holding a hospital liable for the sexual assault committed by one of its doctors against a student nurse anesthetist under a vicarious liability theory.
- Employers may also be held liable for their own, independent "negligence" (unreasonable conduct), which allowed the criminal acts to occur. Common theories of liability against employers include:
 - "Negligent Hiring" – The employer either failed to conduct a background check or failed to properly investigate the employee's background, leading them to hire a dangerous employee who committed the criminal act, such as a sexual assault or murder. As an example, one Illinois case found a trucking company liable to a sexual assault victim-hitchhiker for failing to investigate a truck driver employer's response on application which would have revealed a history of violent sex-related crimes, including aggravated sodomy of two teenage hitchhikers. Passen Law Group successfully held a hospital liable for negligent hiring and "negligent credentialing" of a doctor who was alleged to have sexually assaulted several women at previous hospitals, and then sexually assaulted our client at the hospital we sued.

NOTE: Under the Job Opportunities for Qualified Applicants Act, 820 ILCS 75/15, employers are prohibited from requesting a criminal record of a job applicant in many types of employment. However, certain jobs still require employers to conduct criminal background checks, such as day care workers, school employees, Emergency Medical Services (EMS) providers, and other jobs where a criminal history is deemed relevant to whether the person should be placed in a certain position.

- “Negligent Supervision or Retention” – The employer knew or should have known of their employee’s dangerous behavior, failed to stop or discipline the behavior, leading to the criminal act committed by the employee. For example, one Illinois case involved an employer who was liable for “negligent supervision” in placing a 16-year-old student in a work-study program with an employee who repeatedly touched her inappropriately in the presence of supervisors and therefore, the employer “knew or should have known” that the employee was a danger to the victim, and failed to protect her against further sexual assault.
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NOTE: Employee-victims may not be able to sue their employer because of the Workers Compensation Act, see “Affirmative Defenses” section below.

- **Nursing Homes**

- Under the Nursing Home Care Act, 210 ILCS 45/3-601, nursing home owners and licensees are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident, including sexual assault. The Nursing Home Care Act provides resident crime victims with substantial ammunition to recover damages against responsible entities.

- **Landlords**

- Landlords may sometimes be held liable for their “negligent security” in maintaining the property in a reasonably safe manner. For instance, one Illinois case involved a landlord who “voluntarily undertook” to provide lighting as a security measure to its tenants. A tenant was raped one night when the lights were not functioning was able to pursue a civil lawsuit against the landlord for its negligence in failing to repair the lighting. Another Illinois case example involved an owner of an apartment complex who was held liable for negligently hiring and retaining a building security employee who accessed a tenant’s room and sexually assaulted the woman victim.

- **Hotels / Innkeepers**

- Hotels may sometimes be held liable for their negligence in allowing a criminal act to occur on their property. Courts have found that innkeepers owe their guests a “duty” to act reasonably in protecting their safety against criminal acts of third-parties. The same duty applies to “business invitees” – where business or property owners invite members of the public onto their property. However, such businesses are only liable for criminal acts that are determined to be reasonably foreseeable, and which could have been prevented with reasonable care. As for the “foreseeability” of the criminal act, that depends on the past criminal activity in the area as well as a number of other factors, including whether any prior similar incidents had occurred on the property.

- **Schools**

- Schools may be held liable for injuries to student crime victims in certain circumstances. For example, a recent Illinois case involved a Montessori School that was held civilly liable for the sexual assault of a two-year-old student committed by one of its employees. Not only did the student have a valid cause of action against the school, but so did the student’s parents who could pursue independent causes of action against the school for fraudulent concealment in the cover-up, intentional infliction of emotional distress and civil conspiracy.

NOTE: See “Constitutional” and “Sovereign Immunity” sections below for additional considerations in lawsuits against schools.

- **Hospitals**

- Hospitals may be held liable in civil litigation for criminal acts committed by its employees in situations similar to those described above. For example, a mother whose newborn baby is stolen from the hospital should have a valid cause of action against the hospital for negligence. Indeed, our firm has had success in holding the hospital liable for the intentional criminal acts of its agents or employees.

- **Bars, Nightclubs, Restaurants, other Merchants**

- There are times when merchants, such as bars, clubs and restaurants may be held liable for the criminal acts that occur on (or even outside) their property. For example, Illinois courts have held clubs liable for providing inadequate or negligent security, which leads to a patron’s serious injuries in a fight with another patron. Courts have found physical altercations in a crowded bar/club to be reasonably foreseeable, and therefore reasonable security measures must be taken to prevent serious injury. Courts have even found clubs liable for injuries occurring outside the property, after the men involved in the fight were thrown out of the club, finding it foreseeable that the men would continue to fight once they were kicked out of the club. See *also* below, “Alcohol and Drug-Related Crimes” regarding possible actions against bars.
- As another example, Passen Law Group represented a woman employee of Public Storage who was murdered while at work by a man who came into the facility and was able to access a private area because of the lack of security measures. Our theory of liability against Public Storage was that they owed a “duty” to protect their employees, “voluntarily undertook” to provide security measures in this high-crime areas, and did so negligently which placed our client at unreasonable risk of violence.

NOTES: The main issues in holding merchants liable for the criminal acts of third-parties will be whether the merchant owed a “duty of care” to the victim, whether the criminal acts were “foreseeable,” and whether there were reasonable steps the merchant could have taken to protect the victim against injury. Also, when the victim is an employee suing the employer, there is a substantial risk that the claim will fall under the Workers Compensation Act, as was the case in our Public Storage case discussed above (see “Affirmative Defense” section below).

- **Physicians / Therapists for Preventing Criminal Acts of Patients**

- Can therapists or physicians be held liable for failing to prevent a criminal act committed by one of their patients? Illinois has two statutes that address that.
- The first is for Therapists, 740 ILCS 110/11, which says that “records and communications may be disclosed. . . when, and to the extent, in the therapist’s sole discretion, disclosure is necessary to warn or protect a specific individual against whom a recipient has made a specific threat of violence where there exists a therapist-recipient relationship or a special recipient-individual relationship.
- The second is for Physicians and Clinical Psychologists, 405 ILCS 5/6-103, which states: “There shall be no liability against any person who is a physician, clinical psychologist, or qualified examiner based upon that person’s failure to warn of and protect from a recipient’s threatened or actual violent behavior except where the recipient has communicated to the person a serious threat of physical violence against a reasonably identifiable victim or victims.”
- In other words, there may be a viable civil lawsuit against a therapist or physician who receives a threat of violent behavior addresses at a specific identified victim, and fails to act reasonably to protect the victim resulting in injuries to the victim.



Alcohol and Drug-Related Crimes

There are various laws against underage drinking, providing alcohol or drugs to minors, and driving under the influence of alcohol or drugs (DUI). In those situations where someone is seriously injured or killed, there is likely a viable civil action against various individuals or entities, including:

- **Intoxicated Driver** (or others who “negligently entrusted” vehicle)
 - Certainly, victims injured in crashes caused by intoxicated drivers have a cause of action against the intoxicated driver for negligent and reckless conduct. If the intoxicated driver was driving another person’s vehicle at the time, there may be a viable claim against the vehicle owner(s) for “negligently entrusting” the vehicle to someone who they knew or should have known was intoxicated or otherwise should not have been driving.

NOTE ABOUT INSURANCE: Injured victims are typically limited on what they can recover in motor vehicle crashes – regardless of the severity of their injuries – by the amount of motor vehicle “liability” coverage of the negligent parties (in Illinois, the minimum coverage is \$25,000) or by the amount of motor vehicle “uninsured motorist” (UM) or “underinsured motorist” (UIM) coverage the injured victim had on her own insurance policy. In other words, if a victim was seriously injured by a drunk driver who only had \$25,000 in liability coverage, but the victim had \$500,000 in UM/UIM coverage on her own policy, she could recover up to \$500,000 from her own insurance company to compensate her injuries. Without such UM/UIM coverage, the victim would likely be limited to a \$25,000 recovery, which typically does not even cover the medical expenses associated with a serious injury. We have found that many people believe they are “fully insured” when in fact they are “underinsured.” We recommend to all our clients that they check their motor vehicle policy and make sure they have enough UM/UIM coverage to protect them and their families against unsafe drivers.

- **Sellers of Alcohol**
 - The Dram Shop Act, 235 ILCS 5/6-21, allows victims who suffer physical injury or injury to property caused by an intoxicated person to sue the business that that sold the liquor, as well as lessors or owners of the property on which the liquor was sold for damages. The plaintiff must prove that the intoxication was caused by consumption of liquor provided by (i.e. sold or given to) a defendant and that the injury was caused by the act of an intoxicated person.

NOTE: Damages are capped under the Dram Shop Act to \$45,000 for personal injury or property damage, and \$55,000 for loss of means of support or loss of society.

- **Social Hosts**
 - Can a victim hold “social hosts” liable for providing alcohol at their home who then becomes intoxicated and injures or kills the victim in a motor vehicle crash? The answer, in Illinois, is it depends.
 - Passen Law Group represented the family of a young girl in a case that went up to the Supreme Court and became the seminal case dealing with social host liability. In *Wakulich*, we represented the mother of a 16-year-old girl, Elizabeth, who was at her friend’s house and was pressured by older men (ages 18 and 21) to drink an entire bottle of Goldschlager. Elizabeth then lost consciousness, and the men placed her in the family room of their home, where they observed her “vomiting profusely and making gurgling sounds.” They refused to drive her home, did not contact her parents, did not seek medical attention, and “actually prevented other individuals at the home from calling 911 or seeking other medical intervention.” Elizabeth died later that day. The Illinois Supreme Court held that while generally there is no social host liability for serving alcohol to minors who are subsequently injured, in this case we were able to hold the defendants liable for their negligence after “voluntarily undertaking” to provide care to Elizabeth.

- The **Drug or Alcohol Impaired Minor Responsibility Act**, 40 ILCS 58/5, now creates a cause of action against any person 18-years-old or older, who willfully supplies alcohol or illegal drugs to a minor (under the age of 18), causing the impairment of such person which results in injury or death. In other words, adult “social hosts” who provide alcohol at their homes to minors can be held liable if the minor becomes intoxicated, resulting in injury or death to himself or third-parties. Adults on non-residential premises who permit minors to consume alcohol on the property can also be held liable.

NOTE: The law is unique in that it allows for the recovery of a wide array of damages, including attorney fees, litigation expenses and punitive damages, and even provides that typical “Affirmative Defenses” (see below) of contributory negligence and contributory willful and wanton conduct are not defenses.

Claims Against the Government

There are times when crime victims must sue the government – whether it’s a municipal police department, public school, state prison or otherwise. Sovereign Immunity – the legal concept that protects the government from civil (or criminal) liability – is a concept that comes up any time there is an action against a governmental unit.

- **State of Illinois**

- The Court of Claims Act, 705 ILCS 505/1, provides that most lawsuits against the State of Illinois fall under the exclusive jurisdiction of the Court of Claims, which caps damages at \$100,000, unless the incident involved the operation of a state-owned motor vehicle by a state employee. Courts have carved out other exceptions to the Court of Claims Act, including actions against doctors employed by the University of Illinois.

- **Counties, Cities and Municipalities**

- The Local Governmental and Local Governmental Employees Tort Immunity Act (“Tort Immunity Act”), 745 ILCS 10/1-101, protects local public entities and public employees from liability arising from the operation of government. In some circumstances, the government is completely immune against liability, in other circumstances the government may still be held liable for acts amounting to “willful and wanton conduct,” which is defined as “a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.”

NOTE: The Tort Immunity Act generally provides immunity for most cases of ordinary negligence. Therefore, the viability of lawsuits against local public entities often depend upon whether the acts amounted to willful and wanton (aka “reckless”) misconduct.

- For example, the Illinois Supreme Court recently held that the City of Chicago and its police officers may be held liable for willful and wanton violations of the Domestic Violence Act, 750 ILCS 60/305. In that case, officers were called to the victim’s home after the victim complained her husband had entered her home in violation of a protective order. The officers drove to the home but waited in their patrol car and left before the husband shot and killed the victim. The Court held the city and police were not immune from the lawsuit alleging willful and wanton misconduct.

- **Federal Constitutional Claims**

There are instances where crime victims may have a valid civil cause of action for violation of their Constitutional rights.

- For example, a victim of domestic abuse may have a viable claim against the police for violation of her “Equal Protection” rights under the Constitution if there is evidence that police protection was provided to persons abused by someone with whom the victim had no domestic relationship, but provided lesser protection when the victim was a woman abused by a spouse or domestic partner.

What about “Section 1983” lawsuits against the government for Civil Rights violations?



NOTE: *What is a §1983 claim?* Section 1983 is part of the Civil Rights Act and creates private causes of action against governmental employees or entities for violations of Civil Rights. To prevail in a claim under section 1983, the plaintiff must prove two critical points: (1) a person subjected the victim to conduct that occurred under color of state law, and (2) this conduct deprived the victim of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution.

The following are examples of §1983 claims arising out of criminal acts:

- Passen Law Group represented a man who arrested late at night while staying at a property owned by a judge, and that same evening the judge convicted and sentenced him to 240 days in jail without any Due Process whatsoever. We were able to prevail in a §1983 lawsuit against the judge for violations of the man's constitutional rights despite the judge's claims to "judicial immunity." In addition to recovering damages for our client, our lawsuit also led to the judge being permanently removed from the bench.
- In another case, a young boy and girl were removed by the County from their parents' home at ages 6 and 3 based on "baseless" accusations of neglect by extended family members, and spent several months in foster care before being returned home. They were successful in suing the County under §1983 for violations of the 4th Amendment "unreasonable seizure" without any investigation, as well as violations of procedural due process following frivolous claims of neglect.
- Another case involved a boy who was sexually abused on multiple occasions by school teacher with history of prior sexual abuse. The boy successfully sued the Board of Education under §1983 for "fostering a climate to flourish where female students were left vulnerable to and subjected to sexual abuse by school teacher" by failing to report suspected abuse to the Illinois Department of Children & Family Services ("DCFS") and failing to train teachers and other school personnel to report suspected sexual abuse despite actual knowledge of sexual abuse.

Torts 101

A tort occurs when a person either intentionally injures another or fails to perform his or her duty of care causing injury to another (negligence).

Intentional Torts include:

- **Battery** (720 ILCS 5/12-3): A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.
- **Assault** (720 ILCS 5/12-1): A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.
- **Fraud:** To prove fraud, the plaintiff must show the following elements: (1) the defendant made specific false statements of material fact; (2) the defendant either knew the statements were false or made the statements in reckless disregard of whether they were true or false; (3) the defendant made the statements with the intent to induce the plaintiff to act; (4) the plaintiff reasonably relied on the truth of the statements; and (5) the plaintiff sustained damages as the result of his reliance.
- **Stalking:** The Stalking No Contact Order Act, 740 ILCS 21, provides for stalking victims to obtain "no contact" orders against perpetrators, but does not allow monetary damages as a remedy for stalking. Although there are other civil causes of action for stalking victims to pursue (such as negligent or intentional infliction of emotional distress (see below)), Passen Law Group is hoping Illinois will join a growing group of states that have civil stalking statutes, which provide a private cause of action for damages, including punitive damages, against stalking perpetrators.

- **Intentional Infliction of Emotional Distress**

- A victim who suffers severe emotional distress caused by someone’s intentional or reckless “extreme and outrageous” conduct may be able to recover damages against that individual for “intentional infliction of emotional distress.” Courts determine whether conduct is “extreme and outrageous” using an objective test on a case-by-case basis. Courts have stated that the conduct must “go beyond all possible bounds of decency.”
- For example, the mother of son who was shot and killed in gang-related incident successfully sued the Chicago Tribune for intentional infliction of emotional distress after a Tribune reporter took unauthorized photographs of her son in private hospital room, eavesdropped on the mother’s final conversation with her son, and used the material in a Tribune article, causing the mother severe emotional distress.

Negligent Torts examples include:

- **Negligent Hiring** (*see above*)
- **Negligent Security**
 - These cases against property owners/lessors/management companies for providing inadequate security often come down to whether the particular crime was “foreseeable.” Evidence of prior crimes can be used to prove foreseeability, but there are other relevant factors as well. Illinois use the “totality of the circumstances” test to determine foreseeability.
- **Negligent Retention or Supervision** (*see above*)
- **Negligent Entrustment**
 - An action for negligent entrustment involves “entrusting a dangerous article to another whom the lender knows, or should know, is likely to use it in a manner involving an unreasonable risk of harm to others.” Examples include a gun owner giving the gun to a known criminal who uses it to commit a crime, or entrusting a car to someone (i.e. a drunk driver or someone without a valid license) who injures someone in a car crash.
- **Identity Theft**
 - Under Illinois law, 720 ILCS 5/16-33, a person who commits or “facilitates” identity theft is liable in a civil action to the person who suffered damages as a result of the violation, including damages for court costs, attorney’s fees, lost wages, and other actual damages.
- **Title IX actions**
 - Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally-funded education program or activity, and allows victims to recover monetary damages and injunctive relief.

NOTE: Title IX has been interpreted by courts to cover teacher-on-student violence, student-on-student offenses, and failure to appropriately respond to a student’s sexual assault, which has effectively barred the victim’s access to an educational opportunity or benefit. The victim must show that the defendant – oftentimes a school or school board – acted with “deliberate indifference” to the violence or harassment of the student.

- **Negligent Infliction of Emotional Distress**

- Similar to intentional infliction of emotional distress (*see above*), but for negligent “outrageous” conduct resulting in severe emotional distress. Direct victims of negligently inflicted emotional distress may recover for mental anguish unaccompanied by physical manifestations of injury. A bystander may also recover damages for negligent infliction of emotional distress if he or she can prove: 1) that he or she was in the “zone of physical danger”; 2) that he or she reasonably feared for his or her own safety because of the defendant’s negligence; and 3) that he or she suffered a physical injury or illness as a result of the emotional distress caused by the defendant’s negligence.

- **Products Liability**

- In products liability actions arising out of defective products, the issue is the safety of the product (“strict liability”) rather than the conduct of defendant (“negligence”). The plaintiff must show the product was “unreasonably dangerous” in its design, manufacturing or inadequate warnings at the time it left the control of the defendant (manufacturer).
- Passen Law Group recently secured a \$10.9 million jury verdict in a product liability action against a chemical manufacturer for its unreasonably dangerous design of a concrete sealer, which was ignited in our client’s home basement resulting in severe burn injuries.

NOTE: Ordinance or law violations can be used as evidence of negligence. For example, in a lawsuit against a school brought by a student who was sexually assaulted by a school employee, evidence that the school never conducted a background check in violation of 105 ILCS 5/34-18.5, which requires a criminal background check of school employees, is evidence of the school’s negligence. Similarly, in a recent product liability case, we were able to use violations of federal labeling requirements as evidence that the product at issue was “unreasonably dangerous.”

Wrongful Death Actions

If someone dies as a result of a tortious injury, the Wrongful Death Act, 740 ILCS 180/1, creates a cause of action in the name of a personal representative – typically the surviving spouse or “next of kin” – for their “pecuniary injuries.”

- “Pecuniary injuries” means the loss experienced by the surviving family, including money, goods, and services as a result of the person’s death. When there are surviving children, it also includes the instruction, moral training, and superintendence of education that the children would have received from the deceased parent. “Loss of society” – the love, companionship, guidance, etc. – from a parent losing a child, spouse or sibling is also recoverable. In addition, the “grief, sorrow and mental suffering” of the surviving spouse or next of kin is also recoverable as damages.

NOTE: There are various rules that determine who may recover under the Wrongful Death Act, and what types of damages are recoverable. For example, adoptive parents are treated the same as natural parents and children. However, foster parents may not bring an action for the wrongful death of a child. Punitive damages are not recoverable under the Wrongful Death Act.

There are Two Types of Damages

1. Compensatory damages

- a. All about the harm the victim suffered; the greater the harm, the greater the compensatory damages.
 - i. Economic damages include things like medical bills, funeral expenses and lost wages, which can be objectively determined.
 - ii. Non-economic damages, such as pain and suffering, emotional distress, grief and sorrow, disfigurement, and loss of a normal life are more subjective but dependent on the nature and extent of trauma to the victim.

NOTE: It is critical to work with an attorney who takes the time to deeply understand the physical and emotional injuries experienced by crime victims, and who is able to communicate the severity of those injuries to opposing counsel, insurance adjusters, and ultimately a jury to ensure that victims are fully and fairly compensated.

2. Punitive damages

- a. All about punishing the defendant and discouraging similar conduct. For some people or businesses, it takes severe financial pain before they start making better decisions.
- b. Punitive damages are rare in Illinois. The conduct must be fraudulent, intentional, or “willful and wanton,” defined as showing an utter indifference to or conscious disregard for the safety of others.
- c. Punitive damages are not allowed in certain cases, such as those involving wrongful death, medical malpractice, or intentional infliction of emotional distress.
- d. There are no caps on the amount of punitive damages. For example, in one Illinois case involving a drunk driver who had five previous DUIs before injuring the plaintiff, the court upheld a \$6 million punitive damages award which more than 60-times greater than the compensatory award, which was less than \$100,000. However, this case came down before U.S. Supreme Court decided *State Farm Mut. Auto. Ins. Co., v. Campbell*, (2003) 538 U.S. 408, in which it struck down a punitive damages verdict with a punitive-to-compensatory ratio greater than single digits, suggesting that punitive damage awards exceeding 10 times the compensatory award will be heavily scrutinized.

Affirmative Defenses to Intentional Torts

An affirmative defense to a civil lawsuit is a fact or set of facts alleged by the defendant that, if proven, defeats or mitigates the legal consequences of the defendant's otherwise wrongful conduct.

- Consent (*Often used in rape cases*)
- Self Defense (*can only use that amount of force reasonable and necessary*)
- Defense of Others (*only defense of people, not defense of property or pets*)

Affirmative Defenses to Negligent Torts

- Comparative Negligence
 - If a plaintiff is found to be 50 percent or less “comparatively negligent,” her damages are reduced by that percent. However, if a plaintiff is found to be 51% or more at fault, she recovers nothing.
- Workers’ Compensation
 - Most lawsuits brought by employees against employers are usually barred by the Workers’ Compensation Act, 820 ILCS 305/. However, if the injuries are not considered “accidental” or did not “arise out of the employment,” the victim may be able to sue the employer.

Statute of Limitations

A statute of limitations is the time period in which you must bring certain types of actions. Different causes of actions have different time periods.

NOTE: When does the clock start? The time period usually begins when the injury occurs. Certain limitations periods may be extended by the “discovery rule”, which means the clock does not start until the victim knew or should have known that the injury was wrongfully caused. There are also many things that can pause (or “toll”) a statute of limitations, such as being a minor (statute doesn’t start until age 18), mental incapacity, and fraudulent concealment by the defendant.

Here are the following statute of limitations in Illinois for common civil actions brought by crime victims:

- **Personal Injury, False Imprisonment or Malicious Prosecution:** 2 years (735 ILCS 5/13-202)
- **Claims based on conduct which constituted first degree murder, Class X felony, or Class 1 felony:** *No limit; may be commenced any time* (735 ILCS 5/13-202.1)
- **Defamation:** 1 year (735 ILCS 5/13-201)
- **Fraudulent Concealment:** 5 years from discovery (735 ILCS 5/13-215)
- **Injury to Personal Property:** 5 years (735 ILCS 5/13-205)
- **Breach of Unwritten Contract:** 5 years (735 ILCS 5/13-205)
- **Personal Injury against the State:** Must give state "Notice" within 1 year (705 ILCS 505/22-1)
- **Against Local Government:** 1 year (745 ILCS 10/8-101)
- **Violations of the Gender Violence Act for Physical Intrusion of a sexual nature:** 2 years (740 ILCS 82/20)
- **Violations of the Gender Violence Act for acts of physical violence:** 7 years (§ 740 ILCS 82/20)

NOTE: Passen Law Group successfully held a doctor liable for sexual assault under the Gender Violence Act, as well the hospital where the doctor worked and committed the assault for "encouraging or assisting" the doctor's gender-related violence.

- **Sexual Exploitation in psychotherapy or professional health services:** 2 years (740 ILCS 140/6)
- **Sex Trafficking under the Predator Accountability Act:** 10 years (735 ILCS 5/13-225)
- **Child Sexual Abuse:** *No limit; may be commenced any time* (735 ILCS 5/13-202.2)

NOTE, however, statute of limitations periods vary greatly among different states. The state where the abuse occurred determines which state's statute of limitations applies. Also, for many years Illinois had a statute of limitations period in which child sexual abuse cases must be filed. The statute of limitations period in place when the victim reached the age of majority (18 years old) controls.

NOTE also that a manufacturer, producer or distributor of obscene material which proximately caused a perpetrator to commit sexual assault or abuse may be sued by the victim of the assault within 3 years of the perpetrators conviction (720 ILCS 5/11-1.80)



Satisfying a Judgment

The major reason why a lawyer may be unable to help a crime victim pursue a civil action is the unavailability of collecting a judgment against those responsible. This is most likely to occur when the only viable defendant is a perpetrator with little assets. Nevertheless, some perpetrators have significant assets to “satisfy” (e.g. “pay”) a judgment, and these are the basic steps to collect a judgment:

1. First, you must receive a “judgment” – a court order specifying the amount of the judgment. For example, an order from a judge saying the defendant must pay the crime victim \$1,000,000 in damages for the injuries caused.
2. Next, the crime victim who received the judgment (now considered a “creditor”) must try to collect the judgment from the defendant (now considered a “debtor”). To determine the assets of the debtor, you must prepare a “Citation to Discover Assets,” which is a sworn statement that you have not been paid, and a request for a hearing to discover what income and assets the debtor has.
3. File the Citation to Discover Assets with the circuit clerk’s office in the court in which the judgment was entered or the county where the debtor lives. Obtain a hearing date and time.
4. Notify the debtor of the hearing by sending a copy of the Notice and the Citation to Discover Assets, as well as a “special notice” (see 735 ILCS 5/2-1402) listing the exemptions to which the debtor is entitled.
5. Attend the Hearing. If debtor shows up, he or she should bring documents regarding his or her assets. The creditor should also be able to ask question to determine where the debtor is employed, how much the job pays, whether the debtor owns any real property, and where the debtor has any bank accounts. Once you find out where the debtor’s money is located, file a Citation to Discover Assets to a Third Party if there is a third party (such as a bank) holding the assets. If the debtor does not show up, you may request a “body attachment,” which means the debtor will be arrested and brought to court for a future hearing.
6. If the debtor’s income and assets are not exempt, the judge will issue an Order instructing to either make payment in full or according to a payment plan.
7. File the Order with the circuit clerk’s office. Send a copy of the Order to the debtor.
8. If the debtor continues not to pay, prepare and file a Petition for Rule to Show Cause – a request to the judge for a hearing to find out why the debtor is not making payments.
9. If still no payment, the court may order other options such as:
 - a. Putting a lien on the debtor’s personal property
 - b. Putting a lien on real estate
 - c. Sheriff’s sale of assets
 - d. Wage deduction (garnishment)

NOTE: Some assets are protected from judgment in Illinois, such as Social Security and disability benefits, life insurance proceeds, and other assets. See 735 ILCS 5/12-1001.

Under the **Criminal Victims’ Asset Discovery Act**, 725 ILCS 145/, crime victims of first degree murder, a Class X felony, or aggravated kidnapping may take the deposition of the perpetrator for the sole purpose of discovering assets for which to attach a judgment.

Insurance Coverage

The easiest way to collect a judgment is where there is an insurance policy that covers the claim for which you received the judgment. Depending on the case, a number of different insurance policies might be triggered including: Homeowner's insurance, Automobile insurance, Umbrella coverage, Business insurance, or Professional Liability insurance. Many of these policies have "exclusions" for intentional acts, however an experienced, skilled attorney may be able to frame the theory of liability in such a way that insurance coverage might apply.

Civil Justice Resources Available to Assist Crime Victims and Victim Advocates

- [Passen Law Group](http://www.passenlaw.com): 312-527-4500 or info@passenlaw.com

Our attorneys are happy to answer any questions you might have. There is never any charge, and the conversations are always confidential.

- National Center for Victims of Crime: 855-4-VICTIM
- Civil Justice for Victims of Crime in Illinois
- Counseling Crime Victims: Practical Strategies for Mental Health Professionals, by Laurence Miller, www.springer.pub.com
- What to do When the Police Leave: A guide to the First Days of Traumatic Loss, by Bill Jenkins, <http://www.willsworld.com/>
- Coping With Traumatic Death: Homicide. A book to help you in your time of need, by Bob Baugher & Lew Cox <http://www.vcv.org/>
- The Compassionate Response: How to Help and Empower the Adult Survivor of Child Sexual Abuse, by Joelle Casteix <http://Casteix.com>



