

..... *A Guide for*

Pennsylvania Crime Victims



*Understanding your
Rights in the Criminal
and Civil Justice Systems*

TABLE OF CONTENTS

- 3 *Introduction*
- 5 *Criminal Justice System Overview*
- 9 *Crime Victim Bill of Rights*
- 14 *Victim Services*
- 17 *Understanding the Differences and Similarities between the Criminal Justice System and the Civil Justice System*
- 19 *Civil Justice System Overview*
- 22 *Statute of Limitations in Civil Cases*
- 23 *Liability*
- 24 *Insurance Coverage*
- 25 *Types of Victims in the Civil Justice System*
- 30 *FAQs of Crime Victims*
- 32 *About the Authors*

INTRODUCTION

If you are reading this handbook, you or a loved one has been the victim of a crime. This is undoubtedly a traumatic, confusing, and life-changing time, and you may be unsure of where to turn next. A victim of a crime suffers tremendous burden, through not only physical pain, but emotional distress, sleepless nights, and time away from work. The physical, emotional, and mental effects of being the victim of a crime may lead to a victim losing their job, their home, and their overall sense of self-worth. Many victims even suffer from post-traumatic stress disorder, which can interfere with day-to-day life.

Victims of crime in Pennsylvania may turn to the many available local services and resources, which can help with coping and recovery. This handbook serves as a guide for victims of crime. It will navigate you through the legal system, provide you with information about available resources in Pennsylvania, and ultimately try to help you reach justice and find peace. Many crime victims are unsure of what to expect after reporting a crime, which can make this process much more intimidating. We hope this handbook allows you to feel more assured throughout the legal process.

As a victim of crime, it's important to follow positive coping strategies. After a trauma, victims should pay special attention to their well-being. Some coping strategies include:

- Finding someone to talk to about how you are feeling, whether a close friend or a counselor
- Keeping a journal
- Re-establishing a daily routine, without overdoing it
- Maintaining a regular sleep routine
- Eating regular, healthy meals

The thought of dealing with the legal system following a crime may be overwhelming at first. It's important to keep track of some information following a crime, as this information may aid you in your fight for justice. Follow this checklist, as this information could prove useful later:

- Get the name and phone number of the arresting officer or investigating agency.
- Know the county where the crime was committed.
- Establish contact with the District Attorney's office.
- Learn the name of the judge assigned to the case and where his/her courtroom is located.
- Make copies of all medical bills (this includes physicians as well as psychologist and counseling bills).
- Keep a running log of missed days at work.

As a victim of crime, it is important to understand that you have options for seeking justice. The criminal justice system seeks to prosecute those who wronged you, but it is not the only avenue you have for seeking justice. The civil justice system presents another opportunity for you to receive compensation for abuse suffered. This handbook will help you understand the procedures of each legal system, so you know what to expect in the months following a crime.

If you are searching for legal advice, speak to a crime victim attorney today about your options. This book serves as a guide to the process but offers no legal advice, as each situation is unique.

CRIMINAL JUSTICE SYSTEM OVERVIEW

The criminal justice system is designed to punish those who violate laws and deter the overall presence of crime. The criminal justice system varies by location, and crimes generally fall within the state or federal justice system. In Pennsylvania, as in most states, prosecution of criminals is the responsibility of law enforcement and the District Attorney's office.

This chapter breaks down the main elements and processes of the criminal justice system.

Who is Involved?

The criminal justice system generally has five key players.

- **Law Enforcement:** These are the officers that take reports for local crimes. They investigate and gather evidence. They may also arrest offenders and may be called upon to give testimony.
- **Prosecution:** Prosecutors, often titled as the District Attorney or United States Attorney, are lawyers who represent the state or federal government throughout the court process. Law enforcement brings evidence to the prosecutor, and the prosecutor may decide whether or not to file charges. It is the job of the prosecutor to present evidence in court, question witnesses, and decide whether to negotiate plea bargains with defendants.
- **Defense Attorneys:** These attorneys defend the accused against the government. They may be assigned by the court or hired by the defendant.
- **Judges:** Judges run courts and make sure that the law is properly applied. They decide whether to release offenders on bail before the trial. In addition, judges oversee trials, accept or reject plea agreements, and sentence convicted offenders.

- **Corrections:** Once an offender is convicted, they may be supervised by a correctional officer in jail, prison, or while on probation or parole. They are responsible for overseeing the day-to-day custody of inmates.

How are Criminal Cases Resolved?

Criminal cases are resolved in one of two ways—through a plea bargain or through a trial. If a defendant accepts a plea bargain or is found guilty in a trial, he or she will be sentenced. While the judge will deliver sentencing, the victim is also an important part of determining the punishment. The victim, or relatives of the victim, may provide a written or oral statement, called a victim impact statement, which details the physical, emotional, and financial effects of a crime. The judge must take the statement into account when deciding on a sentence. A victim is not required to contribute a victim impact statement, but it is a good way to express the negative effects of a crime.

The Criminal Justice System Process

The following list details some of the major steps in the Pennsylvania criminal justice system. Note that the system varies by county and not every case fits this process.

1. **Investigation:** A crime must first be reported to law enforcement to begin the prosecution process. Some crimes, like child abuse, must be reported regardless of whether or not the victim steps forward. Law enforcement collects evidence to help prosecutors understand the details of the crime.
2. **Criminal Complaint:** Once the prosecutor studies the case and questions witnesses, he or she must decide whether to present the case to a local magistrate judge. A complaint is filed or a grand jury may return an indictment. Complaints or indictments are formal notices stating that the defendant is believed to have committed a crime and listing the charges.

3. **Summons or Arrest Warrant Issued:** Once a complaint is filed, the defendant will receive a summons, or for more serious crimes, will be physically arrested. A summons is usually mailed and provides notice of the defendant's preliminary hearing.
4. **Preliminary Arraignment/Hearing:** Once the offender is charged, they are brought before a magistrate judge for an initial hearing. At this point, the judge may decide whether to hold the offender in prison until trial or release them. The judge may also grant bail. At this time the defendant will be asked to plead guilty or not guilty. Then, the Commonwealth must make a prima facie case, meaning that evidence that a crime was committed is present and the defendant is presumed to be the perpetrator. Depending on the county, a law enforcement officer or an Assistant District Attorney represents the Commonwealth. If a prima facie case is presented, the case is held for court.
5. **Information or Indictment:** The District Attorney's office files a formal charging document, called the Information, with the clerk of the Court of Common pleas. The document specifies the charges against the defendant.
6. **Formal Arraignment:** The defendant is then given the copy of the Information and advised of their constitutional rights. Within 30 days of arraignment, the defendant may file various pretrial pleadings.
7. **Pretrial Litigation:** If the defendant and his or her counsel feel they have appropriate grounds, they may file a pretrial pleading and request a hearing prior to trial. Some pretrial examples include a motion to suppress evidence, a motion for severance, or a motion for continuance to postpone the trial. Motions for continuance are common in the criminal justice system. Sometimes the defendant accepts a plea agreement, which requires him or her to plead guilty often in exchange for a lighter sentence or lesser charges. If no plea agreement is made, then the case is scheduled for trial. If a plea deal is accepted, the next step is sentencing.

8. **Trial:** If the defendant moves forward with a trial, a jury trial or non-jury trial may occur. In trial, the Assistant District Attorney must establish the defendant's guilt beyond a reasonable doubt. In a jury case, the jury must return a unanimous verdict. In a non-jury trial, the judge must return the verdict. If found not guilty, the defendant is discharged. If found guilty, the defendant may be sentenced immediately or sentencing may be deferred.
9. **Sentencing:** Before sentencing occurs, a local probation officer may prepare a pre-sentencing investigation report detailing the crime and the defendant's history, if the judge orders it. The defendant, his or her counsel, and the Assistant District Attorney are present at the sentencing hearing. In Pennsylvania, some crimes carry a mandatory minimum sentence. For example, sexual assault crimes carry a minimum sentence and mandatory registration as a sex offender under Megan's Law. The judge may also consider alternatives, such as a fine, community service, a jail or prison sentence, probation, or a combination. The judge may also order the defendant to make restitution to victims for out-of-pocket expenses.
10. **Post-Sentencing:** A defendant may be sentenced to jail or prison time and may also be placed on probation. Conditions of probation may include completion of community service and counseling programs, as well as restitution to the victims. A defendant may also appeal the conviction or sentence.

CRIME VICTIM BILL OF RIGHTS

Beginning in the 1980's, U.S. states began passing laws to protect the rights of crime victims as their cases travel through the criminal justice system. Many of these rights ensure the victims' safety. For example, in Pennsylvania, victims must be notified of a criminal defendant's release from jail or escape from a correctional or mental facility. In addition to the passing of these laws, District Attorneys' offices began employing victim advocates to provide service and support for crime victims.

The state provides these services as a way to ensure that victims are treated with dignity and respect, and certain services help victims to feel empowered rather than helpless. Many Pennsylvania institutions work to provide these rights, including local law enforcement offices, the prosecutor's office, the Board of Probation and Parole, and the Department of Public Welfare. See the Pennsylvania Crime Victims Act below for more details about these rights.

PENNSYLVANIA STATUTES
TITLE 18. CRIMES AND OFFENSES
CHAPTER 2. CRIME VICTIMS ACT
CHAPTER 2. CRIME VICTIMS
SUBCHAPTER A. BILL OF RIGHTS
18 P.S. § 11.201 (2009)
§ 11.201. Rights

Victims of crime have the following rights:

1. To receive basic information concerning the services available for victims of crime.
2. To be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case. This paragraph includes all of the following:
 - i. Access to information regarding whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.

- ii. Immediate notification of a juvenile's preadjudication escape from a detention center or shelter facility and of the juvenile's subsequent apprehension.
 - iii. Access to information regarding the grant or denial of bail to an adult.
 - iv. Immediate notification of an adult offender's pretrial escape from a local correctional facility and of the offender's subsequent apprehension.
3. To be accompanied at certain criminal and all juvenile proceedings in accordance with 42 Pa.C.S. § 6336(d) (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.
4. In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office or juvenile probation office, as appropriate to the circumstances of the case, on the potential reduction or dropping of any charge or changing of a plea in a criminal or delinquency proceeding, or, diversion of any case, including an informal adjustment or consent decree.
5. In cases involving a personal injury crime, to receive notice and provide comment to the sentencing court when the prosecutor's office requests an eligibility requirements waiver as part of Recidivism Risk Reduction Incentive (RRRI) sentence (61 Pa.C.S. § 4504).
6. To have opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. The written statement shall be included in any predisposition or pre-sentence report submitted to the court. Victim-impact statements shall be considered by a court when determining the disposition of a juvenile or sentence of an adult (18 P.S. § 11.201).

- i. To have notice and to provide prior comment on a judicial recommendation that the defendant participate in a motivational boot camp (61 Pa.C.S. § 3905), known as the Motivational Boot Camp Act.
 - ii. To have notice of and to provide comment on defendant's medical release petition submitted to the court and to receive notice of final adjudication (42 Pa. C.S. Section 9777).
 - iii. Upon request of the victim of a personal injury crime, to have the opportunity to submit written comment or present oral testimony at a disposition review hearing, which comment or testimony shall be considered by the court when reviewing the disposition of the juvenile.
7. To be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the expeditious return of property which is seized as evidence in the case when in the judgment of the prosecutor the evidence is no longer needed for prosecution of the case (18 Pa. C.S. 1106(c)).
8. In personal injury crimes where the adult is sentenced to a State correctional facility, to be:
 - i. Given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement;
 - ii. Provided immediate notice of an escape of the adult and of subsequent apprehension; and
 - iii. Given the opportunity to receive notice of and to provide prior comment on a recommendation sought by the Department of Corrections that the offender participate in a motivational boot camp pursuant to the Motivational Boot Camp Act.

9. In personal injury crimes where the adult is sentenced to a local correctional facility, to:
 - i. Receive notice of the date of the release of the adult, including work release, furlough, parole, release from a boot camp or community treatment center placement (42 Pa. C.S. Section 9813); and
 - ii. Be provided with immediate notice of an escape of the adult and of subsequent apprehension.
10. If, upon the request of the victim of a personal injury crime committed by a juvenile, the juvenile is ordered to residential placement, a shelter facility or a detention center, to:
 - i. Receive prior notice of the date of the release of the juvenile, including temporary leave or home pass.
 - ii. Be provided with:
 1. immediate notice of an escape of the juvenile, including failure to return from temporary leave or home pass; and
 2. immediate notice of re-apprehension of the juvenile.
 - iii. Be provided with notice of transfer of a juvenile who has been adjudicated delinquent from a placement facility that is contrary to a previous court order or placement plan approved at a disposition review hearing and to have the opportunity to express a written objection prior to the release or transfer of the juvenile.
11. If the adult is subject to an order under 23 Pa.C.S. Ch. 61 (relating to Protection From Abuse Act) and is committed to a local correctional facility for a violation of the order or for a personal injury crime against a victim protected by the order, to receive immediate notice of the release of the adult on bail (18 P.S. Section 11.201).

12. To receive notice if an adult is committed to a mental health facility from a State correctional institution and notice of the discharge, transfer or escape of the adult from the mental health facility.
13. To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the bureau.
14. To be notified of the details of the final disposition of the case of a juvenile consistent with 42 Pa.C.S. § 6336(e) (relating to conduct of hearings).
15. Upon the request of the victim of a personal injury crime, to be notified of the termination of the courts' jurisdiction.

HISTORY: Act 1998-111 (S.B. 1192), § 201, approved Nov. 24, 1998, eff. immediately.; Act 2000-86 (S.B. 1224), § 2, approved Oct. 30, 2000, eff. in 60 days.; Act 2002-85 (S.B. 380), § 1, approved June 28, 2002, eff. in 60 days.

VICTIM SERVICES

Pennsylvania is home to a number of organizations that offer services for victims of abuse. If you or a loved one needs support, consider contacting one of these Chester, Delaware, Philadelphia, or Montgomery County organizations.

Chester County:

Organization	Contact Info	Services
Chester County Department of Children, Youth and Families	(610) 344-5800 601 Westtown Road, Suite 310 West Chester, PA 19380	Social services for children and families
Crime Victims' Center of Chester County	(610) 692-1926 135-137 W. Market Street West Chester, PA 19382 www.cvcofcc.org	Free legal, financial, and emotional support for victims of all crimes
Domestic Violence Center of Chester County	(610) 431-3546 (888) 711-6270 www.dvccc.com	Free counseling, legal advice, shelter, and more for victims of domestic violence

Delaware County:

Organization	Contact Info	Services
Children and Youth Services: Child Sexual Abuse Center	(610) 891-5258 100 W. 6th Street Media, PA 19063 www.co.delaware.pa.us/humanservices/chilyouth.html	Resources for victims of child sex abuse
Delaware County Women Against Rape	(610) 692-1926 135-137 W. Market Street West Chester, PA 19382 www.cvcofcc.org	Counseling, accompaniment, and compensation assistance to victims of sexual assault
Domestic Abuse Project of Delaware County	(610) 565-6272 14 W. Second Street Media, PA 19063 www.dapdc.org	Medical, legal, housing, and counseling services for victims of domestic abuse
Family Support Line	(610) 891-5275 100 W. 6th Street, Suite 2 Media, PA 19063 www.familysupportline.org	Prevention, treatment and training for the trauma of child abuse

Delaware County Cont'd:

Organization	Contact Info	Services
Senior Victim Services	(610) 627-2292 20 S. Olive Street, Suite 303 Media, PA 19063 www.seniorvictims.org	Services and support for elderly victims
Office of the District Attorney Victim Witness Assistance Unit	(610) 891-4227 Delaware County Courthouse 201 W. Front Street Media, PA 19063 http://www.delcoda.com/	Information on victims' rights and services in the criminal justice system

Montgomery County:

Organization	Contact Info	Services
Laurel House	(610) 277-1860 (800) 642-3150 www.laurel-house.org	Shelter, support and information for victims of domestic violence
Lincoln Center for Family and Youth	(610) 277-3715 www.thelincolncenter.com	Resources and counseling for the whole family
Montgomery County Victim Services	(610) 278-3144 Montgomery County Courthouse P.O. Box 311, Floor 4 Norristown, PA 19404 www.montcopa.org/da	Legal advice and support for Montgomery County victims of all crimes
Victim Services Center of Montgomery County	(610) 277-0932 (888) 521-0983 325 Swede Street, Floor 2 Norristown, PA 19401 www.victimservicescenter.org	Advocacy, counseling, prevention, and legal advice for crime victims
Women's Center of Montgomery County	(610) 279-1548 (800) 773-2424 www.wcmontco.org	Legal, financial, emotional, and housing support for victims of domestic violence

Philadelphia:

Organization	Contact Info	Services
Center City Crime Victims Services	(215) 665-9680 1315 Walnut Street, Suite 320 Philadelphia, PA 19107 www.cccvs.org	Complimentary assistance for victims and witnesses of crimes
Philadelphia County Victims Services Office of the District Attorney	(215) 686-8027 The Widener Building Three South Penn Square Philadelphia, PA 19107 www.phila.gov/districtattorney	Provides support and services for victims of crime in Philadelphia, and specialized services for elderly victims
Philadelphia Juvenile Victim Services	(215) 686-4095 (215) 686-7604 1801 Vine Street Philadelphia, PA 19103	Services for victims of juvenile offenders and juvenile victims of adult offenders
North Central Victim Services	(215) 763-3280 1415 N. Broad Street, Suite 222 Philadelphia, PA 19122 www.northcentralvictimsservices.org	Help for victims of all crimes in the 22nd and 23rd Police Districts
Northeast Victim Services	(215) 332-3888 Revere Commons, Suite 4 2824 Cottman Avenue Philadelphia, PA 19149 www.nevs.org	Advocacy, support, and assistance for victims of crime in the 2nd, 7th, 8th, and 15th Police Districts
Northwest Victim Services	(215) 438-4410 6301 Germantown Avenue 2nd Floor, Suite 1 Philadelphia, PA 19144 www.northwestvictimservices.org	Support, advocacy, and assistance for crime victims in the 5th, 14th, 35th, and 39th Police Districts
SeniorLAW Center	(215) 988-1244 Two Penn Center 1500 JFK Blvd, Suite 1501 Philadelphia, PA 19102 www.seniorlawcenter.org	Protection of the rights of older Pennsylvanians
Victim/Witness Services of South Philadelphia	(215) 551-3360 1426 South 12th Street Philadelphia, PA 19147 www.vwssp.org	Direct assistance and support for crime victims, witnesses, and families in the 1st, 3rd, and 17th Police Districts
Women Organized Against Rape	(215) 985-3315 (215) 985-3333 One Penn Center 1617 JFK Blvd, Suite 1100 Philadelphia, PA 19103 www.woar.org	Counseling, prevention education, and advocacy for the rights of victims of sexual assault

UNDERSTANDING THE DIFFERENCES AND SIMILARITIES BETWEEN THE CRIMINAL JUSTICE SYSTEM AND THE CIVIL JUSTICE SYSTEM

Victims of crime in Pennsylvania have the opportunity to seek justice through both the criminal and civil justice systems. The criminal justice system seeks to punish criminal offenders by imposing a variety of sanctions, such as probation, community service, electronic home monitoring and, in the most severe cases, imprisonment. Oftentimes a crime victim is awarded restitution for out-of-pocket expenses, such as medical bills. This restitution is ordered by the court, but is often difficult to collect, especially if the criminal is in jail or indigent.

Unlike the criminal justice system, the civil justice system may provide victims an opportunity to receive compensation for physical, emotional, and economic damage caused by a crime. Many key factors separate the two systems, and oftentimes victims of crime aren't always aware that each system handles cases differently.

The main differences between the criminal justice system and civil justice system are as follows:

1. Criminal cases are handled by a lawyer called a prosecutor, or District Attorney, as crimes are considered a harm against society. In a criminal case, the prosecutor represents the victim as well as society as a whole. In a civil case, the victim engages his or her own lawyer to pursue compensation from the criminal defendant for the harm suffered.
2. Punishment varies. Most civil cases result in monetary damages, while criminal cases can result in jail time or probation.
3. The standard of proof is different for each system. In the criminal justice system, crimes must be proved "beyond a reasonable doubt." Civil cases are proved by a lower standard, such as "the preponderance of evidence."

4. Both criminal and civil cases usually allow for trial by jury, but may also be decided by a judge without a jury.
5. In a criminal case, the defendant is entitled to an attorney. If he or she cannot afford one, the state must provide an attorney. In a civil case, the defendant must pay for a lawyer or defend him or herself.
6. Under criminal law, defendants have many protections, such as the right to be free from unreasonable search and seizure. Many of these protections are not available to a defendant in a civil case.

The O.J. Simpson Case

One example that shows the differences between the criminal and civil justice systems is the O.J. Simpson case. O.J. Simpson was found not guilty of murdering Nicole Brown Simpson and Ronald Goldman, as judged by a criminal court jury in 1995. However, two years later, a civil court found O.J. Simpson responsible for the deaths of the victims. The civil suit was filed by the families of Brown and Goldman and resulted in a reward of over \$40 million in damages.

In order to understand why this happened, you must consider the burdens of proof required in both legal systems. In the criminal system, the case against the defendant must be proved beyond a reasonable doubt. In an unlawful death civil case, the plaintiff has to prove that the defendant's intentional, negligent, or reckless conduct resulted in the victim's death. This is based off of the preponderance of evidence, which is a lesser burden of proof than in a criminal case.

In the case of O.J. Simpson, a criminal jury did not find the accused to be guilty beyond a reasonable doubt. The civil jury found it "more than likely" that he caused the death of the two victims. The scales must tip ever so slightly in the victim's favor. Thus, victims that do not receive justice in the criminal system may still have an opportunity to do so in the civil system.

CIVIL JUSTICE SYSTEM OVERVIEW

The civil justice system is an avenue for victims of crimes to receive justice separate and apart from the criminal system. While criminal cases involve a defendant who broke the law, civil cases are most commonly legal disputes between two or more people. Victims of crime can turn to the civil justice system to receive justice, even when there has already been a criminal trial. Rather than facing jail time, defendants may have to pay monetary damages or forfeit property as restitution for the victim's pain and suffering. Even after a criminal case is over, many crime victims feel they have not been properly compensated for medical bills, time away from work, or even emotional distress.

Unlike in criminal cases, the civil justice system can protect the privacy of the crime victim. Personal information can be redacted from court documents, records may be sealed, and confidentiality agreements can be included in settlements. Additionally, wrongdoing in a civil justice case does not need to be proved beyond a reasonable doubt. Instead, the victim and his or her counsel must convince the jury or judge by "preponderance of the evidence," or provide evidence that is more persuasive than that of the opponent(s).

This chapter breaks down some of the main elements of the civil justice system.

Who is Involved?

Every civil case is different, and the parties involved in each case vary according to the specifics. In addition to the plaintiff and defendant, possible involved parties include:

- **Attorney:** An experienced crime victim attorney will guide the victim through the civil justice system. He or she will investigate the crime and identify liable parties, as well as represent the victim in court. Hiring an attorney is not mandatory, but an experienced lawyer will limit difficulties in the court process.
- **Judge:** Even in the civil justice system, judges are imperative in the resolution of a lawsuit. They listen to depositions, reports, and in non-jury cases, are the sole decision-makers when it comes to the

verdict and damages. Judges often hold settlement conferences in an attempt to resolve the case before trial.

- **Third-Party Defendants:** In many civil cases, third-party defendants are involved. These are individuals or entities who did not personally commit the crime but may be liable due to some contribution or negligence. This group often includes restaurants, bars, landlords, schools, religious institutions, employers, and property owners.
- **Experts:** Often, experts will be called into civil suits to report on the damages and liability. If a property owner failed to provide working window locks, an expert in security may report that he or she was negligent and is then liable for the injury a tenant suffered after a break-in. Both sides are able to call in experts, and they are often necessary to provide sufficient evidence in the case.

How are Civil Cases Resolved?

Once depositions are finished, all parties prepare cases to go to trial or to reach a settlement. Most civil cases end in agreement or settlement, but if the parties can't agree, the case may go to trial. However, disagreeing parties have the options of mediation and arbitration to attempt to reach a settlement.

If the civil case does reach trial, it follows much of the same format as a criminal case. Civil cases can enter into either a jury or non-jury trial. Both sides have the option to appeal the verdict, and settlements are often reached if an appeal has been granted.

The Civil Justice System Process

The following list details some of the major steps in the Pennsylvania civil justice system. Note that the system varies by county and not every case fits this process.

1. **Investigation:** The specifics of the injury/abuse need to be determined, as well as the responsible parties. In civil cases, the criminal defendant may not be the only one to bear liability. Depending on the specifics of the case, a school, religious institution,

bar, restaurant, or property owner could also be liable.

2. **Complaint:** The victim then files a complaint against the criminal defendant as well as any other responsible parties with the Court of Common Pleas. The complaint is a formal document describing the injury and how the defendant and other liable parties contributed to the victim's injury. In circumstances where the attorney does not have enough information to file a lawsuit, he or she can file a writ of summons, allowing them to subpoena documents and other information needed to gain that information and file a complaint.
3. **Types of Civil Lawsuits:** Victims can file claims to bring about civil action. Possible claims may include assault, battery, intentional or negligent causation of emotional harm, negligence, and wrongful death.
4. **Discovery Phase:** Once all parties are notified of the complaint, the case enters the discovery phase where all parties disclose to one another information about the case. The information exchange comes through the answering of interrogatories, which ask questions about facts, potential witnesses, and other documents.
5. **Depositions:** This phase is when involved parties and witnesses testify under oath about the case. However, depositions take place in the attorney's office rather than a courtroom. Typically, only the involved parties, the attorney, and a court reporter are present. Many cases' outcomes are determined by the depositions.
6. **Reports:** In most civil cases, experts will write reports about the specific damages or liability. For example, doctors and psychologists may report on physical and emotional damage suffered by the victim. Additionally, various experts may report on negligence that makes a party liable for the injury. Both the plaintiff and defendant can rely on expert reports to make their case.
7. **Pretrial Motions:** After depositions and reports are complete, both sides may file pretrial motions. Most commonly, the defense attorney will file a motion for a summary judgment, which asks the court to throw away or dismiss the case due to a lack of facts or rule of law that supports the defendant. An experienced lawyer is necessary to defend against these motions.

8. **Settlement:** Because the cost of going to trial is so high, the majority of civil cases end in a settlement. In Pennsylvania, the court typically requires a settlement conference before setting a trial date.
9. **Trial:** If the civil case goes to trial, it unfolds in a manner similar to criminal trials. Parties have the choice between a jury trial, where the verdict is determined by a jury, and a bench trial where the judge solely decides on a verdict. Remember, though, the standard of proof in the civil justice system is lower than in the criminal system. Cases must be proved by a “preponderance of evidence.”

STATUTE OF LIMITATIONS IN CIVIL CASES

Often, crime victims do not come forward to report abuse until after a substantial amount of time has passed. However, the Commonwealth of Pennsylvania’s statute of limitations restricts the time a victim can file a lawsuit against the responsible parties. Because every personal injury case is different, it is important that each case be carefully analyzed by an experienced crime victim personal injury lawyer at the earliest opportunity.

Two Year Statute of Limitations

As in most states, the statute of limitations in Pennsylvania is **two years**. In most cases, this means that victims have two years from the date of their injury to file a civil lawsuit. However, the statute of limitations is different for minors. **VICTIMS WHO WERE MINORS WHEN THEY WERE INJURED HAVE TWO YEARS FROM THE DATE THEY TURN 18 TO FILE A LAWSUIT.**

Statute of Limitations in Child Sex Abuse Cases

In 2002, Pennsylvania legislature extended the statute of limitations for victims of child sex abuse. Previously, victims had five years after their 18th birthdays to file a lawsuit. The 2002 amendment extended that by seven years, meaning victims who were sexually

abused as minors now have until their 30th birthdays. This special statute of limitations is not retroactive, so it does not apply to victims who turned 18 before its enactment in 2002.

Exceptions to the Statute of Limitations

There are certain exceptions to the statute of limitations in Pennsylvania. The first is fraudulent conduct or concealment, where the defendant attempts to conceal his/her crimes in various ways, including threatening the victim. Another exception is the discovery rule, which states the victim has two years to file a lawsuit after he or she has discovered he or she was injured by the defendant. Finally, mental incompetence at the time of the crime can also affect the statute of limitations.

LIABILITY

What many crime victims do not know is that they have the right to file a civil lawsuit against not only the perpetrator, but any other parties who unreasonably failed to prevent the crime. There are varying types of claims that hinge upon the unique circumstances of each case.

Failure to Report or Prevent Sex Abuse

Although we usually prefer to mind our business unless we know all the details, sex abuse and especially child sex abuse, are cases that need to be reported as soon as there is suspicion. Oftentimes the abuser is someone the child trusts, like a teacher or priest, which may mean extensive abuse. In addition to the abuser, the school and religious institution could be legally responsible for abuse if they did not take the proper action to report suspected abuse. These parties could also be liable if they took action to hide the abuse.

Negligent Hiring/Negligent Retention

In some cases, a business or employer could be liable for injury if the proper precautions aren't taken when hiring an employee, or when a violent employee is negligently retained. For example, if a

proper background check is not conducted or the employer hires and/or retains someone despite knowing he or she has a violent background, the employer or business could be liable if a co-worker or patron is injured by that person.

Failure to Protect Others from Criminal Activity

In Pennsylvania, law requires landowners or property management companies to foresee potential crime on properties and provide adequate security or warnings. This applies to restaurants, hotels, shopping centers, and similar establishments. It also applies to apartment complexes. Examples of this liability include landowners and property managers who fail to warn and take adequate security measures after break-ins. It also applies to landlords who provide inadequate lighting or faulty locks, which give a criminal access to the property.

Dram Shop Liability

If an intoxicated person or minor is served alcohol and later causes injury to themselves or a third party, the bar, restaurant, or social host may also be liable for the injury. A common example of dram shop liability is when a drunk driver gets into an accident after being over-served at a bar. If death or injury occurs in that accident, the establishment could be liable, in addition to the driver.

INSURANCE COVERAGE

Crime victims have a right to receive compensation for damages like pain and suffering, and usually receive that compensation in the form of financial recovery as part of a civil judgment. In some cases, other parties, in addition to the criminal defendant, are responsible for the crime, in which case insurance coverage may offer financial recovery for the victim.

The two major forms of insurance used as financial recovery for crime victims are commercial liability insurance and homeowners insurance. In both cases, most policies will only provide coverage if the acts of the insured were unintentional and not criminal. This means that typical

cases where insurance may be used as a source of recovery involve an act of negligence, like failing to lock a door or unreasonably failing to discover abuse.

TYPES OF VICTIMS IN THE CIVIL JUSTICE SYSTEM

The civil justice system gives victims in a variety of cases an opportunity to seek justice. This chapter breaks down some of the most common types of civil cases and provides examples of real cases. Please note that initials are used in cases of a more sensitive nature to protect the victims of the crimes.

Sexual Abuse

By definition, sexual abuse is a crime in which the perpetrator forces the victim into a sexual act by violence or threat. However, the aftermath is not so black and white. Sex abuse is a deeply personal crime that often causes victims to feel ashamed and hesitant to report it. Victims of sexual abuse deal with their physical and emotional injuries in different ways, and feeling normal again can sometimes be quite a journey. Victims of sexual abuse have the opportunity to seek justice in two ways— the criminal justice system and the civil justice system. While the criminal system can punish your assailant with jail time, the civil system helps you seek compensation for your injuries.

The following case provides an example of how the Pennsylvania legal system aided victims of sexual abuse:

Jerry Sandusky, longtime defensive coordinator for Penn State University, made headlines when he was convicted of child sex abuse in 2012. In June 2012, Sandusky was convicted of 45 counts of sexual abuse and sentenced to 30 to 60 years in prison. Numerous men came forward claiming they had been sexually abused by Sandusky as children.

Many of the victims that came forward filed a lawsuit against Penn State. By August 2013, 25 men who claimed they were abused by Sandusky as children had settled lawsuits totaling millions of dollars with the university.

Assault and Battery

Assault and battery are serious, physical crimes that cause physical, as well as, psychological trauma. Assault occurs when someone intends to cause you physical injury, even if they were not completely successful. If the assailant was successful, the correct charge may actually be battery. However, you should consult a legal professional to be sure. Violent crimes can cause a myriad of symptoms for the victim, occasionally including post-traumatic stress disorder.

The case example below demonstrates how the Pennsylvania legal system helps victims of assault and/or battery find justice:

In 2014, G.W. was a patron at a West Chester, PA bar. G.W. went to the bathroom at the bar, and as he exited the men's room, he was assaulted by an intoxicated patron. G.W. was struck over the head with a beer bottle and suffered severe head and face injuries, along with hearing loss.

In the criminal case, the assailant was arrested and sentenced for assault. G.W. also filed a civil case against the bar patron and the bar where the assault took place. With the help of his lawyers (Luongo Bellwoar LLP), G.W. received a substantial monetary settlement from the civil suit.

Negligence/Recklessness

You can become the victim of a crime when others do not take the proper action to ensure your safety. Defendants are often found guilty of negligent crimes when they failed to see or prevent a crime that would have occurred to an ordinary person. Recklessness occurs when a person acts without regard for the safety of others, thus putting victims in harm's way. Anyone can become the victim of negligent and reckless crimes, whether they are assaulted by a coworker, injured by a drunk driver, or anything in between. Often, these are senseless crimes where the victim was simply in the wrong place at the wrong time.

Take a look at this case example to see how a victim of negligent and reckless crimes sought justice through the legal system:

On November 11, 2001, S.P. was the victim of a shooting in a Kennett Square, PA bar. The bullet, which was accidentally fired, grazed the hand of the shooter, the ear of another victim, and hit S.P. in her right eye, completely destroying it. The shooter was sentenced to 11.5 to 23 months in prison that January. However, this didn't restore S.P.'s quality of life.

As a child, S.P. suffered an accident that left her blind in her left eye. After this incident in 2001, she was completely blind and unable to care for herself. She was forced to move back in with her 62-year-old mother, who had gone back to work in order to support her. With the help of her attorneys (Luongo Bellwoar LLP), she was able to file a civil suit against the defendant/shooter as well as the bar where the accident occurred. The suit argued that the shooter, as well as the establishment, acted negligently and recklessly, wrongly causing injury to S.P. The case reached a confidential settlement before trial, and S.P. received a substantial monetary settlement, which was enough to take care of her for the rest of her life.

Priest/Clergy Abuse

The Vatican recently reported that 848 priests have been defrocked for sexual abuse since 2004. There has been extensive media coverage of these cases, many of which involve the abuser as well as other parties who helped hide the abuse. As seen in the news, some victims weren't motivated to report the abuse until seeing their abuser or other abusers in the media. Because many sexual abuse victims wait until adulthood to report these crimes, the state of Pennsylvania extended the statute of limitations for sexual abuse cases in 2002. Now, victims have until their 30th birthdays to report sexual assault that occurred while they were minors. Although, this new statute of limitations only applies to cases where the victim turned 18 after 2002.

The following case example displays some of the ways in which the criminal and civil justice systems are able to aid victims of priest and clergy abuse:

In September 1982, Rev. Carmen Sita was arrested for abusing a teen boy multiple times in Jersey City. He pleaded guilty and was sentenced to five years of probation, then was sent to New Foundations House in Albuquerque, NM. In one year, he legally changed his name to Gerald Howard and joined the Saints Peter and Paul parish in Boonville, MO. While there, he continued to sexually assault minors although the crimes were not reported until much later.

In 2009, the Newark Archdiocese paid \$225,000 of a \$600,000 settlement to a man who said Howard abused him and supplied him with drugs in Missouri between 1983 and 1988. He was arrested and charged in 2010 with forcible sodomy and the kidnapping of 3 Missouri boys in the 1980's. In June 2014, he admitted to forcing the teenagers into sex acts and was given two concurrent 12-year sentences.

Nursing Home Neglect/Abuse

When you place your elderly loved ones into a nursing home, you are trusting the staff to give them the best care possible. Unfortunately, sometimes individuals take advantage of this situation. In many of these cases, the victims do not have the ability to share stories of the abuse with others so it goes unreported. With the help of criminal injury lawyers, you can make sure your loved one receives compensation for the emotional and physical trauma forced upon them.

In some cases, individuals other than the perpetrator may also be found liable for the abuse if they failed to prevent or report it. In Pennsylvania, liability is based on case law which establishes a certain standard of care for professionals in nursing homes.

The following case provides an example of how the legal system handled a recent elder abuse case:

In 2011, 82-year-old Pauline Cook was found dead in her room at an assisted-living facility at Park Pointe Village. A nurse named Braquette Wykina Walton confessed to killing Cook in 2012 after she stole several checks from Cook, withdrawing \$1,200. Cook notified

staff about the fraud in November 2011 after finding checks made out to Walton. Walton was alerted of criminal accusations against her by another employee and later smothered Cook in her sleep, beating her and dragging her to a shower.

After Cook's death, her daughter filed a civil suit against two employees of Park Point Village, including Walton's supervisor and a chef employed with the community. The complaint states that the supervisor chose to take no immediate action against Walton, including preventing her from entering the premises, alerting staff or changing her work schedule. The complaint alleged Park Pointe Village failed to protect Cook from "foreseeable criminal acts," provide adequate security measures, and prevent Walton from gaining access to Cook. The case settled in the amount of \$1.5 million.

Dram Shop

Under Pennsylvania's Dram Shop law, a business or individual who gives alcohol to a visibly intoxicated person is legally responsible for any damage that person might cause. Pennsylvania's Dram Shop law applies not only to businesses that serve alcohol, like bars and restaurants, but also to private events. The law may apply when the server has committed other liquor violations, such as serving alcohol to a minor, serving alcohol after hours, or serving without a license. In that case, the business or individual who served alcohol illegally may be criminally charged for the violation, as well as sued for financial damages by the victims of the person they allowed to become intoxicated.

The following case provides an example of how victims in Pennsylvania may seek justice against a bar or restaurant establishment:

In 2005, J.P., 24, was at a restaurant in East Marlborough, PA with some friends. After leaving the establishment, J.P. got in the car with driver, S.C., who eventually lost control of his vehicle, causing the death of J.P. and one other passenger. When he was tested after the crash, S.C. had a blood alcohol level of .125, which is above the state's legal .08 limit.

Following the crash, attorneys representing J.P.'s parents (Luongo Bellwoar LLP) sued the restaurant claiming they improperly served alcohol to the driver of the car, in which their son was a passenger when he was killed. The suit contends bartenders and servers at the restaurant continued to give drinks to the driver after he was clearly drunk, and even went so far as to help him to his car and get him behind the wheel of the pickup truck. The suit also contends the establishment did not have trained personnel at the restaurant that night who were familiar with the standards of serving alcohol. The lawsuit against the restaurant resulted in a \$4.4 million settlement.

FAQS OF CRIME VICTIMS

1. How long does a case take?

There is no definitive answer for this question. Depending on the specifics of the case, it could take anywhere from a few months to a few years.

2. Will I have to testify in a criminal trial?

Not all victims are required to testify in criminal trials; however, victims may be called to testify as witnesses.

3. Will I have to testify in a civil case?

In a civil trial, you will need to testify. If you refuse, you could be subpoenaed. In this case, you would have to testify truthfully or risk perjurying yourself.

4. What if I don't want to testify?

If you do not want to testify, you should discuss this upfront with your civil attorney or the prosecutor. The overwhelming majority of criminal cases result in a plea bargain, in which case you will not need to testify. In addition, many civil cases go to settlement without needing a trial, meaning you do not have to testify on trial. However, as a victim, you may be required to give a statement under oath, called a deposition. This deposition is often a question and answer session that takes place in an attorney's office.

5. Who will pay for my expenses?

If found guilty in a criminal case, a judge can order the defendant to pay you restitution or compensation for your out-of-pocket expenses, such as medical bills and lost days at work.

6. How can I make my feelings about the crime known?

Every crime victim has the opportunity to submit a written or oral victim impact statement at trial before sentencing. Rather than outlining the facts of the crime, this voluntary statement details the impact of the crime on the victim and is considered by the judge and/or jury before the defendant is sentenced.

7. What is a Protection from Abuse order?

A Protection from Abuse order (PFA) is a court order available to victims of domestic abuse. It prohibits the abuser from contact with the victim and from harassing the victim's loved ones. In most cases, a PFA could prohibit the defendant from possession of weapons. A final PFA can be in effect for up to three years. Victims obtain PFA's by filing a petition with the local court and having a hearing with the judge. Violation of a PFA order could result in jail and fines.

8. Do I need an attorney?

In criminal cases, your interests will be represented by the county or federal prosecutor so a personal lawyer is not necessary. Attorneys are not mandatory in civil cases either but are highly recommended to make the best case for your injuries.

9. Can I afford an attorney?

Attorneys in most civil cases are retained on a contingent-fee basis. This means, if the case reaches a settlement, the attorney will receive a percentage of that settlement amount. If the case does not settle, the attorney receives nothing. In a criminal case, a prosecutor is assigned by the state at no cost to the victim.

10. What if the defendant or his/her attorney contacts me?

Before the trial, the defendant's attorney may contact you but it is your decision whether or not to speak with him/her; you are not required. However, it is a crime for the defendant or anyone acting on behalf of the defendant to intimidate or harass you.

ABOUT THE AUTHORS

LUONGO BELLWOAR LLP is a Chester County, PA law firm that represents the rights of crime victims in the civil justice system. Attorneys Stanley E. Luongo, Jr., and Thomas B. Bellwoar have over 45 years of combined experience in the practice of law. The law firm is located in downtown West Chester, PA.



LUONGO BELLWOAR LLP
Attorneys and Counsellors at Law
213 W. Miner Street
West Chester, PA 19382
(610) 430-6600
crimevictimspa.com