

Why Don't More Women Sue Their Rapists?

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Because the Supreme Court took away part of the Violence Against Women Act.

By [Claire Bushey](#)

When the Supreme Court struck down a portion of the [Violence Against Women Act](#) 10 years ago this month, the justices made it clear they thought victims of sexual violence had the right to sue their attackers. They just didn't think federal court was the place to do it.

The rationale behind VAWA, which Congress passed in 1994, was simple enough: Rape, a crime committed mostly against women and girls, constituted a brutal violation of their civil rights. Lawsuits could help victims hold rapists accountable. In 1994, Christy Brzonkala, then a student at Virginia Tech, accused football players James Crawford and Antonio Morrison of raping her. She sued Morrison and the school under VAWA's new civil rights remedy. In 2000, in [United States v. Morrison](#), the court said that Brzonkala's suit couldn't go forward because Congress had overstepped its constitutional authority by creating a federal remedy in the criminal-justice realm that usually falls to the states. "If the allegations here are true, no civilized system of justice could fail to provide [Brzonkala] a remedy," Chief Justice William Rehnquist wrote for the majority. "But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States."

And yet a decade later, rape victims in most states have yet to recover the legal advantages they lost when VAWA's civil rights remedy was struck down. To be sure, the number of civil cases in state court alleging sexual assault has increased dramatically. [Research by Ellen Bublick](#), a professor at the University of Arizona's law school, shows that state supreme courts heard more than 100 sexual violence suits between 2000 and 2005, compared with fewer than 10 between 1970 and 1975. That translates into hundreds or even thousands of cases in trial courts, most of which probably ended in settlement.

But most of these lawsuits go after third-party defendants—the kind with assets. The woman plaintiff brings a negligence claim against a shopping mall guarded by apathetic rent-a-cops or a nursing home that doesn't screen for a criminal background when it hires. These kinds of defendants offer the possibility of a hefty judgment that can pay for a lawyer's work on the case. Without that, attorneys often turn down cases even if they're winners, said Jeff Dion, director of the National Crime Victim Bar Association. Though lawsuits against third-party defendants occasionally also name the rapist, "their responsibility is a far less frequent focus

of inquiry," Bublick wrote. Dion said that for every case the National Crime Victim Bar Association's 300 lawyers take, "there's 10 they turn away." Peter Everett, a Virginia attorney who handles negligence cases against malls and hotels with inadequate security, said he turns down more than half the cases he's offered.

VAWA's civil remedy made it easier for women to find lawyers to take their cases against individual rapists because it encouraged courts to award attorney's fees to successful plaintiffs. The federal law also made it easier for women to sue by extending the statute of limitations to four years. (In most states, for cases like these, the time period is about two years.)

Victims need the weapon of a lawsuit because the criminal courts don't always serve their interests. A [2004 study](#) of sex crimes in Philadelphia and Kansas City, Mo., found that only half of the cases that resulted in an arrest were prosecuted. When prosecutors who doubt a victim's story are unwilling to press criminal charges, a civil suit allows the victim a different measure of justice. Juries determine guilt using a lower burden of proof; instead of deciding whether a defendant is guilty "beyond a reasonable doubt," a plaintiff need only demonstrate that "a preponderance of the evidence" points to guilt, making it easier for victims to prevail. Victims don't send their rapists to prison by suing them, but the damages they can win are another form of punishment. Damages can also help replace a rape victim's lost income and pay for counseling. "The criminal case is about paying your debt to society," Dion says. "The civil case is about [perpetrators] paying their debt to the victim."

Along with its practical importance for victims, VAWA promised a more abstract kind of benefit that was lost when the Supreme Court struck down the relevant portion of the law. Introducing the legislation in 1990, then-Sen. Joe Biden pointed out that more than 90 percent of sex crimes are committed against women. And yet, he argued, "we ignore the implication: a rape or sex assault should be deemed a civil rights crime, just as 'hate beatings' aimed at blacks or Asians are widely recognized as violations of their civil rights." Even when states address rape victims' practical concerns by extending the time they have to sue or encouraging courts to award attorney's fees, they don't challenge the public to rethink rape as an attack on women because they are women—in other words, as a form of discrimination.

At the moment, only Illinois, California, and New York City have laws that pick up on this message of VAWA. In a training presentation she gives to volunteer rape crisis counselors, Kaethe Morris Hoffer, legal director for Chicago Alliance Against Sexual Exploitation, talks about a client who won a judgment in Cook County under Illinois' Gender Violence Act. The man who raped her has to write a check for damages every month. Hoffer hopes that, when he writes that check to his victim, for a moment he thinks about what he did. If he's ever tempted to assault a woman again, maybe he will decide it isn't worth it.