

A LAYPERSON'S JUSTICE SYSTEM GUIDE TO DAMAGES FACT SHEET
by Rev. Minister Angela Smith of COPE (<https://www.cope.church>)

I personally believe it would benefit everyone who may ever seek damages or restitution in US courts to understand how damages are typically and reasonably calculated and determined. In criminal cases, the burden of proof is beyond a reasonable doubt. In tort (civil) cases, the burden of proof is by a preponderance of the evidence.

Criminal and/or Tort (Civil) Cases Involving Bodily Harm: Restitution in criminal cases and/or damages in civil cases often involve consideration of the following: medical bills, provable lost wages or other property with definitive objective legal marketable value, and that amount with the addition of triple that amount for punitive damages in cases where such is deemed warranted.

For example, if someone tripped you and the only medical bills you had were for a chipped tooth because of how you landed or hit a chair when falling, the restitution would be for the expense to repair the chipped tooth and triple that if punitive damages awarded then added on. So, if the chipped tooth repair cost between \$200-\$5000, depending on if the tooth needs to be extracted and replaced or just cosmetically addressed/repared, then you are looking at a minimum of \$800 ($\$200 + (\$200 \times 3)$) and if restitution through criminal court, all of that is yours if a plea deal is reached or court orders it. But, likely a small claim tort/civil suit if the \$800 amount with no lawyers needed. With the \$5000 tooth repair cost, looking at \$20,000 ($\$5000 + (\$5000 \times 3)$) and so may need a lawyer. But, you may need witnesses to prove you were deliberately tripped rather than clumsy or else reasonable doubt may apply in a criminal case. Video footage would work too as evidence.

Criminal and/or Tort (Civil) Cases Involving Theft/Fraud: If you can prove loss of money or any other property with definitive objective legal marketable value (i.e. a car, jewelry, etc), then if the perpetrator is sued or prosecuted you could be awarded the value of the lost money or property in restitution or damages. You will need to prove the loss occurred and value of the loss. Many jurisdictions will not pursue a criminal case unless the loss is over \$5000 and recommend small claims lawsuits for damages on any losses less than that where bodily harm is not also a factor and you've identified the perpetrator.

Criminal and/or Tort (Civil) Cases Involving Emotional Distress/Harassment (But NO bodily harm and NO financial harm): The small claims court will not consider it as a stand alone unless you can prove you've required mental health services and the sole reason for that is the harassment so you can prove those bills for services as your losses. Bringing your own mental wellness into question often is enough for reasonable doubt on a criminal prosecution even if harassment is proven. But, unless imminent bodily harm was threatened and reasonably believed to be an immediate threat, harassment isn't a priority for law enforcement. So, you'd need to call when the threat manifests more physically, get a protective order to stop contact, or refuse any contact by blocking on social media, phones, e-mail, and/or returning "snail mail" as refused. And, with a civil suit if you can prove the harassment would result in a reasonable person requiring some

support from mental health service providers that you did and/or continue to require then you could get the costs to date, arguable continued costs if provided as an estimate by the provider of services, and triple that for punitive if the court found it was warranted at most.

So, the bottom line is with any case you have a limited time to file a complaint whether you choose to file with law enforcement or in tort/small claims. In most jurisdictions you have 1-3 years to file a personal injury/tort suit. Depending on tort claim(s) and jurisdiction, the maximum I'm aware of in the US is a 10 year statute of limitations for filing. Many jurisdictions recognize minority as a barrier to justice so those statutes of limitations begin running when the victim turns 18 in those jurisdictions.

With criminal cases, it really depends. But, if the assault and/or battery (i.e. tripped and chipped tooth was the harm) amounted to a misdemeanor rather than felony (serious bodily harm/maiming (i.e. loss of limb)/burning/rape/death), usually it has to be reported within 1-3 years to law enforcement sometimes within 28 days depending on jurisdiction. But, felonies such as kidnapping, murder, and some battery offenses have no statute of limitations in most, if not all, jurisdictions. In Florida, human trafficking has a 10 year statute of limitations. So, that needs to be reported within 10 years for prosecution.

And, sometimes #TimesUp applies to more than just perpetrators. So, don't forfeit your chance at justice and understand there's a sick way to interpret "you get out of it what you put into it" in terms of legal tender. If you had no legal tender (money, property of objective marketable value) when harmed and therefore didn't spend any on medical bills then the court doesn't recognize you as having lost legal tender. The courts only focus on legal tender and making everyone whole in terms of legal tender at law when considering value of loss in terms of monetary damages or restitution.

Now, the legislature will officially disapprove of things like harassment, cyber-stalking (which is really hard to prove especially when people mask their IPs and change their social media accounts so they can harass you from new virtual locations), and a bunch of other things like that by making laws against it. But, administratively in allocating limited resources for enforcement, bodily harm and provable objective property loss are the priority for investigation and prosecution. And, with the Rape Kit backlogs alone, do you want more funding for law enforcement, the same, or none at all? I personally want more money for law enforcement and until the bodily harm stuff is solved at more than 75% as far as holding perpetrators accountable at law, I'm good with sucking up hurt feelings and/or forgiving when people are unpleasant because when I'm feeling impatient or wrathful I can be a bitch too and I forgive people when they are being bitchy unless maniacally deceptive and vicious, then it isn't just bitchy, it's whorish IMHO.

So, if a survivor too, I ask that you show the same understanding and patience you require or have required of everyone while you find the resolve to act decisively for justice that everyone has shown you. And, where the time for filing has expired, recognize your delayed reporting is the actual reason justice was denied or likely will be unless an exception to the statute of limitations exists in your case. The perpetrators have

the same rights to free speech the rest of us do. So, activism can become a public "he said, she said" in some cases that is just another controversy or blip in the 24 hour news cycle to everyone else. For example, have you heard about what happened in shutting down Restoration Youth Academy in Alabama? It was in Newsweek. HEAL Mission volunteers helped. Children were being tortured. Did you hear about that? Well, that's really important to me and my mission. We all thought it was a big deal. I guess some of you reading this did not. I'm going to feel the same about similar stories where I've got no proverbial skin in the game so to speak in most cases. Unless it is relevant to me and my work, I likely won't even pay attention at all. How did this paragraph make you feel?

This was all said with love and hopefully not too tough in tone. But, I want justice for all and that requires we all do our part for justice by filing any and all official complaints in a timely fashion before the time for filing expires and justice is forfeited. If you forfeited justice, I still love you. It happens to the best of us sometimes. It's okay. Help warn others if it will help prevent victimization or encourage timely proper reporting. That's what activism looks like in the fight for social justice at the HEAL Mission of COPE.

This fact sheet does not constitute legal advice and was not prepared by a lawyer. It is a layperson's guide. (See my credentials: <https://www.cope.church/credentials.pdf> and/or <https://www.cope.church/goodshepherd.htm>)