

## A Civil Case Or A Criminal Case?

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### Types of cases and who can bring a lawsuit

Our legal system recognizes two different kinds of law cases -- civil and criminal. A civil case is one in which a person who feels he or she has been wronged brings legal action against a wrongdoer in order to protect his or her interests and, if appropriate, to collect damages from the person who wronged them. The case is started by the person whose rights have allegedly been violated and this person is known as the "plaintiff." The person being sued is known as the "defendant." In a civil case, the person who feels wronged decides whether or not to bring suit against the wrongdoer. The person also decides how much money in damages to seek.

In civil cases, if the wrongdoer is found responsible to the plaintiff the court can enter a judgment for: money damages, punitive damages, compensation for lost time/wages/income, reimbursement for certain costs and sometimes for attorney's fees, maybe even specific performance of something to be done that was not done. In any event, the judge cannot enter a judgment sending the defendant to jail or prison except in unusual cases where the defendant may have violated a court order.

A criminal case, on the other hand, is one in which the local, state, or federal government brings an action in the name of its citizens. The plaintiff is the government acting on behalf of the people. The case is prosecuted and the plaintiff is represented in court by the state attorney or the U.S. attorney. The accused, also known as a "defendant," is charged with a crime against society -- that is, a violation of the laws regulating our conduct, such as murder, rape, conspiracy, theft, DUI, vandalism, robbery, etc. In addition, less serious conduct such as driving without a license or conducting door-to-door solicitation without a permit may also violate criminal laws.

In a criminal case, the prosecutor or a grand jury decides whether to initiate criminal proceedings, that is, to charge the defendant with violating a law. If a defendant is found guilty of a crime, the punishment can be: fines, reimbursement to victims of the crime, attending classes to educate the offender on avoiding similar behavior, attendance at drug or alcohol counseling, probation, jail and/or prison. The punishment depends upon the circumstances and the type of crime for which the wrongdoer is convicted.

### Burden of proof

In a civil case, it is up to the plaintiff, the person who has started the lawsuit, to prove his or her case with stronger evidence than the defendant has -- that is, by a **preponderance of the evidence**. In other words, for the plaintiff to win the case, the judge or a jury must believe that the weight of the plaintiff's evidence is greater than the weight of the defendant's evidence.

In a criminal case, because a person is presumed to be innocent until proven guilty, the prosecution must prove the case **beyond a reasonable doubt**. This does not mean beyond all possible doubt, but it does mean the court or jury must have an abiding conviction to a moral certainty of the truth of the charge. This is a much heavier burden of proof than in a civil case.

## Testifying

In a civil case any person may be required to testify in court. Everyone has the right to hire and appear with his or her own attorney, but in a civil case an attorney is not automatically appointed to represent a person who cannot afford an attorney. In some circumstances, however, local legal aid organizations, as well as private attorneys, will agree to represent a person free of charge or for a reduced charge if they cannot afford to hire a lawyer.

In a criminal case, the accused person cannot be made to testify. The accused person in a criminal case has the right to representation by an attorney appointed by the court and without charge to the defendant if the person doesn't have the money or property to hire an attorney. The accused person in a criminal case has many other rights that defendants in a civil case do not have. Additionally, a defendant in a civil case may also be the defendant in a criminal case for the same alleged act -- theft, for example.

If you are involved in either a civil or a criminal case, you should contact an attorney to determine how to proceed. There are many deadlines and time limitations that can affect your rights in either a civil or a criminal case so consulting with an attorney may help you understand your rights and obligations as well as your options for resolving the case.

If you believe you need legal advice, call your attorney. If you do not have an attorney, call The Florida Bar Lawyer Referral Service at (800) 342-8011, the local lawyer referral service or legal aid office listed in the yellow pages of your telephone book.

[Back to Top](#)

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