



**Seeking Justice  
Against Enablers:**  
A Quick Guide to  
Civil Liability Against Those  
Who Enable Criminal  
Attacks or Sexual Abuse

A HAAS & CASTILLO EBOOK

By Marcus Castillo, B.C.S.

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## Introduction

Have you or a loved one recently been the victim of an attack, bullying or abuse? Have you or a loved one incurred medical bills or lost time at work while dealing with injuries or the psychological impact from such attack, bullying or abuse? Are you considering seeking compensation for the injuries or psychological damage inflicted by an assailant? Are you simply interested in learning more about this area of the law? If so, read on.

## Core Liability Theories and Defenses

Following an attack, bullying or abuse, the natural tendency is to consider the assailant the target defendant. Indeed, first year law students learn that the assailant is potentially liable for damages for assault and battery. So why shouldn't the discussion end there? Because many assailants will end up in prison and therefore penniless. Even if the assailant has some form of liability insurance, most liability policies exclude intentional conduct like assault and battery. Often, plaintiff's lawyers have tried to get around this problem by arguing that the assailant didn't act intentionally because he or she was too intoxicated to know better. I used to make those arguments too, but insurance companies began rewriting their policies in a way that made it virtually impossible to collect against them for any assault.

Many situations involving a criminal attack or some form of abuse were enabled by another person or business. These enablers can take multiple forms, depending on the circumstances. In the sections below we will look at a few examples.

For the moment, let's consider the primary legal theories subjecting the enabler to liability for the assailant's acts: negligence and breach of fiduciary duty. Negligence is a failure to act when one had a duty to act and was on notice in some way about the assailant's potential to do harm. But there is an important catch: If your case is based on negligence, Florida recognizes a defense known as the "impact rule." This requires the plaintiff to show the assailant was physically (versus only verbally) abusive. Stated differently, if there is no touching, there is no negligence case against the enabler. The law also recognizes the potential for liability for breach of fiduciary duty. This requires a higher duty of care and is applicable to persons caring for those with limited mental capacity, children or the elderly.

In addition to the impact rule, there is another important defense to consider. In virtually all negligence cases, a defendant will argue that the plaintiff was "comparatively negligent." This means the defense will argue that the victim caused or contributed to his or her own injuries in some way. There are many other available defenses, but these are the most frequently-asserted ones.

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This discussion would not be complete without mentioning that there are also potential statutory claims that may not require impact that may be made in addition to a negligence claim. An

example is that a “hostile environment” existed because of verbal abuse coupled with racially or sexually charged gestures. This is especially relevant in the employment and school setting.

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## Common Types of Enabler Claims

The scope of enabler liability is best understood by illustration. The following are some of the more common scenarios...

### Employers

Employers whose employees injure other persons may be liable for negligent hiring or retention of the assailant. Companies should perform background checks before hiring. Such checks may reveal a violent or otherwise questionable background. After hiring, companies should monitor their employees, particularly if aggressive or erratic behavior occurs. If the assailant was a co-employee, then employment law protections like Title VII would apply.

#### CASE EXAMPLES

**Firm member Marcus Castillo has handled negligent hiring and retention cases involving...**

Sexual assaults

Injuries sustained inside a bar

Injuries at an office party

A frisk of a co-employee who was wrongfully accused of theft

### Youth Organizations

Think of the responsibility of youth organization leaders as similar to employers. These organizations and their insurance carriers may be liable if supervisors knew about the assailant’s dangerous tendencies but took no action. Many of these organizations carry liability insurance coverage.

#### CASE STUDY

**Our firm recovered a settlement from a youth organization when one of its youth leaders attempted to molest a camp attendee.**

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### Government

Most state governments like Florida administer foster care programs. The vast majority of employees are dedicated public servants. Unfortunately, there are a handful of sexual predators in their midst that have inflicted sexual abuse on foster children. The government may be liable in some instances if its supervisory employees knew or should have known about the abuse or assaults but took no steps to stop it.

#### CASE STUDY

**Firm member Marcus Castillo's first solo jury trial involved allegations of negligent supervision over a foster parent accused of sexually battering children in his care. The case ultimately settled during trial on favorable terms.**

### Schools

Schools are a special situation. School bullying and attacks are governed by Title IX under federal law. Title IX requires a showing that the bullying or attack was motivated in some way by one's gender. With the rise in bullying, expect to see more school-based lawsuits.

#### MORE ON BULLYING

**Bullying can take many forms, from the playground to school halls to social media platforms. Parents can play a major role in helping kids stand up to bullying. For more information, check out [www.stopbullying.gov](http://www.stopbullying.gov).**

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## Afterword

We hope you've found this eBook useful to understand the basic issues in a case involving a criminal attack or sexual abuse or related conduct. These cases demand aggressive investigation and a thorough grasp of the controlling law. Look to an attorney with broad-based experience in this area of practice.

### ABOUT THE AUTHOR



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### Marcus Castillo, B.C.S.

Marcus is an AV-rated Florida SuperLawyer (Top 5% of all lawyers in the state). He leads our criminal attacks and sexual abuse practice. His practice areas include:

**AD&D and Life Insurance Claims**

**Criminal Attacks and Sexual Abuse**

**Employment Litigation**

**Premises Liability**

**Whistleblower Claims**



Marcus is also co-founder of **TrialFocus, LLC**, which employs focus groups to test the strengths and weaknesses of civil litigation cases.

## **Haas & Castillo, PLLC is a law firm built on reputation and referrals, not advertising.**

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We are a law firm of specialists certified as experts in business litigation and labor and employment law by The Florida Bar and have worked in Tampa Bay for over 35 years.

Our business and construction litigation practice, led by Lee Haas, includes these types of disputes: contracts, collections, construction, real estate, corporate, trade secrets, noncompetition contracts, and landlord/tenant, as well as appeals of these cases.

Marcus is board-certified in labor and employment law and handles a variety of labor and employment law related matters both for plaintiffs and defendants. Marcus has long achieved successful results for crime victims where a third-party may be civilly liable. Marcus also handles the related field of premises liability.



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