

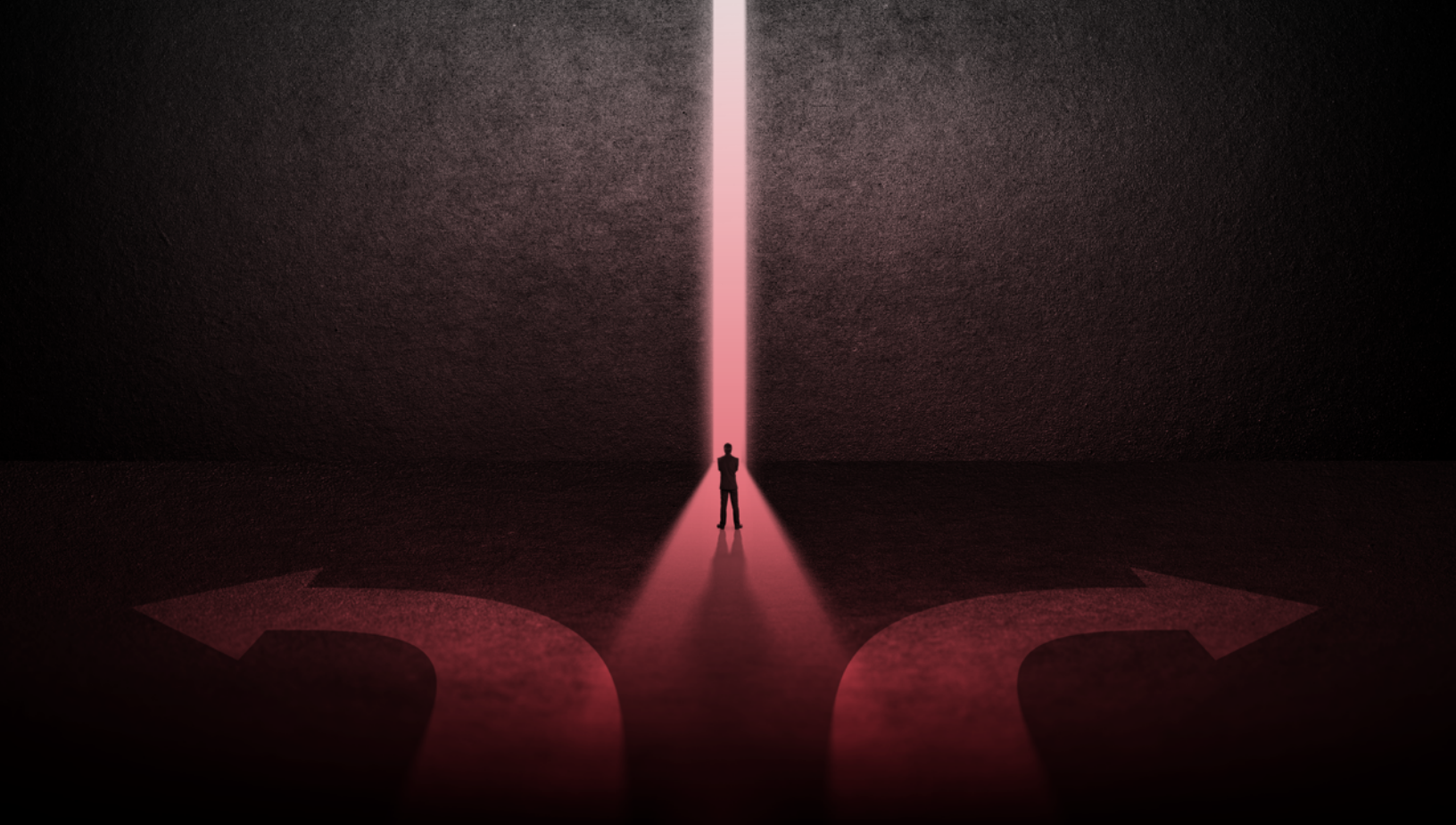
HARNESSING THIRD-PARTY CIVIL LAWSUITS TO SECURE JUSTICE FOR CRIME SURVIVORS



A WHITE PAPER PRESENTED BY

ROXANNE CONLIN & ASSOCIATES, P.C.

HELPING INDIVIDUALS WHO HAVE BEEN HURT BY OTHERS



For many crime survivors, the path to healing and justice is fraught with countless obstacles and unanswered questions. What if the perpetrator never gets caught, leaving the crime survivor in a perpetual state of fear and uncertainty? What if, despite a conviction, the survivor is left with a mountain of medical bills and a lifelong need for therapy to heal the invisible scars of their ordeal? What if the survivor is a child whose memories of the crime are suppressed until decades later? These haunting scenarios underscore the limitations of the criminal justice system, where even a guilty verdict can fail to deliver true justice to those who have suffered.

But what if there were another path, one that empowers survivors to seek accountability from those whose negligence created the conditions for their suffering? Third-party civil lawsuits provide such a path. They forge a powerful opportunity not only for personal justice but also for systemic change far beyond the impact of an individual conviction.

Far too often, the criminal justice system falls short when it comes to righting wrongs against crime victims. Convictions require a high burden of proof. The prosecution must prove guilt “beyond a reasonable doubt” – the most difficult standard to meet in the legal system.

Additionally, charges can generally only be brought against the individual perpetrator. Other parties whose negligence may have contributed to the crime cannot be held accountable in the criminal justice system, as their actions (or inaction) don't rise to the level of a crime. Additionally, even in cases where there is a conviction, the crime survivor is still left shouldering significant financial and emotional burdens. Such burdens can include lifelong costs for therapy, mental health treatments and other related expenses that arise from the crime.

The civil justice system offers another avenue for addressing these injustices. Unlike the criminal system, civil claims involve a "preponderance of evidence" – or, more likely than not – burden of proof,

which is a much easier standard to meet than that of criminal cases. Civil claims can also seek justice for the broader context of the crime, including the roles played by negligent third parties. For instance, an employer can be held liable through a civil claim for hiring a medical professional who subsequently commits sexual assault.

These third-party civil claims empower survivors, providing them with a meaningful opportunity to seek accountability not just from the direct perpetrator but also from those who indirectly contributed to their suffering. The benefit of civil claims extends far beyond the outcome in the individual case. A favorable result can go a long way toward preventing the same type of harm from recurring.

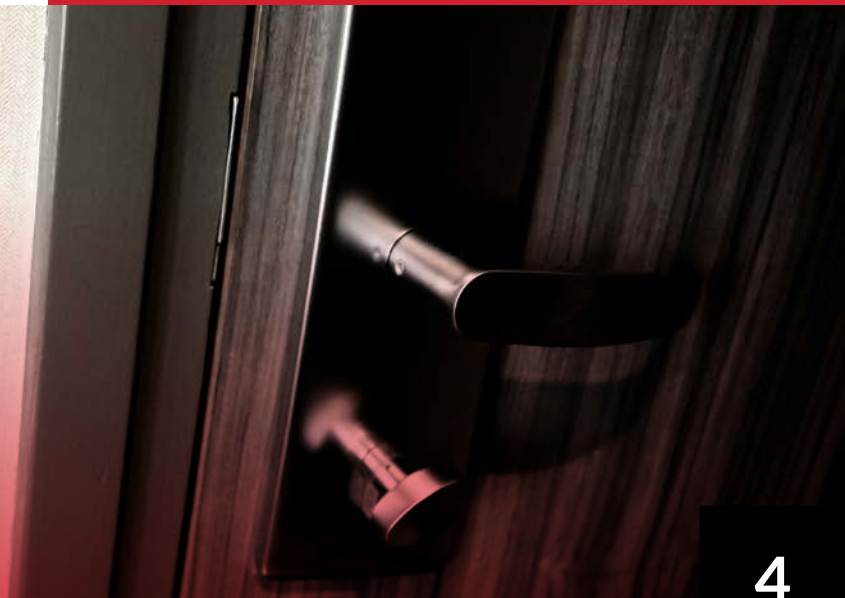


What Is A Third-Party Civil Claim For Criminal Conduct?

A third-party claim is a type of civil lawsuit where the victim of a crime can seek damages from a third party – that is, someone other than the crime perpetrator – whose negligence or misconduct contributed to the conditions that facilitated the crime. Unlike direct claims against the perpetrator in criminal cases, these civil claims target parties who are indirectly responsible. Examples include employers, property owners, businesses and institutions. By addressing these broader liabilities, third-party claims complement the criminal justice system and provide an additional layer of accountability and remedy for crime survivors.

Case Example: Negligent Hotel Security

In the 1995 case of *Monica Samuels v. Florida Hotel*, a young woman was sexually assaulted in her hotel room by a former guest who kept the room key. After the attack, she was thrown from the balcony, resulting in severe injuries. Represented by attorney Roxanne Conlin, she sued the hotel and obtained a confidential settlement. The hotel's failure to obtain a return of the room key or change the lock created the conditions that made the attack possible.





How Do These Claims Work?

Typically, a crime survivor starts a third-party civil claim by consulting a lawyer, which can occur at any point before, during or after the criminal proceedings. A skilled attorney can guide the survivor through both criminal and civil proceedings, protecting their rights in both forums. A criminal case is not necessary in order to file a civil claim.

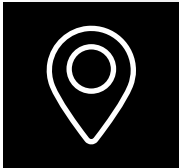
The crime survivor's attorney will initiate the claim by filing a civil lawsuit against third parties who might have indirectly contributed to the crime by failing to prevent it or creating an environment that facilitated it. It's

important to note that the statute of limitations (legal deadline) for civil claims can be different – and often shorter – than the deadline for criminal cases. This makes timely legal consultation essential.

Who Do They Usually Involve?

Third-party claims typically involve entities such as employers, property owners, businesses, religious institutions and other organizations that had some control over the environment or conditions under which the crime occurred. These entities might be held accountable for negligence or failure to implement adequate safety measures.

Identifying the correct defendants is crucial for the success of the case. This involves a detailed investigation into the circumstances of the crime. Relevant considerations include:



Location of the crime: Where the incident occurred can influence which parties might be liable. For instance, if a crime happened in a poorly lit parking lot of a shopping mall then the property management company could be considered negligent for failing to provide adequate lighting, allowing foreseeable crimes to occur.



Perpetrator of the crime: Understanding who committed the crime and their relationship to the third parties can provide a basis for the claim. For example, if an employee commits a crime within the scope of their employment, then their employer might be liable.



Circumstances of the crime: The specific conditions under which the crime was committed are also significant. Was there adequate security? Were there prior similar incidents?



Relationship between the criminal and the victim: This is particularly relevant in contexts involving inherent power dynamics and vulnerability, such as therapist-client, priest-parishioner relationships or teacher-student. In such situations, the victim often places a high level of trust and dependence on the perpetrator, who is in a position of authority or influence. These cases can lead to severe repercussions for the third party (such as a church, therapy practice or school district due to their duty to provide a safe environment for vulnerable individuals under their care).

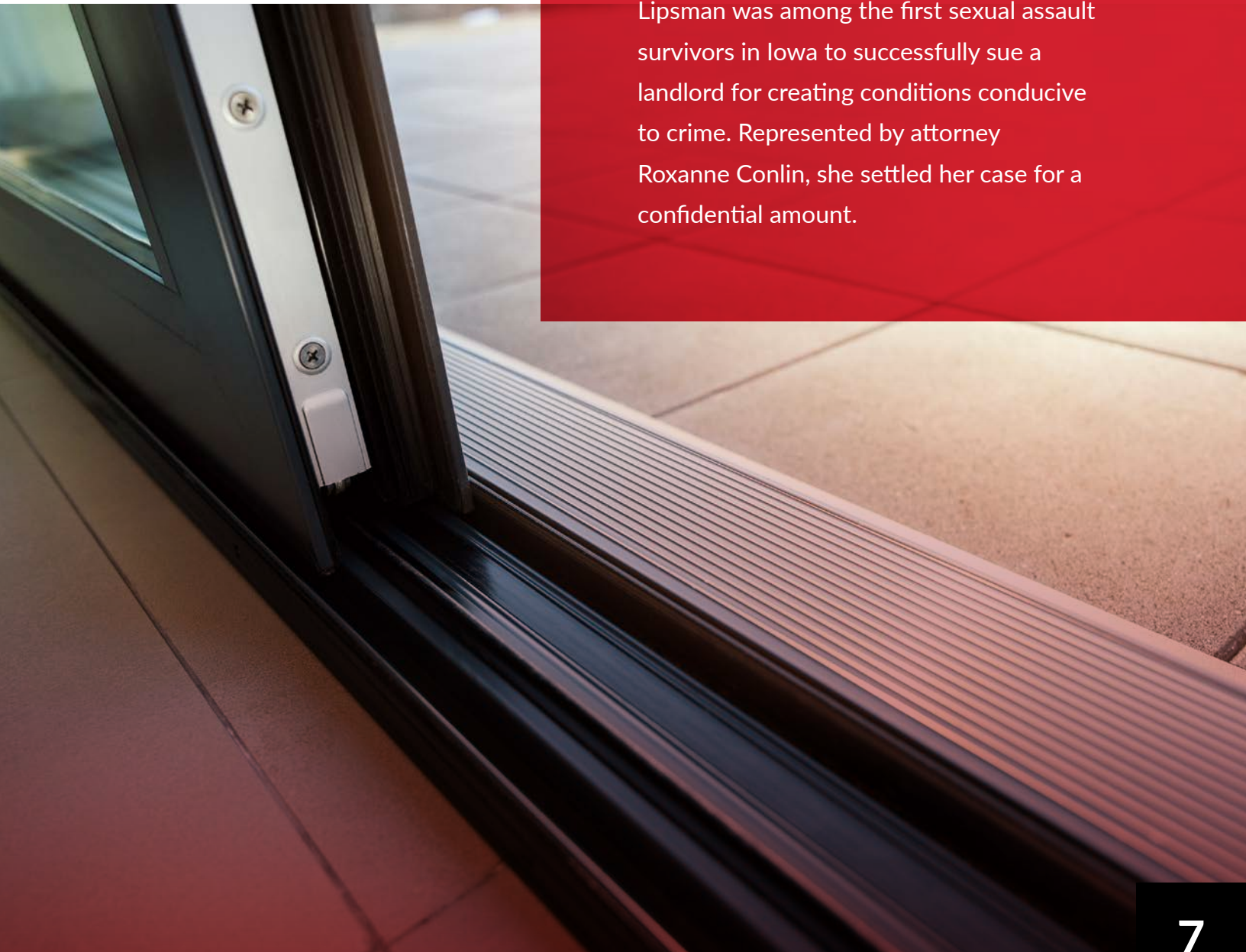


Defendant's assets: It is also pragmatic to consider whether the defendant has collectible assets to compensate the survivor, as this may make a lawsuit impossible.

As you can see, there are many considerations that go into investigating and preparing a civil claim against the appropriate third parties. Laying a strong foundation from the start is pivotal for the success of these claims.

Case Example: Negligent Apartment Security

In the groundbreaking case of *Lipsman v. Apartment Owner* (1985), Ms. Lipsman was sexually assaulted in her first-floor apartment by an intruder who entered through a defective horizontal sliding window. Ms. Lipsman had complained to her landlord multiple times about the window's failure to securely lock, but her landlord had failed to make repairs. Ms. Lipsman was among the first sexual assault survivors in Iowa to successfully sue a landlord for creating conditions conducive to crime. Represented by attorney Roxanne Conlin, she settled her case for a confidential amount.



What Remedies Are Available In Third-Party Civil Claims?

Through third-party civil claims, crime survivors can seek various types of damages (compensation), depending on the nature and extent of their losses.

They can request remedies such as:

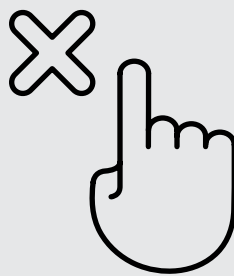
COMPENSATORY DAMAGES

These are intended to cover economic losses (such as medical bills and lost wages) and noneconomic losses (such as pain and suffering).



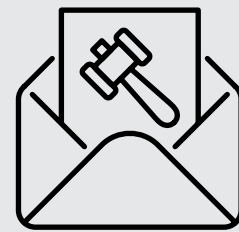
PUNITIVE DAMAGES

If the third party's actions are especially egregious, punitive damages can be awarded to punish the wrongdoer and prevent similar behavior from recurring.



INJUNCTIONS

These are court orders that require the defendant to do or refrain from doing specific actions. For example, a business might be required to implement better security measures to prevent future harm.



These remedies not only compensate the survivor but also serve an important social function by promoting safer practices and holding entities accountable for their roles in allowing unsafe conditions to persist.



Case Example: Creating Meaningful Change While Securing Justice

Dickinson v. The Clinton Community School District (2018)

Jane Doe, a 13-year-old eighth grader, was groomed and sexually exploited by a predatory teacher who manipulated her through social media, gifts and public attention. Despite multiple reports of the teacher's inappropriate behavior, school supervisors failed to act. The teacher was eventually convicted of sexual exploitation. Jane Doe sued the school district and obtained a \$2.25 million settlement. The settlement also required the school to implement policy reforms and mandatory staff training, creating meaningful and lasting change.

Impact Of Insurance Caps On Survivor Compensation

In many situations, the third party's insurance policy will be the source of crime survivor compensation. Some of those insurance policies particularly for mental health providers have caps. Such policies may usually cap third-party claim payouts at \$25,000.

Due to this limit, many survivors find it more beneficial to settle these claims rather than pursuing lengthy trials.

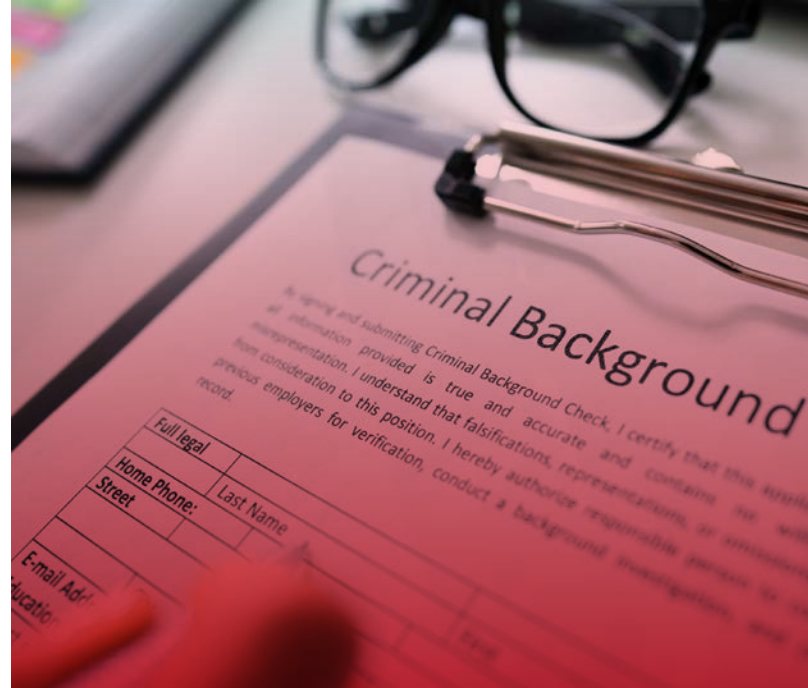
What Types Of Legal Claims Can Be Used In Third-Party Civil Cases?

Third-party civil claims are typically grounded in tort law, meaning that they are based on negligence or wrongdoing that doesn't rise to the level of a crime. These claims are filed in the appropriate state court. Here's a look at some specific types of claims that are often used:

- **Negligent security:** This claim arises when a property owner or manager fails to provide adequate security measures to prevent foreseeable crimes. Examples include inadequate lighting in a parking lot or faulty locks that enable easy access to private areas.
- **Negligent hiring:** Employers can be liable if they fail to conduct proper background checks before hiring personnel who then commit crimes that could have been foreseen. For instance, a school could be liable for negligent hiring if it employed a staff member with a violent or abusive criminal history.
- **Negligent supervision:** This covers situations where an employer doesn't adequately supervise employees or put appropriate supervisory measures in place. An example is a school that does not monitor its staff properly, allowing a teacher to engage in inappropriate behavior with students.
- **Negligent retention:** This involves keeping an employee on staff after becoming aware of the danger they pose. For example, a hospital that continues to employ a nurse known to have engaged in inappropriate conduct with patients could be held liable for negligent retention.
- **Negligent or intentional infliction of emotional distress:** This claim addresses situations where a wrongdoer's misconduct has caused severe emotional harm. An example is a company that knowingly allows an environment of severe harassment to persist until it eventually escalates to physical abuse.

- **Dram shop liability:** This applies when a business illegally sells alcohol to a visibly intoxicated person who then causes harm. An example is a bar that serves alcohol to a drunk person who later kidnaps and rapes a woman.
- **Breach of contract:** This claim is applicable when the defendant hasn't upheld their obligations as stipulated in a contract. For example, when a landlord is contractually obligated to provide secure premises but fails to do so – perhaps by neglecting to repair broken locks or inadequate security systems – that failure can be grounds for a breach of contract claim.

Third-party cases stemming from criminal conduct often involve multiple types of claims. For instance, a lawsuit might combine claims of negligent hiring and supervision if an employee who committed a crime was inadequately vetted and improperly monitored.



Case Example: Negligent Hiring

Stephanie Marchese v. Comprehensive Management Services, Inc., and CMS Wellington, Inc. (2001)

Stephanie was the victim of multiple thefts in her apartment due to the negligent hiring practices of her apartment complex, which failed to conduct a background check on maintenance worker Rusty Sills. Using a master key, Sills entered Stephanie's apartment and those of other female tenants to steal shoes and underwear. He had a lengthy criminal history, which the landlord could have discovered through a background check. Stephanie subsequently sued the landlord and secured a confidential settlement.

Another Option: Filing A Civil Rights Complaint Under The Iowa Civil Rights Act

When the underlying crime is intertwined with discrimination or harassment based on protected characteristics such as race, gender, disability or sexual orientation, filing a civil rights complaint may be an appropriate recourse. The Iowa Civil Rights Act requires employers, housing providers, educational institutions and other entities to foster environments that are free from discriminatory practices and harassment. Failure to uphold these duties can lead to legal consequences.

The process for filing a civil rights complaint is distinct from pursuing a civil lawsuit. It involves submitting a complaint to the Iowa Civil Rights Commission, a state agency dedicated to enforcing civil rights laws. This avenue can sometimes be more straightforward and less demanding than civil litigation. They do offer the same types of damages available in civil lawsuits, except for punitive damages. Any such complaint can be removed from the Iowa Civil Rights Commission and filed in Court after they have been in the ICRC for two months.

Anti-Bullying Laws In Iowa

Iowa law prohibits bullying and cyberbullying in educational contexts. However, this law is quite limited. It does not provide a private right of action, making it difficult to enforce. It's typically not a viable option for holding schools accountable.

Hope For Crime Survivors Seeking Justice

Often, a crime survivor's ordeal doesn't end with the criminal trial or investigation. It continues to affect their lives deeply and persistently long after the verdict has been rendered.

Civil lawsuits empower crime survivors to address and rectify the broader contexts that contributed to their suffering. By pursuing third-party civil claims, survivors can seek accountability from those indirectly responsible for the harm they suffered. Civil claims not only offer a path to justice in individual cases but also pave the way toward greater safety and accountability. They can create meaningful change that prevents others from suffering similar harm.



About Attorney Roxanne Conlin: A Lifelong Advocate For Crime Survivors

Roxanne Conlin has been a determined advocate for crime survivors throughout her distinguished career. She graduated from Drake Law School with honors at the age of 21. Roxanne's career in public service began as a Deputy Industrial Commissioner. She then became the assistant attorney general for Iowa, where she led the Civil Rights Section and fortified the state's assault laws. Roxanne then went on to become one of the first women in a United States attorney position, where she prosecuted numerous complex federal crimes and served as president of the Federal Executive Council.

Roxanne has achieved many other firsts in her groundbreaking career. She was the first female president of the Association of Trial Lawyers of America and the first female chair of the Roscoe Pound Foundation.

Beyond her legal practice, Roxanne has been deeply involved in various advocacy groups, championing civil rights and providing support to grassroots organizations. She has been a pioneering figure in many respects. Her career is peppered with accolades and recognition, including selection for inclusion in Iowa Super Lawyers for more than 15 years. Roxanne's life work continues to inspire many, embodying the relentless pursuit of justice for individuals and communities wronged by criminal activities and systemic failures.

In Her Client's Words

“When Roxanne represented me, she was my strength, my adviser, my counselor, and my support. It was Roxanne who decided to dedicate her life to helping those who felt powerless. It was Roxanne who vowed to end discrimination and harassment. It was Roxanne who knew that those who hurt others, either directly or through neglect, should be held accountable ... Roxanne takes cases because it is the right thing to do, even if she might lose.

“Roxanne has spent a lifetime pushing, prodding, urging, and demanding that individuals, companies, and the government treat all people with respect, dignity, and fairness. Roxanne has made Iowa and the United States better places because of her efforts. As long as there are people who need her help, as long as bigotry and discrimination exist, Roxanne will continue to fight.”

— **Paulee Lipsman**, former client (from Trial magazine, September 1999)

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