

## Financial Remedies for Victims

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In addition to physical and emotional damages, crime produces real financial losses. While victims struggle to recover from the physical and emotional effects of crime, serious, unexpected expenses are suddenly thrust upon them as a result of the crime. A victim may have property stolen or damaged, incur unforeseen medical and counseling expenses, or lose income due to an inability to work or extended involvement in the court process. The surviving family members of a homicide victim may have funeral and burial expenses to pay at the same time that they have lost the family's primary wage-earner. In addition, violence often prompts crime victims to take costly self-protection measures, such as installing alarm systems or enrolling in self-defense courses, which generate further expenses.

Although some victims have worker's compensation for work-related crimes or medical, life, automobile and disability insurance policies to cover part of these crime-related expenses, many have no insurance or very limited coverage and are left to handle an overwhelming financial strain by themselves. When it comes to finances, victims often feel trapped in a dilemma: they cannot think about negotiating their finances because they feel too overwhelmed by the physical and emotional impact of violent crime, yet they cannot take care of their physical and emotional needs because they don't have enough money to pay crime-related bills. The financial impact of crime often adds another layer of victimization and crisis.

Fortunately, several potential sources of funding exist to compensate victims for their crime-related losses, including state victim compensation, court-ordered restitution and civil litigation. In order to maximize the benefits that you can receive as a victim, *it is important that you retain all bills and receipts for expenses related to the crime*. Regardless of the type of recovery you seek, you should try to keep a chronological record or folder of the crime-related expenses you have and keep copies of bills, police reports, and other relevant documents. Such documentation is necessary to obtain insurance reimbursement, worker's compensation, victim compensation, restitution, a civil judgment, or a tax deduction for crime-related losses. This chapter provides an overview of the major ways crime victims may recover their crime-related financial losses.

### Victim Compensation Program

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#### Overview

The Commonwealth of Massachusetts provides financial compensation for certain out-of-pocket expenses incurred by victims as a direct result of a violent crime. Compensation is paid

by the state and the federal Victims of Crime Act (VOCA) out of public revenues through a program run by the Victim Compensation and Assistance Division of the Attorney General's Office. In order to maximize the number of victims who receive compensation, the Victim Compensation Program is intended to be a "fund of last resort" for crime victims. This means that the expenses for which a victim is seeking reimbursement must not be covered by another source, such as private insurance or restitution, and that the victim must have exhausted all other sources of public benefits for which the victim may be eligible, such as hospital-based Free Care, worker's compensation, or Veterans' Benefits.

#### Eligibility Requirements

In order to be eligible to receive Victim Compensation, you must be a victim of a violent crime who suffers physical or psychological injury, a dependent or family member of a homicide victim, or a person who incurs the funeral and burial expenses of a homicide victim. You do not need to be a resident of Massachusetts to qualify, but the crime must have occurred in Massachusetts. Unless there is good cause for delay, you must have reported the crime to the police within five days of its occurrence *and* submitted your claim to the Victim Compensation Program within three years of the date of the crime.

Although Victim Compensation decisions are not based upon whether someone has been arrested or convicted for the crime, victims seeking compensation must cooperate with law enforcement officials in the investigation and prosecution of the crime in which they were injured. This is required not only to encourage the apprehension and conviction of offenders, but also to reduce the possibility of fraud from non-victims. If a victim is physically or psychologically unable to cooperate or reasonably believes that his or her safety may be in jeopardy as a result of cooperating with law enforcement, this requirement may be waived by the Victim Compensation Program. The program does not provide compensation if the claimant was an accomplice of the offender in the commission of the crime. In addition, the program does not provide compensation if it determines that payment to a victim will unjustly enrich the offender.

There is no financial means test to prevent a person from being eligible for Victim Compensation. Claims are processed without regard to the financial status of the victim or the offender. Although no emergency awards are given by the Victim Compensation Program, the process for reviewing compensation claims may be expedited for those victims demonstrating extreme financial hardship.

#### Expenses Covered

The Victim Compensation Program only covers specified out-of-pocket expenses incurred by victims *as a direct result of the crime*. Crime-related expenses must exceed \$100 to qualify for compensation unless the person is over 60 years old or a victim of rape. The maximum compensation amount awarded is \$25,000, and there are limits on certain types of expenses, such

as funeral and burial costs.

Typical expenses covered include, but are not limited to, medical and dental expenses, mental health counseling, funeral and burial expenses, lost wages, loss of homemaker services, and loss of financial support for dependents of homicide victims. Unfortunately, the Victim Compensation Program cannot cover property losses or damages, pain and suffering or loss of companionship. In addition, crime-related expenses reimbursed by private insurance, court-ordered restitution, civil damage awards or other public funds are not eligible for Victim Compensation.

#### Application and Verification Procedures

You can obtain a compensation application from your victim witness advocate or by contacting the Victim Compensation Program directly. Advocates are available within the Victim Compensation Program to assist victims in completing the application. There is no application fee required to apply for Victim Compensation.

In general, the compensation application form is straightforward and you do not need an attorney to complete it. Victims are not required to go to court on a claim unless they are appealing a decision made by the Victim Compensation Program. If you do hire an attorney for this purpose, the Victim Compensation Program will award reasonable attorney's fees up to 15% of the total compensation awarded, which is deducted from your award amount.

You must verify all crime-related expenses claimed through documentation. Typically, supporting documents include police reports, bills for services or treatment, employer's reports or tax returns to demonstrate lost wages, insurance forms and death certificates if applicable. Not providing sufficient documentation may cause your compensation award to be delayed, reduced or denied. Your victim witness advocate can attach the police report to your application or will mail the police report directly to the Victim Compensation Program.

Once the application and documentation are complete, investigators verify your eligibility and expenses. Upon completion of the investigation, the Victim Compensation Program will make a decision on the claim and notify you. If you agree to the award decision, a check will be issued from the State Treasurer. If you disagree with the decision, you may request reconsideration by the Program or appeal the decision in court. Claims typically take about six months to process.

#### Advocate Assistance

In addition to helping you complete the necessary application forms for compensation, victim advocates in the Victim Compensation Program can assist you in maximizing the benefits available to you as a crime victim. They can refer you to appropriate agencies providing services,

such as mental health counseling, at low or no cost to victims. If you have a compensation application pending, they may also provide assistance with your creditors regarding your crime-related financial obligations. For instance, if you are having difficulty with funeral expenses, the advocate can inform the funeral home director about the Compensation Program and explain that you qualify or have applied for victim compensation to cover funeral expenses. Many funeral homes and other creditors are willing to defer the collection of payments for this reason.

#### Additional Expenses

You may submit any additional crime-related bills to the Victim Compensation Program until the maximum benefit has been paid. If you need additional treatment, such as mental health counseling, after your claim has been settled, you should contact the Victim Compensation Program to find out whether and how you should submit the additional bills. There is no strict time limit for the submission of supplemental bills, but the time period must be reasonable and the subsequent expenses must clearly be crime-related.

If you continue to be billed for expenses that you believed were already paid by the Victim Compensation Program, you should inform the Program as soon as possible. For large expenses, such as crime-related medical bills, the Victim Compensation Program often negotiates a settlement as payment in full for the services provided to the victim. As a condition of payment, the hospital or other creditor is not allowed to hold the victim financially responsible for the balance of the bill.

#### Subrogation for Restitution and Civil Judgments

If you have applied for or received Victim Compensation, you may still pursue court-ordered restitution from the offender or initiate a civil suit for damages caused by the crime. However, the Victim Compensation Program is entitled to repayment if restitution or the civil suit judgment has already been received. This right to repayment is called subrogation.

As a general rule, it is a good idea to seek restitution and file a claim for compensation at the same time. Restitution can be ordered for expenses that the Victim Compensation Program does not cover, such as stolen and damaged property losses, and you may have expenses which exceed limits imposed by the Program. You can continue to receive restitution for specified crime-related expenses until you are fully reimbursed for those expenses. Moreover, although restitution may be ordered at sentencing, payments are generally ordered to be made in installments over a longer period of time, and there is no guarantee that it will be paid and collected in full. The same precaution holds true for civil judgments against an offender or another responsible party.

You are *legally obligated* to notify the Victim Compensation Program of any restitution or other payments received which cover the same expenses submitted to the Program. If you have

not yet received payment from the Victim Compensation Program, these expenses will be deducted from your total award. If you have already received payment from the Victim Compensation Program, you are legally responsible for reimbursing the Program for any amount that has been paid twice.

## Court-ordered Restitution

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### Overview

Another potential source of reimbursement to crime victims is court-ordered restitution. Restitution, sometimes called reparations, is compensation paid by criminal offenders to victims for the losses, damages and injuries they incurred as a result of the offender's criminal conduct. Typically, a judge orders the offender to pay the out-of-pocket expenses caused to the victim, such as damaged or stolen property, lost wages, and uninsured counseling expenses and medical costs. Any victim who has suffered financial losses as a result of the crime is eligible to request restitution at sentencing.

Victims' rights concerning restitution are more complicated than for victim compensation because the rights of the offender are also involved. For instance, although the underlying purpose of restitution is to require the offender to reimburse a victim for losses caused as a result of the criminal conduct, restitution -- in a legal context -- involves "taking" something from an offender. As unfair and illogical as this may seem to a victim, the legal process by which courts do that "taking" must safeguard the procedural rights of the offender. The judge must evaluate legal questions which are separate and distinct from the right of the victim to request restitution. In most cases, the fact that the victim has crime-related financial losses is not disputed, although the amount of those losses may be.

### Pros and Cons of Restitution

There are distinct strengths and weaknesses to restitution as a financial remedy that victims should consider. The clearest advantage is that *restitution is paid by the offender* as a direct consequence of his or her criminal conduct. Restitution ordered by a judge holds the offender responsible to the victim financially. The other major advantage to restitution is that it can be ordered for all expenses related to the crime, including property loss, which are not compensable through victim compensation. Since most violent crime victims have property losses in addition to the physical and emotional harm, restitution can provide relief for this financial burden.

Restitution also has some weaknesses. First, unlike victim compensation or a civil lawsuit, restitution is available as a remedy for victims only in cases in which the offender is convicted or pleads guilty to a crime. Second, restitution is not mandatory. A judge can refuse to order

restitution or order only partial repayment if it is determined that the offender does not have enough money to repay the victim. Third, restitution is typically ordered only in cases in which an offender is to be placed on probation. Judges generally do not order restitution if they are sentencing the offender to a prison or jail term because the offender is normally unable to earn enough money to pay restitution. Offenders who work within the prison are permitted to earn only three dollars per day of labor, and those wages are used to meet a variety of court-ordered financial obligations.

Another major problem with restitution is that even if an offender is ordered by a judge to pay restitution, there is no guarantee that the victim will ever be reimbursed. Some offenders may simply default on the obligation. Other offenders may delay paying restitution or seek payment extensions until later in their probation period, knowing that there will be no oversight once probation ends.

#### Requesting Restitution

Under the **Victim Bill of Rights**, you have the right to request that the offender pay restitution to you for damages caused by the crime. If you intend to request restitution from the offender, you should discuss your losses with the victim witness advocate or prosecutor as soon as possible. Your victim witness advocate can provide assistance in documenting your losses for the judge. Most victim witness programs have forms available for victims to use for this purpose. The victim witness advocate will generally review your losses and submit them to the probation department and to the prosecutor in a damage report. The victim also has the opportunity to address financial losses as part of the Victim Impact Statement.

#### Restitution Through Plea Agreements

Although restitution is ordered at the sentencing stage, defendants often engage in plea negotiations early in the criminal process. Because so many cases are resolved through plea negotiations, it would be helpful for the prosecutor during those negotiations to know if you intend to seek restitution. If you request restitution as part of a proposed plea agreement, you should ask the prosecutor to request that the judge establish a restitution payment schedule as part of the restitution order in the proposed plea agreement.

It is important to remember that restitution cannot be ordered by a judge on crimes for which offenders were not charged or convicted. If charges against an offender are dropped through plea negotiations, it is possible that you may not receive restitution for losses connected to those crimes. However, the prosecutor may be able to negotiate full victim restitution as a condition of dropping certain charges in a plea agreement.

#### Restitution Review Hearings

If restitution is ordered by a judge, offenders are entitled to request and receive a

restitution review hearing. If the offender disagrees with the amount of restitution ordered by the judge at sentencing or by the probation officer following sentencing, or has other objections about the order, the offender must be granted a restitution hearing to dispute the issue. The hearing is limited to issues of restitution.

If such a hearing occurs, the prosecutor will ask that you submit proof of your damages if you have not already done so. Again, it is important to retain copies of all receipts and bills to document your losses and enable the judge to evaluate what expenses can be legitimately covered. It is possible that you may be asked to testify at the restitution hearing.

### Determining Restitution Orders

For those cases in which restitution is not arranged through a plea agreement, a defendant's ability to pay is evaluated in pre-sentence reports submitted to the judge by the probation department. A probation officer will present the offender's financial assets, employment history and current financial obligations, including other court-ordered fines and assessments. From these reports and the Victim Impact Statement documenting losses, the judge determines whether the offender has the ability to pay restitution for the amount of the victim's losses. If there are multiple offenders who are convicted of the crime, or if there are multiple victims who suffered financial losses and request restitution, the judge will determine payment in any manner he or she deems appropriate.

If you are acquainted with the offender and have some information about the offender's assets, you may want to provide that information to the prosecutor or probation officer to help them assess the offender's true ability to pay. Such information may enable the judge to make a more informed appraisal of a defendant's assets rather than relying on only what the defendant claims.

### Payments Schedules

Once restitution is ordered, the prosecutor is required by the **Victim Bill of Rights** to provide the victim with the name and telephone number of the probation officer assigned to supervise the offender and a copy of the offender's schedule of restitution payments. You are entitled to receive a copy of the offender's restitution payment schedule from the supervising probation officer. He or she is also responsible for making sure the offender pays restitution. Offenders make their scheduled restitution payments to the probation department, which is responsible for sending you the restitution check. Offenders do not send payments directly to the victim. To help ensure that restitution checks and any hearing notices are sent to you in a timely manner, you should always keep the supervising probation officer or victim witness advocate informed of your current address.

If you do not receive a scheduled payment, you should contact the probation officer who

is supervising the offender and report it. The probation officer generally contacts the offender to determine whether or not the offender made the scheduled payment, or if there is some other problem. If the probation officer determines that the offender has an inability to pay, the offender can request a modification hearing to adjust the payment schedule. The U.S. Supreme Court has ruled that offenders who cannot reasonably pay restitution cannot have their probation revoked. However, if the probation officer determines that the offender *willfully* refuses to pay restitution, the probation officer may petition the court for a probation revocation hearing and the judge may revoke the offender's probation and order the offender to serve the remaining sentence in prison. In practice, however, courts usually revoke probation only when non-payment of restitution is coupled with other violations.

### Restitution Modifications

If for some reason the offender cannot pay restitution as ordered, the offender is entitled to a restitution modification hearing in which he or she can request that the judge dismiss, reduce or otherwise adjust a restitution order. If the defendant seeks a modification, the probation officer supervising the offender is required under the **Victim Bill of Rights** to provide notice to you of the hearing on the proposed modification. The **Victim Bill of Rights** also gives you the right to attend and be heard by the judge at such the modification hearing.

Because restitution is imposed as part of the offender's sentence, you are not allowed to request an increase in the amount of restitution at a restitution modification hearing -- even if additional crime-related expenses have been incurred. However, you may request that the judge extend probation to allow for a longer period of time during which the defendant can make the restitution payments.

## Civil Litigation

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### Overview

Over the past decade victim rights have become increasingly recognized by the civil justice system as well as the criminal justice system. Civil litigation has provided victims with a new avenue of financial relief from their physical and emotional injuries. As a victim, you may be able to recover your financial losses through a civil lawsuit against the perpetrator or a negligent third party.

### Considering a Civil Lawsuit

There are several important factors to consider as you evaluate whether to pursue a civil lawsuit. The first determination you need to make is whether civil litigation is possible in your case and whether your case is solid enough to win. This is best done by consulting a private



attorney. After a preliminary investigation of the facts of a case, an attorney who is experienced in civil actions for victims can generally tell whether a prospective civil suit has legal merit and whether the victim is likely to be awarded and collect a civil judgment. An attorney will base this determination on several issues, including:

- the nature and extent of the victim's injuries;
- the extent of the defendant's responsibility for these injuries;
- the likelihood that a victim will recover from the injuries;
- the facts of the case;
- the financial resources of the defendant;
- the likelihood of the collecting a court-ordered judgment from the defendant.

Beyond these legal and practical considerations, there are other concerns about the personal effects of the civil litigation process on victims which should be evaluated if you are thinking about filing a civil lawsuit. The civil litigation process may prolong the period of time you will be involved in the court system. This is an important decision to make, particularly if you have already been through lengthy criminal proceedings. The extensive civil procedures may require you to continue to re-experience events that were physically and emotional traumatizing. Moreover, if you have not come face to face with the offender in court because the offender was not previously charged or convicted, it may be difficult to confront the offender in civil proceedings.

### *Finding an Attorney*

While increasing numbers of attorneys are gaining experience in representing crime victims in civil proceedings, the number of attorneys with actual experience, sensitivity and specialized knowledge of crime victims' problems is still relatively small. In Massachusetts, however, there is a growing core of experienced civil attorneys who specialize in lawsuits on behalf of crime victims. Although any licensed private attorney can file a lawsuit on your behalf, attorneys who have experience in cases involving crime victims can provide many advantages.

If you already have a personal attorney who you trust or know someone who is an attorney, you can contact this person, describe your situation and ask for a referral. If this attorney cannot provide you with legal assistance, he or she should be able to help you locate another attorney who is qualified to work on your case. Sometimes other crime victims who you may know through support groups can recommend a civil attorney who was helpful to them.

If you have questions about a particular attorney or want a referral, you may want to contact the county or local bar association listed in the telephone book. Bar associations can provide you with basic information about an attorney, such as his or her area of specialty, the location of the practice, and how long the attorney has been practicing law. Bar Associations

maintain general referral lists for attorneys and separate them according to practice specialties designated by the attorneys. You can also contact the National Victim Center's Crime Victim Litigation Project, which maintains a national list of civil attorneys who specialize in this area.

Choosing an attorney is a very personal decision and you should not choose one based only on another person's recommendation. You should not hesitate to meet with several attorneys before selecting one. If you are uncomfortable with an attorney or do not have confidence in the advice or responses given to you, you should "get a second opinion" from another attorney. You can also ask a prospective attorney for the names of other crime victims he or she has worked for to call as a reference. However, the attorney may need to get permission from the victim before giving you that information. In addition, you may want to ask a prospective attorney the following questions:

- How long have you been practicing law?
- What is your educational background and professional experience?
- Have you ever worked with crime victims before?
- Have you handled cases similar to mine? If so, how many?
- What kinds of judgments or settlements have you obtained for your clients?
- Have you ever worked as a prosecutor or a criminal defense attorney?
- Who will be working on my case -- you or other attorneys in your firm?
- Will you provide status reports on my case? If so, how often?
- Do you maintain malpractice insurance?

Most private attorneys who specialize in victim-related cases work on a contingency fee basis. This means that if the attorney accepts the case and you are not successful in recovering civil damages, you are not required to pay attorney fees. However, you may be required to pay for the attorney's out-of-pocket expenses related to the case, such as the costs of obtaining expert witnesses, filing fees and depositions. If your lawsuit is successful, the attorney will take a percentage of the settlement, usually between 25-40%, for their fees. Because such arrangements vary, you should be sure that you fully understand the details of any retainer agreement or other contract before signing it.

#### *Advantages and Disadvantages of Civil Litigation*

As a means of financial recovery, a civil lawsuit by a victim has particular strengths and weaknesses. On the positive side, a victim is the plaintiff in a civil case and has much greater involvement and decision-making authority over the case. Many victims find this can be empowering and helps them to regain a sense of control in their lives. Another benefit of civil litigation is that a victim may seek compensatory damages for the full amount of the injuries or losses due directly or indirectly to the crime, including property losses, pain and suffering, and projected loss of future earnings. By comparison, victim compensation awards are limited to

\$25,000 and restitution is limited to what the offender can pay. Furthermore, a civil judgment is enforceable for a long period of time and can be enforced through additional means.

Another clear advantage of civil actions as a means of recovery is that you may be able to file suit regardless of whether an offender has been apprehended or convicted. Because the standard of proof is higher in criminal cases, a jury in a civil trial may find the offender responsible for committing the crime when a jury in a criminal case may have found the same offender not guilty. Even if an offender was acquitted in a criminal proceeding, he or she cannot introduce the acquittal as evidence in a civil trial because it only represents a determination that guilt was not proven beyond a reasonable doubt.

You may also file suit against an individual, business, government or other organization whose negligence may have contributed to the attack. Some victims do not like the idea of holding a third party responsible for the offender's criminal conduct, but lawsuits against third parties can help to promote greater safety in addition to providing an alternative source of recovery for a victims who might be unable to collect judgments directly from offenders. Many victims also feel gratified that the civil justice system holds offenders and negligent third parties accountable for their actions and helps to reinforce the importance of victim's rights.

The major drawback to civil litigation is that the lawsuit is often expensive and time-consuming and may not be successful. Although most successful cases end in a settlement before trial, there is no guarantee that a jury will find an offender or third party liable for damages. Another potential obstacle for victims is that many offenders or liable third parties may be "judgment proof" -- that is, they do not have enough money or other assets to satisfy the judgment. Offenders frequently have few resources with which to satisfy a civil judgment. Another negative effect of the civil lawsuit is that it may require the victim, who may have just undergone the rigors of the criminal justice system, to initiate further involvement with the offender and the court system.

Although a positive outcome of a civil action may be extremely gratifying, the procedures involved in a civil lawsuit can be very stressful for a victim. The defense may use personal information about you in a civil proceeding that is unlikely to surface in a criminal trial. If you are basing part of your lawsuit for damages on the emotional distress caused by the crime, you may be required to release your prior and current psychiatric or counseling records and other confidential information to the defense in a civil proceeding. The kinds of questions that you may be asked by the defense attorney may be extremely personal in nature and will require you to discuss your involvement in and reaction to the crime. Victims of sexual crimes can ask the judge to allow them to file a civil suit under an assumed "Jane Doe" name to conceal their identity from the public. If you are awarded damages in a civil suit against a negligent third party, the jury may provide for a percentage reduction of that award based on how much the jury perceived

the victim to have “contributed” to the crime. Although this reduction is a recognized practice in civil litigation, it may seem unfair to someone who became a victim through misfortune, not choice.

### Criminal vs. Civil Cases

In considering a civil case, you should be aware of the similarities and differences between the criminal and civil justice systems. A civil action for damages is wholly separate from the criminal case in which the victim may be involved, and can be pursued regardless of the result in a criminal case. The criminal justice system’s prohibition against double jeopardy, which bars a defendant acquitted in a criminal proceeding from being tried again for the same crime, does not extend to the civil justice system.

In fact, the jury in a civil case may find that the defendant caused harm to the victim, even though a different jury in the criminal case may find the defendant not guilty because the burden of proof is higher in a criminal case. Criminal defendants must be proven guilty beyond a reasonable doubt, or roughly 95-plus percent of the evidence. In civil cases, however, victims need only prove their cases by a preponderance of the evidence, or 51 percent of the evidence. An offender may be acquitted of criminal charges or the prosecutor may have dismissed or reduced charges because the standard of proof in criminal cases is so high. In addition, the decision of the jury in a criminal case must be unanimous, but in a civil case only 10 of 12 jurors must agree to the decision. Therefore, the fact that there has not been a conviction or formal charging in a criminal case does *not* mean that a victim is prevented from filing a civil action.

Another major difference between criminal and civil cases concerns the structure of the case and the parties involved in the proceedings. In the criminal system, the two parties in the case are the Commonwealth, which is the plaintiff, and the person accused of the crime, who is the defendant. The victim is not a formal party and the prosecutor does not represent the victim in the legal proceedings. The prosecutor -- not the victim -- determines whether to prosecute, what legal strategy to use, whether to negotiate a plea, and what sentence to recommend. While the initial charges against the offender may have resulted from the crime committed against a victim, the prosecutor initiates the criminal case on behalf of the Commonwealth against the offender. The victim’s primary function in a criminal proceeding is as a witness. By contrast, the victim is the plaintiff in a civil case and the offender or a liable third party is the defendant. The victim decides to initiate a civil action and controls other major decisions affecting the case, such as whether to accept a settlement offer.

### Potential Conflicts Between Civil and Criminal Cases

One potential conflict in filing a civil suit for victims involved in criminal proceedings is the length of time involved in most criminal cases. Massachusetts has a time limitation of 3 years in which a victim must bring a civil action for damages against an offender or third party. There

are exceptions to this limitation for minor victims and victims who did not discover the damage caused by the crime until a later date. For situations in which the offender is in hiding or has fled the state, the statute of limitations is frozen or "tolled" until the offender returns. Few criminal cases involving serious crime against a person are concluded within a year, and some cases involve separate trials for multiple offenders, which prolongs a victim's involvement with the system. Such prolonged involvement may conflict with the victim's need to file suit before the statute of limitations expires. If you have concerns about this, you should speak to the prosecutor who is handling your case. The civil case needs only to be filed -- not concluded -- within the three years of the date of the crime.

Unless the statute of limitations is about to run out, it is generally a good idea to wait until the criminal proceedings have concluded before initiating a civil action. Sometimes the fact that a victim is pursuing a civil action against an offender may be used in court to undermine his or her credibility in a criminal proceeding because the victim is perceived to have a monetary motivation against the offender. In addition, victim credibility may be further undermined if a victim's statements in a civil trial contradict what is said in a criminal trial. Either of these situations could jeopardize the chances that an offender will be convicted in the criminal trial. On the positive side, if the offender is convicted or pleads guilty in a criminal case, that outcome establishes the offender's liability in a civil action, which means the only remaining issue to be decided in the civil case is the victim's damages.

In some circumstances, you may be able to file a lawsuit against an offender, and delay the trial until the criminal process has concluded. If the criminal prosecution is still pending or if the defendant has not yet been charged with the crime, the defendant may try to invoke the Fifth Amendment right against self-incrimination which could arise through civil proceedings. This means that the offender does not have to testify in a civil proceeding because that testimony may be used in a criminal proceeding against the offender. All offenders in criminal proceedings have the right not to testify.

Finally, if you intend to file a civil suit and believe that an offender may try to transfer, spend or hide assets if he or she believes a lawsuit will be filed, you may want to approach a civil attorney to seek a precautionary attachment of the offender's assets. Precautionary attachments are issued by courts to temporarily freeze an offender's assets pending the outcome of a civil suit. If criminal proceedings have not concluded, you should inform the prosecutor handling your case that you intend to file suit and discuss the possible effects a civil suit may have on the criminal case.

### Civil Court Procedures

Following an initial consultation between the victim and a civil attorney, the attorney will assess the merits of the case. If you and the attorney decide that you want to pursue a civil action