

CRIME VICTIM RIGHTS INFORMATION GUIDE



OFFICE OF JUSTICE PROGRAMS

July 2012

Forward

Minnesota has a strong commitment to crime victims, as evidenced by its comprehensive statutory scheme of victim rights, the network of resources available to victims, and the efforts of both advocates and criminal justice professionals to ensure the fair and equitable treatment of victims.

To assist those working with crime victims in Minnesota, the Office of Justice Programs produces the *Minnesota Crime Victim Rights Information Guide*. This comprehensive guide discusses the rights, protections, and resources available to crime victims, with specific emphasis on the relevant statutes and case law.

For easy access to the information, the book is divided into five parts.

Part 1 Topic Summary

This section includes descriptions of the rights and resources available to crime victims, including summaries of the relevant case law related to specific crime victim rights.

Part 2 Reparations

This section contains an overview of the Minnesota Crime Victims Reparations Board, including the functions of the board and guidelines for compensation awards.

Part 3 Minnesota Statutes Chapter 611A

This section includes the full text of the Crime Victims Bill of Rights.

The *Crime Victim Rights Information Guide*, first issued in 1993 by the Minnesota Crime Victim and Witness Advisory Council, was a result of a collaborative effort of many crime victim professionals throughout the state. It has gone through several revisions since then, taking into account the evolving nature of victim rights. The 2012 edition of the *Crime Victim Rights Information Guide* reflects the changes from the 2012 legislative session and relevant case law through June 2012.

Like victim rights, this guide is intended to be an evolving document, with current topics supplemented and additional topics added. Please contact the Office of Justice Programs for suggestions on improving the guide.

We hope this guide is useful in your work with crime victims.

Suzanne Elwell
Director, Crime Victim Justice Unit
Office of Justice Programs

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LOCATING LAWS AND ADDITIONAL INFORMATION

How to Find Statutes Referred to in this Guide:

To find a specific Minnesota law, go to the Minnesota Office of the Revisor of Statutes Website, and use the search function. You can search under chapter, the specific section, or by key words: www.revisor.mn.gov.

Chapters Affecting Crime Victims:

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Additional Resources:

[Minnesota Crime Victim Rights: Reference Guide for Criminal Justice Agencies and Professionals](#)

[Minnesota Office of Justice Programs Website](#)

[Minnesota Department of Corrections Victim Assistance Program](#)

[VictimLaw Website](#) (compendium of states' laws)

[Minnesota Sentencing Guidelines Commission](#)

MILESTONES FOR CRIME VICTIMS IN MINNESOTA

- 1971 First rape crisis program is established in Minneapolis, and first battered women's shelter opens in St. Paul.
- 1974 Crime Victims Reparations Board is created to provide financial compensation to victims of violent crimes.
- 1976 First prosecutor-based victim assistance program is established in the Saint Louis County Attorney's Office in Duluth.
- 1983 First law providing comprehensive crime victim rights, including notification and participation in the criminal justice process (Minnesota Statutes section 611A or "the Crime Victim Bill of Rights"), is passed.
- 1984 Governor-appointed task force holds public hearings in seven cities across the state to air public concerns and determine needs of crime victims. Testimony taken from victims and victim service providers results in a clear mandate for a voice in the criminal justice system.
- 1985 Legislature enacts Minnesota Statutes sections 611A.72-74 establishing the Office of Crime Victims Ombudsman (OCVO), the first victim rights compliance office in the nation.
- 1986 Legislature adds a number of rights to chapter 611A, including the rights to increased participation, to obtain a civil judgment to satisfy a restitution order, and to be free from potentially adverse effects of participation. OCVO officially opens as the first crime victim ombudsman's office in the nation in May.
- 1988 Right to give a victim impact statement becomes law. Crime victim rights statute amended to include specific provisions related to domestic violence cases.
- 1990 Legislature enhances legal protections for victims of harassment, including the right to keep their identities confidential in certain government records.
- 1991 Legislature amends chapter 611A to require that prosecutors make reasonable efforts to notify victims of final case dispositions and custodial authorities to notify victims, on request, if an offender escapes from confinement or is transferred to a less secure correctional facility.
- 1993 Legislature makes the following changes affecting crime victims: Law enforcement agencies are required to make reasonable efforts to notify victims of motor vehicle thefts when vehicles are recovered and how to retrieve them; procedures for giving crime victims written notification of their rights are streamlined; minor prosecution witnesses are allowed to have a supportive person in the courtroom during their testimony in any criminal case involving a violent crime.
- 1996 Legislature expands victim notification rights to require notice of bail hearings to victims of domestic violence and harassment.
- 1997 Minnesota's sex offender registration law is enhanced to provide community notification of sex offenders convicted of an offense requiring registration and released from prison after January 1, 1997.
- 1999 Legislature enhances confidentiality of personal information for crime victims and witnesses and limits an offender's right to challenge a restitution order.
- 2000 Changes are enacted to the sex offender registration statute to better track sex offenders (Katie's Law). Domestic abuse no contact orders are established and law enforcement officers given warrantless arrest authority for misdemeanor violations of domestic abuse no contact orders.
- 2001 Legislature enacts law requiring prosecutors to notify victims who have so requested to be notified of expungement proceedings and gives victims the right to be present and submit a statement at the expungement hearing.
- 2002 Legislature clarifies that the costs for sexual assault exams are the responsibility of the county in which the alleged offense occurred and that payment is not dependant on the victim reporting the alleged offense to law enforcement.
- 2002 First county in Minnesota goes online with VINE, the automated victim notification system.

MILESTONES FOR CRIME VICTIMS IN MINNESOTA

- 2003 Victims' right to give oral or written objections is extended to plea hearings. OCVO is renamed the Crime Victim Justice Unit and incorporated into the Office of Justice Programs as part of a state-wide reorganization.
- 2004 Grounds for extending an order for protection are amended to include situations when the respondent is incarcerated and about to be released or has recently been released from incarceration.
- 2005 Definition of "victim" is expanded to include family members of a minor, incompetent, incapacitated, or deceased person. Additional protection is given to victims against employer retaliation for taking time off to attend order for protection, harassment restraining order, or criminal proceedings.
- 2006 Safe at Home, an address confidentiality program for domestic abuse victims, is established.
- 2007 Domestic abuse victims are accorded the right to terminate their rental lease without penalty or liability.
- 2007 Sexual assault victims cannot be required to take a polygraph examination in order for a case to be investigated or prosecuted.
- 2008 Process established for domestic abuse victims to get an order for protection extended for up to 50 years.

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PART 1

TOPIC SUMMARIES

PART 1 – TOPIC SUMMARIES

1. Notice of Rights

Minnesota law requires criminal justice professionals to give victims notice of their rights at certain stages in the course of the criminal justice process. This section discusses the victim rights notification responsibilities that attach to the various elements of the criminal justice system.

Corresponding Statutes: Minn. Stat. 611A.02, 611A.01, 13.82, 629.341, 611A.66, 611A.03, 609.115, 611A.037, 611A.04, 611A.0385, 611A.06, 243.05, and 244.05.

Notice Given By Peace Officers

Under Minnesota Statutes section 611A.02, the initial notice of the rights of crime victims must be distributed by a peace officer to each victim, as defined in section 611A.01, *at the time of initial contact with the victim*. The notice must inform a victim of:

- (1) the victim's right to apply for reparations to recover losses, not including property losses, resulting from a violent crime and the telephone number to call to request an application;
- (2) the victim's right to request that the law enforcement agency withhold public access to data revealing the victim's identity under section 13.82, subdivision 17(d);
- (3) the additional rights of domestic abuse victims as described in section 629.341;
- (4) information on the nearest crime victim assistance program or resource; and
- (5) the victim's rights, if an offender is charged, to be informed of and participate in the prosecution process, including the right to request restitution.

Minnesota Statutes section 611A.66 specifically requires all law enforcement agencies investigating crimes to provide victims with notice of their right to apply for reparations along with a telephone number to call to request an application form.

Police cannot be sued for failure to comply with this statute.

The Minnesota Court of Appeals has ruled that the failure of law enforcement to inform a crime victim of his or her right to reparations does not provide a basis for a negligence action. See **Bruegger v. Faribault County Sheriff's Dept**, 486 N.W.2d 463 (Minn. Ct. App. 1992).

Notice Given by Prosecuting Attorney

Under section 611A.02, subdivision 2(c), a supplemental notice of the rights of crime victims must be distributed by the city or county attorney's office to each victim, within a reasonable time after the offender is charged or petitioned. This notice must inform a victim of all the rights of crime victims under chapter 611A.

Another statute, section 611A.03, directs the prosecuting attorney to notify the victim of the right to be notified of the contents of a plea agreement recommendation and to be present at the sentencing hearing and at the hearing during which the plea is presented. Further, the victim must be notified of the right to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. A prosecuting attorney satisfies the requirements of this statute by notifying:

- (1) the victim's legal guardian or guardian ad litem; or
- (2) the three victims the prosecuting attorney believes to have suffered the most, if there are more than three victims of the offense.

Notice Given by Probation Officer

Under Minnesota Statutes sections 609.115, subdivision 1, and 611A.037, subdivision 2, the probation officer conducting the presentence investigation (PSI) shall make reasonable and good faith efforts to contact the victim of that crime and to provide that victim with the following information:

- (1) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel;
- (2) the victim's right to request restitution pursuant to section 611A.04;
- (3) the time and place of the sentencing or juvenile court disposition and the victim's right to be present; and
- (4) the victim's right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement.

PART 1 – TOPIC SUMMARIES

1. Notice of Rights

Notice Given by the Juvenile Court

Under Minnesota Statutes section 611A.02, subdivision 3, the juvenile court shall distribute a notice of rights and services to each victim of juvenile crime who attends a juvenile court proceeding, along with a notice of services available in that judicial district. The notice shall explain the rights of victims in the juvenile court, when a juvenile matter is public, the procedures to be followed in juvenile court proceedings, and other relevant matters. A model notice is available on the [Office of Justice Programs Website](#).

Notice Given by Courts

Under Minnesota Statutes section 611A.0385, the court must notify at the time of sentencing or disposition each affected victim of the right to be notified of the offender's release and of the expungement provisions under section 611A.06.

Notice Given by Commissioner of Corrections

Parole review hearings: Under Minnesota Statutes section 243.05, subdivision 1b, the commissioner shall make reasonable efforts to notify the victim (meaning the murder victim's surviving spouse or next of kin) in advance of the time and place of an inmate's parole review hearing. The victim has a right to submit an oral or written statement at the review hearing. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the inmate should be paroled at that time. The commissioner must consider the victim's statement when making the parole decision.

Supervised release, life sentences: Under Minnesota Statutes section 244.05, subdivision 5, the commissioner may give supervised release to an inmate serving a mandatory life sentence under section 609.185, clause (3) (first-degree murder while in commission of a listed felony), clause (5) (first-degree murder of minor with pattern child abuse), or clause (6) (first-degree murder with pattern of domestic abuse); 609.3455, subdivision 3 (egregious first-time sex offenders) or subdivision 4 (repeat sex offenders); or 609.385 (treason) after the inmate has served the minimum term of imprisonment specified in subdivision 4. The commissioner shall make reasonable efforts to notify the victim (meaning the individual who suffered harm as a result of the inmate's crime or, if the individual is deceased, the deceased's surviving spouse or next of kin) in advance of the time and place of the inmate's supervised release review hearing. The victim has a right to submit an oral or written statement

at the review hearing. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the inmate should be given supervised release at this time. The commissioner must consider the victim's statement when making the supervised release decision.

Conditional release terms: Under Minnesota Statutes section 609.3455, subdivision 8(b), when a sex offender with a previous or prior sex offense conviction completes the sentence imposed and is placed on conditional release for the remainder of the offender's life, the commissioner shall make reasonable efforts to notify the victim of the offender's crime of the terms of the offender's conditional release.

Notice Given to Party to Child Custody Proceedings

In cases in which a child custody order is issued, each party has the right to be notified by the other party if the minor child is the victim of an alleged crime, including the name of the investigating law enforcement officer or agency. No duty to notify exists if the party to be notified is the alleged perpetrator. Further, exceptions to the notification requirement are when a protective or other order barring communication between the parties is in place or when a party participates in the Safe at Home address confidentiality program. Minn. Stat. 518.17, subd. 3(b).

PART 1 – TOPIC SUMMARIES

2. Notice of Release

Victims have the right to be notified before the offender is to be released. This is a very important right for victims who may need to take steps to protect their safety. There are provisions in Minnesota law regarding pre-trial notice of release of the offender from arrest or detention and post-conviction notice of release of the offender after completion of a term of incarceration. There are also provisions for notice of a reduction in the offender's custody status and for notice of escape of an offender; notice is not required if the offender is transferred to a facility with an equivalent or higher level of security than the one transferred from.

In 1996, the legislature enacted Minnesota Statutes sections 244.052 and 244.053, which provide additional notification to law enforcement, victims, and the public when certain sex offenders are to be released.

This section discusses various custodial authorities' responsibilities with respect to notifying the victim of an offender's release, as well as the court's responsibility to notify victims of an upcoming bail hearing.

Corresponding Statutes: Minn. Stat. 611A.06; 611A.0385; 629.72; 629.73; 13.84; 244.052; and 244.053.

Notice of Release After Arrest or Detention – Victims of Violent Crime

Victims of crimes of violence or attempted crimes of violence have a right to be notified of the release of an arrested or detained person. Minn. Stat. 629.73, subd. 1.

Oral Notice: Under section 629.73, subdivision 1, when a person arrested or a juvenile detained for a crime of violence or attempted crime of violence is about to be released from pretrial detention, the agency having custody of the arrested or detained person or its designee shall make a reasonable and good faith effort before release to orally inform the victim of the following matters:

- (1) the conditions of release, if any;
- (2) the time of release;
- (3) the time, date, and place of the next scheduled court appearance of the arrested or detained person and, where applicable, the victim's right to be present at the court appearance; and
- (4) the location and telephone number of the area sexual assault program as designated by the Commissioner of Corrections.

If the victim is incapacitated, notification shall be to the next of kin. If the victim is a minor, the victim's parent or guardian shall be notified.

Written Notice: As soon as possible after the arrested or detained person is released, the agency having custody of the arrested or detained person must personally deliver or mail to the alleged victim written notice of the information contained in clauses (2) and (3) above. See Minn. Stat. 629.73, subd. 2 (2006).

“Crime of violence” means: felony convictions of the following offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.229 (crimes committed for the benefit of a gang); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.486 (commission of crime while wearing or possessing a bullet-resistant vest); 609.52 (involving theft of a firearm, theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or authorized agent of the owner, theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, and theft involving the theft of a controlled substance, an explosive, or an incendiary device); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subs. 1, 2, or 3 (burglary in the first through third degrees); 609.66, subd. 1e (drive-by shooting); 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun); 609.71 (riot); 609.713 (terroristic threats); 609.749 (harassment and stalking); 609.855, subd. 5 (shooting at a public transit vehicle or facility); and chapter 152 (drugs, controlled substances); and an attempt to commit any of these offenses. See Minn. Stat. 624.712, subd. 5 (2006).

PART 1 – TOPIC SUMMARIES

2. Notice of Release

Release Notice to Victims of Domestic Abuse

“Domestic abuse” means the following, if committed against a family or household member by a family or household member:

- (1) physical harm, bodily injury, or assault;
- (2) the infliction of fear of imminent physical harm, bodily injury or assault; or
- (3) terroristic threats, within the meaning of section 609.713, subd. 1; criminal sexual conduct, within the meaning of sections 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subd. 2.

Oral Notice: Under Minnesota Statutes section 629.72, subdivision 6, before a person arrested for domestic abuse can be released, the agency having custody of the arrested person must make a reasonable and good faith effort to orally inform the alleged victim, any local law enforcement agencies involved in the case, and, at the victim’s request, any local women’s programs established under section 611A.32 or sexual assault programs of:

- (1) the conditions of release, if any;
- (2) the time of release;
- (3) the time, date, and place of the next scheduled court appearance of the arrested person and the victim’s right to be present at the court appearance; and
- (4) if the arrested person is charged with domestic abuse, the location and telephone number of the area battered women’s shelter as designated by the Department of Corrections.

Written Notice: As soon as possible after an order for conditional release is entered, the agency having custody of the arrested person or its designee must personally deliver or mail to the alleged victim a copy of the written order and written notice of the information in clauses (2) and (3) above. See Minn. Stat. 629.72, subd. 6(b).

Under section 629.72, subdivision 2, the prosecutor or other appropriate person must present relevant information about the victim’s or the victim’s family’s account of the crime to the judge to be considered in determining an arrested person’s release.

Post-Conviction Notice of Release

Under section 611A.06, victims are entitled to notice of the offender’s release from imprisonment or incarceration or notice of a reduction in the offender’s custody status. To receive release notification for an offender in a Department of Corrections facility, a victim must make a request to the Minnesota CHOICE electronic notification system or by contacting the department’s

Victim Assistance Program at 800-657-3830. For more information on Minnesota CHOICE, see section 15.

For release notification for an offender in a county jail, victims should contact the facility directly to find out about its process for making the request. Victims can also request to receive release notification through the VINE system, an automated victim notification system that can provide notifications of a change in custody status through phone, email or text message notification. Victims with new contact information must inform the facility and/or update their VINE registration to ensure that notification can be made of changes in custody status.

The court is responsible for advising victims of their right to notice of release. The court or its designee must make a good faith effort to notify each affected victim, or the victim’s parent or guardian, of the notice of release provisions.

The custodial authority must make a good faith effort to notify the victims who have requested notice. This provision includes release of the offender from imprisonment or incarceration; release on extended furlough and for work release; release from a juvenile correctional facility; release from a facility in which the offender was confined due to incompetency, mental illness, mental deficiency, or commitment under sections 253B.18 (mentally ill and dangerous to the public) or 253B.185 (sexual psychopathic personality or sexually dangerous); or a reduction in custody status.

The good faith effort to notify the victim must occur prior to the release or reduction in custody status. For a victim of a felony crime against a person where the offender was sentenced to a term of imprisonment of more than 18 months, the good faith effort to notify the victim must occur 60 days before the offender’s release.

Contents of Notice. The notice given to a victim of a crime against a person must include the conditions governing the offender’s release, and either the identity of the corrections agent who will be supervising the offender’s release or a means to identify the court services agency that will be supervising the offender’s release.

Notice of Escape. If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, or from any facility described in subdivision 1, the Commissioner of Corrections or other custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the offender’s release within six hours after discovering the escape and shall also make reasonable efforts to notify the victim within 24 hours after the offender is apprehended.

PART 1 – TOPIC SUMMARIES

2. Notice of Release

Data Privacy. All identifying information regarding the victim, including the victim's request and the notice provided by the Commissioner of Corrections or custodial authority, is classified as private data on individuals as defined in section 13.02, subdivision 12, and is accessible only to the victim.

Notice of Bail Hearings

Under Minnesota Statutes section 629.72, subdivision 7, this type of notice applies to crimes of domestic assault or harassment. When an arrested person is scheduled to be reviewed for release from pretrial detention, the court shall make a reasonable and good faith effort to notify the victim, the victim's family if the victim is incapacitated or deceased, and the victim's parent or guardian if the victim is a minor. The notice must include:

- (1) the date and approximate time of review;
- (2) the location where the review will occur;
- (3) the name and telephone number of a person who can be contacted for additional information; and
- (4) a statement that the victim and the victim's family may attend the review.

Notice of Release of Predatory Offenders

Sixty days prior to the release of any offender required to register as a predatory offender, the Commissioner of Corrections shall send written notice to the sheriff of the county, the police chief of the city in which the inmate will reside or in which placement will be made in a work release program, and the sheriff of the county where the offender was convicted.

Upon written request, notice of release shall also be sent to the victim, a deceased victim's next of kin, and witnesses as well as any person specified in writing by the prosecuting attorney. Minn. Stat. 244.053. While this notice does not limit a victim's right to request notice of release under section 611A.06, the Department of Corrections is utilizing the same notification request process for both victim notification under Minnesota Statutes sections 243.053 and 611A.06. The notice must inform the victim or a deceased victim's next of kin of the right to request and receive information about the offender authorized for disclosure under the community notification provisions of section 244.052.

Under section 244.052, subdivision 4, the law enforcement agency in the area where the sex offender resides, expects to reside, is employed, or is regularly found, shall disclose any information to the public that is relevant and necessary to protect the public and counteract the offender's dangerousness. If the

offender is assigned a risk level 1, the law enforcement agency may disclose information to other law enforcement agencies. If the offender is assigned a risk level 2, the law enforcement agency may disclose information to other groups/ agencies the offender is likely to encounter, in addition to disclosing information to other law enforcement agencies. For risk level 3 offenders, the law enforcement agency may disclose information to other members of the community whom the offender is likely to encounter. Law enforcement is prohibited from providing notice to groups or community members if the offender is being placed or resides in a licensed residential facility.

For an offender to be subject to community notification under section 244.052, the offender must have been convicted under one of the following Minnesota statutes: 609.185, (a) (2) (murder in the first degree while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence); 609.25 (kidnapping); 609.255, subd. 2 (false imprisonment of someone else's child); 609.322 (solicitation, inducement and promotion of prostitution); 609.324 (other prostitution crimes); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451, subd. 3 (felony level criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct); 609.3455, subd. 3a (mandatory sentence for certain engrained offenders); 609.352 (solicitation of children to engage in sexual conduct); 617.246 (use of minors in sexual performance); 617.247 (possession of pornographic work involving minors); 253B.185 (civil commitment as a sexual psychopathic personality or sexually dangerous person); 526.10 (1992) (former statute governing civil commitment for an indeterminate time); or a comparable offense in another state or a comparable federal offense.

Section 243.166, subdivision 1b specifies when registration as a predatory offender is required.

Access to Data

Victims of juvenile crime may obtain information necessary to assert their right to notice of release from the juvenile correctional agency. The data that may be released includes the name, home address, and placement site of a juvenile who has been placed in a juvenile correctional facility as a result of a delinquent act. See Minn. Stat. 13.84, subd. 6(c) (2006).

Victims do not have a general right of access to confidential portions of a presentence investigation report. *State v. Backus*, 503 N.W.2d 508 (Minn. Ct. App. 1993).

PART 1 – TOPIC SUMMARIES

3. Notice Regarding Pretrial Diversion/Notice of Plea Agreements

In practice, most criminal cases are resolved through plea negotiations, and in some instances, a prosecutor may decide to refer an offender to a diversion program in exchange for dismissal of the charges after a specified period of time or no charges if the program is successfully completed. This section discusses the rights accorded crime victims when these outcomes are being considered by the prosecution.

Corresponding Statutes: Minn. Stat. 611A.031 and 611A.03.

Pretrial Diversion

A diversion program is one reserved for offenders who have committed non-person crimes, have no such prior convictions, and are deemed to be good candidates to successfully comply with program requirements. Among the goals of these programs are promoting the collection of restitution and reducing recidivism. Successful completion of the program allows an offender to keep the crime off his or her record without going through the trial process.

Under Minnesota Statutes section 611A.031, a prosecutor shall make every reasonable effort to notify and seek input from the victim prior to referring a person into a pretrial diversion program. This only applies to the following crimes: 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.365 (incest); 609.498 (tampering with a witness); 609.561 (arson in the first degree); 609.582, subd. 1 (burglary in the first degree); 609.687 (adulteration); 609.713 (terroristic threats); and 609.749 (harassment; stalking).

Plea Negotiation

Most criminal cases result in a plea of guilty by the offender. The offender may plead guilty at the omnibus hearing and other pretrial proceedings. Usually the plea of guilty is the result of an agreement between the prosecutor and the defense attorney.

Plea agreements are subject to the judge's approval (i.e., the judge does not have to accept the plea agreement).

Under section 611A.03, prior to presenting the plea agreement to the judge, the prosecutor shall make a reasonable and good faith effort to inform the victim or the victim's legal guardian or guardian ad litem of:

- (1) The contents of the plea agreement recommendation, including the amount of time recommended for the defendant to serve in jail or prison if the court accepts the agreement; and
- (2) The right to be present at the sentencing hearing and to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.

If there are more than three victims of a particular crime, the prosecutor is only required to notify the three victims the prosecuting attorney believes to have suffered the most.

PART 1 – TOPIC SUMMARIES

4. Notice of Disposition/Notice to Decline

Victims have the right to learn the final disposition of their case if it has been prosecuted and, in some instances, to be informed that their case has been declined for prosecution or dismissed accompanied by information on obtaining a restraining order. This section discusses these rights, which the prosecutor is charged with upholding.

Corresponding Statutes: Minn. Stat. 611A.0315 and 611A.039.

Note: Section 611A.039 allows for a process where a prosecutor may contact crime victims in advance of the final case disposition, either orally or in writing, and notify them of the victim's right to request information on the final disposition of the case. The prosecutor is then only required to provide the notice to those victims who have indicated in advance their desire to be notified of the final case disposition. This process only applies to the disposition notice. Minn. Stat. 611A.039, subd.2.

Domestic Assault, Criminal Sexual Conduct, or Harassment/Stalking

Under Minnesota Statutes section 611A.0315, a prosecutor shall make every reasonable effort to notify a victim of domestic assault, a criminal sexual conduct offense, or harassment/stalking that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority:

- (1) contacting the victim or a person designated by the victim by telephone; and
- (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

Further, whenever a prosecutor dismisses criminal charges against a person accused of domestic assault, a criminal sexual conduct offense, or harassment, a record shall be made of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor shall indicate the specific reason that the witness is unavailable.

Whenever a prosecutor notifies a victim of domestic assault or harassment under section 611A.0315, the prosecutor shall also inform the victim of the method and benefits of seeking an order for protection under section 518B.01 or a restraining order under section 609.748 and that the victim may seek an order without paying a fee.

All Criminal Cases

Under section 611A.039, the prosecutor shall make reasonable good faith efforts to provide to each affected crime victim oral or written notice of the final disposition of the case. This notice should be given within 15 working days after a conviction, acquittal, or dismissal in a criminal case in which there is an identifiable crime victim.

PART 1 – TOPIC SUMMARIES

5. Notice of Appeal/Notice of Sentence Modification

Defendants have the right to appeal their convictions and to seek modification of their sentences. Correspondingly, Minnesota law makes provisions for crime victims who otherwise would not know a defendant had initiated such an action. While the notice of appeal provision applies to all crime victims, the notice of sentence modification applies only to some crime victims. This section discusses these rights in more detail.

Corresponding Statutes: Minn. Stat. 611A.0395 and 611A.039.

Notice of Appeals

Under Minnesota Statutes section 611A.0395, subdivision 1, the prosecutor must make reasonable and good faith efforts to notify the victim of a pending appeal. The notice efforts must be made within 30 days of the filing of the brief by the party responding to the appeal. Under section 611A.0395, subdivision 2, the prosecutor has 15 working days to notify the victim of the final decision on appeal.

Notice Prior to Sentence Modification

Under section 611A.039, when a court is considering modifying the sentence for a felony or a crime of violence or an attempted crime of violence, the court or its designee shall make a reasonable and good faith effort to notify the victim of the crime. The notice must include:

- (1) the date and approximate time of the review;
- (2) the location where the review will occur;
- (3) the name and telephone number of a person to contact for additional information; and
- (4) a statement that the victim and victim's family may provide input to the court concerning the sentence modification.

If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent or guardian.

The term "crime of violence" as specified by section 611A.039 has the meaning given in section 624.712, subd. 5 (designating crimes of violence as felony convictions of the following offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the

third degree); 609.2231 (assault in the fourth degree); 609.229 (crimes committed for the benefit of a gang); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.486 (commission of crime while wearing or possessing a bullet-resistant vest); 609.52 (involving theft of a firearm, theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or authorized agent of the owner, theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, and theft involving the theft of a controlled substance, an explosive, or an incendiary device); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subs. 1, 2, or 3 (burglary in the first through third degrees); 609.66, subd. 1e (drive-by shooting); 609.67 (unlawfully owning, possessing, or operating a machine gun or short-barreled shotgun); 609.71 (riot); 609.713 (terroristic threats); 609.749 (harassment and stalking); 609.855, subd. 5 (shooting at a public transit vehicle or facility); and chapter 152 (drugs, controlled substances); and an attempt to commit any of these offenses.

Additionally, for the purpose of this section, a crime of violence includes gross misdemeanor violations of section 609.224 (assault in the fifth degree) and non-felony violations of sections 518B.01 (Domestic Abuse Act); 609.2231 (assault in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.748 (harassment restraining order); and 609.749 (harassment, stalking).

PART 1 – TOPIC SUMMARIES

6. Presentence Investigations and Victim Impact Statements

Victims of crime and their families have the right to participate and be heard in the criminal justice system. Yet, victims have little opportunity to communicate to judges and other criminal justice personnel regarding how the crime affected them. A presentence investigation, which is required for certain crimes, is one opportunity for the victim to provide information about the impact of the crime and express an opinion about a desirable outcome to criminal justice personnel, in particular, a probation officer. Another key opportunity for the victim to provide feedback and input is at the defendant's sentencing or disposition proceeding prior to the court deciding the sentence or disposition. When addressing the court, victims can personalize the crime and express its impact on them and their families, a process that may also aid victims in their emotional recovery.

This section discusses these rights in greater detail.

Corresponding Statutes: Minn. Stat. 609.115; 609.2244; 611A.037; 611A.038; 243.05, subd. 1b.; and 244.05, subd. 5.

Presentence Investigation

Prior to sentencing of the offender, a probation officer must complete a presentence investigation (PSI) on all felony and domestic abuse cases, and may complete one for misdemeanor and gross misdemeanor cases. The PSI report includes information about the defendant's individual characteristics, circumstances, criminal record and social history, and the circumstances of the offense and the harm caused by it to others and to the community. Also, if the court directs, the report shall include an estimate for the prospects of the defendant's rehabilitation and recommendations for sentencing. In misdemeanor cases, the report may be oral.

Under Minnesota Statutes section 611A.037, the report must include information relating to crime victims, including:

- (1) a summary of the damages or harm and any other problems generated by the criminal occurrence;
- (2) a concise statement of what disposition the victim deems appropriate for the defendant or juvenile court respondent, including reasons given, if any, by the victim in support of the victim's opinion; and
- (3) an attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

A hearing will then be held about the report and the sentence to be imposed upon the defendant. Section 609.115, subdivision 4 states:

[A] copy of the PSI report shall be, if written, provided to counsel for all parties before sentence. The written report shall not disclose confidential sources of information unless the court otherwise directs.

On the request of the prosecuting attorney or the defendant's attorney a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs. If the presentence report is given orally the defendant or the defendant's attorney shall be permitted to hear the report.

Notice to Victim. Under section 611A.037, subd. 2, the officer conducting the presentence or predispositional investigation shall make reasonable and good faith efforts to contact the victim of that crime and to provide that victim with the following information:

- (1) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel;
- (2) the victim's right to request restitution pursuant to section 611A.04;
- (3) the time and place of the sentencing or juvenile court disposition and the victim's right to be present; and
- (4) the victim's right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement. To assist the victim in making a recommendation under clause 4, the officer shall provide the victim with information about the court's options for sentencing and other dispositions.

Presentence Domestic Abuse Investigations

A presentence domestic abuse investigation must be conducted and a report submitted to the court by the corrections agency responsible for conducting the investigation when:

- (1) a defendant is convicted of an offense described in section 518B.01, subdivision 2 (domestic abuse);
- (2) a defendant is arrested for committing an offense described in section 518B.01, subdivision 2, but is convicted of another offense arising out of the same circumstances surrounding the arrest; or
- (3) a defendant is convicted of a violation against a family or household member of:
 - (a) an order for protection under section 518B.01;
 - (b) a harassment restraining order under section 609.748;
 - (c) obscene or harassing telephone calls under section 609.79, subdivision 1; or
 - (d) terroristic threats under section 609.713, subdivision 1. Minn. Stat. 609.2244.

PART 1 – TOPIC SUMMARIES

6. Presentence Investigations and Victim Impact Statements

Victim Access to PSI

A crime victim does not have a right to access confidential information included in the presentence investigation report. In *State v. Backus*, 503 N.W.2d 508, 510 (Minn. Ct. App. 1993), the court held that

[chapter 611A does] not confer a general right of access to the confidential portion of the presentence investigation report. A victim may be informed about the court's sentencing options, so as to be able to make a meaningful recommendation as to sentence without seeing the sex offender evaluation or other confidential portion of the report.

Right to Submit Statement at Sentencing

Under section 611A.038, the victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing. The impact statement may be presented to the court orally or in writing, at the victim's option. If the victim requests, the prosecutor must orally present the statement to the court.

Under section 611A.038(b), community representatives affected by crime also have the right to submit an impact statement describing the social and economic effects of the offense on people and businesses in the community where the offense occurred.

Statements may include the following, subject to reasonable limitations as to time and length:

- (1) a summary of the harm or trauma suffered by the victim as a result of the crime;
- (2) a summary of the economic loss or damage suffered by the victim as a result of the crime; and
- (3) a victim's reaction to the proposed sentence or disposition.

Elements of a Good Victim Impact Statement

Mothers Against Drunk Driving (MADD) advises victims of the following elements of an effective victim impact statement:

- (1) can be read aloud in 3 to 5 minutes;
- (2) does not repeat "evidence" already presented at trial;
- (3) focuses on what the crime means to the victim emotionally, physically, spiritually and/or financially;
- (4) is simple and descriptive; and
- (5) communicates how the victim's life is different due to the crime.

U.S. Supreme Court Cases

In *Payne v. Tennessee*, 501 U.S. 808, 111 S.Ct. 2597 (1991), the United States Supreme Court ruled that the Eighth Amendment of the Constitution does not bar admissibility of victim impact evidence during a capital sentencing hearing. A statement regard-

ing the crime's effect on the victim's family and community was allowed. While the death penalty is not available in Minnesota, this case provides information on the Court's reasoning on victim input at various points in the prosecution process.

Minnesota Court Cases

In *State v. Yanez*, 469 N.W.2d 452 (Minn. Ct. App. 1991), *review denied* (Minn. June 19, 1991), the defendant pleaded guilty to first-degree criminal sexual conduct and the judge departed upward from the guideline sentence. The basis for the upward departure was the multiple penetrations and abduction of the victim. The court of appeals held that the trial court could consider information contained in the victim impact statement, where such information provided proper reasons for a departure from the sentencing guidelines and was supported or corroborated by evidence in the record.

In an unpublished case, *State v. Feela*, No. C6-93-102 (Minn. Ct. App. Nov. 30, 1993), *review denied* (Minn. Jan. 14, 1994), the court of appeals agreed with the trial court's decision not to allow the defense attorney to cross-examine the victim regarding her oral victim impact statement given at sentencing. On appeal, the defendant argued that he should have been allowed to challenge the victim's impact statement. The court of appeals said the "victim impact statement was not testimony subject to cross-examination."

Right to Submit Statement at Parole Hearing or Supervised Release Hearing

Under section 243.05, subdivision 1b, the surviving spouse or next of kin of a murder victim has a right to submit an oral or written statement at the prisoner's parole review hearing. This right applies where the prisoner is serving a life sentence for first-degree murder and is up for parole review. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the prisoner should be paroled at that time.

Under section 244.05, subd. 5(c), the victim or surviving spouse or next of kin has the right to submit an oral or written statement at a supervised release hearing. This right applies to victims of prisoners serving a mandatory life sentence for first-degree murder or under the repeat sex offender law. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the prisoner should be given supervised release at this time. Also, the commissioner of corrections shall require the preparation of a community investigation report. The report shall reflect the views of the sentencing judge, prosecutor, law enforcement personnel involved in the case, and the victim and victim's family, unless they choose not to participate.

PART 1 – TOPIC SUMMARIES

7. Protection from Harm

Incorporated into Minnesota law are a number of statutes designed to protect both crime victims and witnesses involved in a criminal case, not only from the offender, but from the consequences of participating in the prosecution process. This section describes the various protections available to crime victims and witnesses in Minnesota.

Corresponding Statutes: Minn. Stat. 611A.034; 611A.035, subs. 1, 2; 611A.02, subdivision 2(c); 171.12, subd. 7d; 611A.036, subs. 1, 2; 518B.01, subd. 23; 609.748, subd. 10; 631.046, subs. 1, 2; 260B.163, subd. 3; 631.045; 629.72, subd. 6; 629.73, subs. 1, 2; 611A.06, subs. 1, 2, 3; 243.166; 244.053, subs. 1, 2; 253B.18, subd. 5a; 629.342, subd. 3; and 609.498.

Right to a Secure Waiting Area

Under Minnesota Statutes section 611A.034, “[t]he court shall provide a waiting area for victims during court proceedings which is separate from the waiting area used by the defendant, the defendant’s relatives, and defense witnesses, if such a waiting area is available and its use is practical.” If a separate waiting area is not available or practical, the statute instructs the court to provide other safeguards—such as increased bailiff surveillance and victim escorts—to minimize contact during court proceedings. Safety concerns should be communicated to the bailiff, the court administrator, or the judge. Victims or witnesses who are not satisfied with the steps taken by the court may contact the state court administrator’s office.

Right to Request Confidentiality of Victim Information

Right to Request Address and Other Information to be Withheld in Open Court:

Under Minnesota Statutes section 611A.035, subdivision 2, testifying victims and witnesses may not be compelled to state a home or employment address, telephone number, or date of birth in open court unless the court finds that the testimony would be relevant evidence. To prevent this information being disclosed in open court, the prosecutor must certify to the trial court that the information is not relevant and that nondisclosure is necessary to address the victim’s or witness’s concerns about safety or security. Minn. Stat. 611A.035, subd. 1.

Right to Request Law Enforcement to Withhold Victim’s Identity:

Under section 611A.02, subd. 2(c), a crime victim can request that a law enforcement agency withhold public access to data revealing the victim’s identity. Such requests are typically placed with the case file and their information is redacted from any reports provided to the public.

Right to Request Driver and Vehicle Services (DVS) Keep Victim’s Address Private:

Under section 171.12, subd. 7d, victims who have genuine concerns for their safety may ask the Minnesota Department of Public Safety Driver and Vehicle Services to keep their address private and unavailable to the public. The request can be done through the [Private Data Request form](#) (PS32202-11). For questions, call 651-296-6911.

Right to Protection Against Employer Retaliation

Employers are prohibited from retaliating against victims and witnesses who take time off from work to answer a subpoena or answer the request of a prosecutor. In addition, employers cannot retaliate against a victim of a violent crime as well as the victim’s spouse or immediate family, to take reasonable time off from work to attend proceedings involving the prosecution of the violent crime. Victims and their family members do not have to be subpoenaed or asked to attend by the prosecutor for this section to apply. Minn. Stat. 611A.036, subs. 1, 2.

Employers are also prohibited from retaliating against an employee who takes reasonable time off from work to attend order for protection, harassment restraining order, or criminal proceedings. The employee must give 48 hours’ advance notice, except in cases of imminent danger. The employer may ask for verification, but any information related to the leave must be kept confidential. Minn. Stat. 518B.01, subd. 23; 609.748, subd. 10.

Right to a Support Person When Testifying

A minor victim in a case involving child abuse, a crime of violence, assault in the fifth degree, or domestic assault may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial, during testimony. Minn. Stat. 631.046, subd. 1.

PART 1 – TOPIC SUMMARIES

7. Protection from Harm

Any victim in certain criminal sexual conduct cases may choose to be accompanied by a supportive person, whether or not a witness, at the omnibus or other pretrial hearing. If the supportive person is also a witness, the prosecution and the court shall determine whether or not the supportive person's presence will be permitted. Minn. Stat. 631.046, subd. 2.

Likewise, a victim testifying in a delinquency proceeding may choose to have a supportive person (who is not scheduled to be a witness in the proceedings) present during the testimony of the victim. Minn. Stat. 260B.163, subd. 3.

Closure of the Courtroom for Minor Victim's Testimony

The trial court may exclude the public from the courtroom during a minor victim's testimony regarding sex crimes committed against them. The judge shall give the parties an opportunity to object, and shall specify on the record the reasons for closing all or part of the trial. Minn. Stat. 631.045.

Right to Notice of Release from Custody

Victims have the right to know an offender's incarceration status. Minnesota law provides victims with certain notifications of an offender's release, transfer, escape and apprehension, or death.

VINE (Victim Information & Notification Everyday) is a free, 24-hour, 365 days per year, automated telephone service that provides information and notification on offenders in the custody of the Minnesota Department of Corrections and most county jails and detention centers. Victims (and any member of the public) may call the toll-free number anonymously to check offender incarceration status. All they need is a touchtone telephone and the offender's first and last name or OID (offender identification) number. If the victim is properly registered, when an offender is released, transferred, or escapes, the victim will receive an automatic telephone notification. While this system can be very valuable, victims are cautioned not to depend solely on the VINE service for their protection. If victims feels at risk, they should take precautions as if the offender has already been released.

Notice of Release from Custody – Pretrial

The process of victim notification for offenders incarcerated in a county jail or detention center varies. A victim should contact the specific facility for information on that facility's offender notification process. Most Minnesota counties offer the VINE service.

Under Minnesota law, before the person arrested or juvenile detained is released, the agency having custody of the person or its designee must make a reasonable and good faith effort to

inform orally the alleged victim, local law enforcement agencies known to be involved in the case, if different from the agency having custody, and, at the victim's request, any local battered women's and domestic abuse programs or sexual assault programs of:

- the conditions of release, if any;
- the time of release;
- the time, date, and place of the next scheduled court appearance of the arrested person and the victim's right to be present at the court appearance; and
- if the arrested person is charged with domestic abuse, the location and telephone number of the area battered women's shelter.

A copy of the written order and written notice of the above information must then be personally delivered or mailed to the victim as soon as practicable. Minn. Stat. 629.72, subd. 6; 629.73, subs. 1, 2.

Notice of Release from Custody – Post Conviction

The Department of Corrections or custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, including release on extended furlough and for work release; released from a juvenile correctional facility; or released from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency. To receive release notification for an offender in a Department of Corrections facility, a victim must make a request to the Minnesota CHOICE electronic notification system or by contacting the department's Victim Assistance Program at 800.657.3830. For more information on Minnesota CHOICE, see section 15.

For release notification for an offender in a county jail, victims should contact the facility directly to find out about its process for making the request. Victims can also request to receive release notification through the VINE system, an automated victim notification system that can provide notifications of a change in custody status through phone, email or text message notification. Victims with new contact information must inform the facility and/or update their VINE registration to ensure that notification can be made of changes in custody status.

The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release.

PART 1 – TOPIC SUMMARIES

7. Protection from Harm

The good faith effort to notify the victim must occur prior to the offender's release or when the offender's custody status is reduced. For a victim of a felony crime against a person for which the offender was sentenced to imprisonment for more than 18 months, the good faith effort to notify the victim must occur 60 days before the offender's release. Minn. Stat. 611A.06, subds. 1, 2.

Notice of Escape

Under Minnesota Statutes section 611A.06, subdivision 3, if an offender escapes imprisonment or incarceration, including from release on extended furlough or work release, the custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the person's release within six hours after discovering the escape and shall also make reasonable efforts to notify the victim within 24 hours after the person is apprehended.

Notice of Impending Release – Certain Sex Offenders

At least 60 days before the release of any inmate requiring registration under section 243.166, the Commissioner of Corrections shall send written notice of the impending release to the sheriff of the county and the police chief of the city in which the inmate will reside or in which placement will be made in a work release program. The same notice shall be provided to the following persons concerning a specific inmate convicted of an offense requiring registration:

- the sheriff of the county where the offender was convicted;
- the victim of the crime for which the inmate was convicted or a deceased victim's next of kin if the victim or deceased victim's next of kin requests the notice;
- any witness who testified against the inmate in any court proceedings involving the offense, if the witness requests the notice; and
- any person specified in writing by the prosecuting attorney. Minn. Stat. 244.053, subds. 1, 2.

Notice to Victims – Release from Civil Commitment

Under section 253B.18, subdivision 5a(d), if the victim wishes to be notified of the offender's possible release from a treatment facility, the victim must make a written request to the county attorney in the county where the conviction occurred. The county attorney who receives the victim's written request for notification must forward the request to the Commissioner of Human Services. The Department of Human Services must communicate

the victim's request to the specific treatment facility. The victim has a right to submit a written statement regarding the decision to discharge or release.

Medical Treatment – Domestic Abuse Cases

If a law enforcement officer does not make an arrest when the officer has probable cause to believe the person is committing or has committed domestic abuse or violated an order for protection, the officer shall provide immediate assistance to the victim including assisting the victim in obtaining necessary medical treatment. Minn. Stat. 629.342, subd. 3.

Witness Tampering

Tampering with a witness is a crime and should be immediately reported to law enforcement and the prosecutor's office.

Tampering with a witness in the first degree involves the use of force or threats to any person or property in order to prevent, dissuade, or coerce a person from testifying or providing information to law enforcement; to provide false information at a trial or to law enforcement; or to retaliate against someone who testified or provided information to law enforcement. Minn. Stat. 609.498, subd 1.

Tampering with a witness in the second degree involves the use of "coercion" to prevent a witness from testifying or providing information to law enforcement or to provide false information during testimony or to law enforcement. "Coercion" includes threats to damage property, injure a business or profession, expose a private secret, or threaten to cause a criminal charge to be filed. Minn. Stat. 609.498, 609.27, subd. 2.

Tampering with a witness in the third degree involves the use of intimidation to prevent or dissuade a witness from testifying or cooperating with law enforcement. Minn. Stat. 609.498, subd. 2a. Coercion is not required.

PART 1 – TOPIC SUMMARIES

8. Restitution

The right to restitution is critical to the many victims who have suffered losses as the result of a crime and stand to lose more in the future as they seek to recover from the crime. While getting restitution ordered can be fairly straightforward once a conviction has been obtained, collecting the money from the defendant often proves to be difficult. This section discusses the topic in more detail and includes relevant case law that has more clearly defined the scope of restitution under Minnesota law.

Corresponding Statutes: Minn. Stat. 611A.04; 611A.045; 611A.046; 611A.037; 609.135, subd. 1a; 260B.198, subd. 8; 260B.225, subd. 9; 609.10; 609.125; 609.527, subd. 4(b); 609.532; 609.115; 631.425, subd. 5; and 243.23, subd. 3.

Restitution

Restitution is money that the judge orders the offender to pay to reimburse the victim of the crime and/or the Crime Victims Reparations Board. Restitution may be ordered in both juvenile and adult cases after the offender has been convicted or found delinquent. Restitution may be ordered in addition to imprisonment and/or a fine. Under Minnesota Statutes section 611A.045, the amount of restitution must be based on the amount of economic loss sustained by the victim as a result of the crime and the offender's income, resources, and obligations. Under the sentencing statutes for felonies, gross misdemeanors, and misdemeanors, restitution includes:

- (1) payment of compensation to the victim or the victim's family, and
- (2) if the victim is deceased or already has been fully compensated, payment of money to a victim assistance program or other program directed by the court.

See Minn. Stat. 609.10, subd. 2 and 609.125, subd. 2.

According to Minnesota law, “[a] victim of a crime has a right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted.” Minn. Stat. 611A.04, subd. 1; **State v. Palubicki**, 727 N.W.2d 662, 665 (Minn. 2007) (in which the Minnesota Supreme Court states, in dicta, that under section 611A.04, subdivision 1, “victims of crimes are permitted to request restitution from a defendant if the defendant is convicted”).

As noted in **State v. Belfry**, “restitution serves to both compensate the victim and rehabilitate the defendant.” 416 N.W.2d 811, 813 (Minn. Ct. App. 1987).

Procedure for Getting Restitution Ordered

Sections 611A.04 and 611A.045 provide detailed procedures for requesting and ordering restitution. First, the court, or its designee, obtains from the victim information determining the amount of restitution owed. This information should be “in affidavit form or by other competent evidence.” Minn. Stat. 611A.04, subd. 1(a). In order for the restitution request to be considered at the sentencing or dispositional hearing, all information regarding the restitution request must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing.

Most counties have the victim complete an affidavit form listing the losses incurred as a result of the crime. If the victim provides oral testimony rather than submitting an affidavit form, it is up to the judge to determine whether the evidence is relevant.

If the full extent of the victim's loss is not known at the time of sentencing, and the offender is on probation or supervised release, the amount of restitution may be determined at a later date.

The court does not have to order restitution, particularly if the necessary information is not provided by the victim. If the victim requests restitution and the judge does not order it, the judge must explain the reasons. See Minn. Stat. 611A.04, subd. 1(c).

The offender has the right to object to expenses submitted for payment. The court may hold a hearing on the restitution due to objections by the offender or the victim. In such a case, the court must notify the victim and the Crime Victims Reparations Board at least five days before the hearing.

Under section 611A.045, if the offender intends to challenge a restitution order, he has the burden to produce evidence. See also **State v. Thole**, 614 N.W.2d 231, 235 (Minn. 2000). The offender must submit a detailed sworn affidavit setting forth all challenges to the restitution or items of restitution and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims. The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing.

Once an offender raises a proper challenge to a restitution order, then the prosecution bears the burden of proving the propriety of the restitution by a preponderance of the evidence. Failure to meet the procedural requirements under section 611A.045 for challenging restitution will bar the defendant's claim. See **State v. Bell**, A09-1736 (Minn. Ct. App., Sept. 28, 2010).

PART 1 – TOPIC SUMMARIES

8. Restitution

Under section 611A.04, subdivision 4, when the court orders a defendant to pay both a fine and restitution and the defendant does not pay the entire amount of restitution, the court may order that restitution be paid before the fine. Also if there is more than one victim of a crime, the court must give priority to the victims who are not governmental entities when ordering restitution. See Minn. Stat. 611A.045, subd. 1.

The right to restitution is critical to the many victims who have suffered losses as the result of a crime and stand to lose more in the future as they seek to recover from it. While getting restitution ordered can be fairly straightforward once a conviction has been obtained, collecting the money from the defendant often proves to be difficult. This section discusses the topic in more detail and includes relevant case law that has more clearly defined the scope of restitution under Minnesota law.

Corresponding Statutes: Minn. Stat. 611A.04; 611A.045; 611A.046; 611A.037; 609.135, subd. 1a; 260B.198, subd. 8; 260B.225, subd. 9; 609.10; 609.125; 609.527, subd. 4(b); 609.532; 609.115; 631.425, subd. 5; and 243.23, subd. 3.

Restitution

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- payment of compensation to the victim or the victim's family, and
- if the victim is deceased or already has been fully compensated, payment of money to a victim assistance program or other program directed by the court.

See Minn. Stat. 609.10, subd. 2 and 609.125, subd. 2.

According to Minnesota law, “[a] victim of a crime has a right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted.” Minn. Stat. 611A.04, subd. 1. See **State v. Palubicki**, 727 N.W.2d 662, 665 (Minn. 2007).

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Most counties have the victim complete an affidavit form listing the losses incurred as a result of the crime. If the victim provides oral testimony rather than submitting an affidavit form, it is up to the judge to determine whether the evidence is relevant.

If the full extent of the victim's loss is not known at the time of sentencing and the offender is on probation or supervised release, the amount of restitution may be determined at a later date. Minn. Stat. 611A.04, subd. 1(b)(3). In the case **In the Matter of the Welfare of M.R.H.**, A05-929 (Minn. Ct. App. June 13, 2006), the court observed that it is the district court's lack of knowledge that allows it to amend or issue a restitution order after sentencing, not the victim's. See also **Mason v. State**, 652N.W.2d 269,272 (Minn. Ct. App. 2002).

In **State v. Vanderbeck**, C6-94-1034 (Minn. Ct. App. Jan. 31, 1995), *review denied* (Minn. Mar. 29, 1995) (unpublished opinion), the court of appeals upheld a restitution order where the amount of restitution was determined 31 days after sentencing had been completed. The court stated that although section 611A.04 grants authority to enter a restitution order after sentencing if the victim's loss was not known at the time of sentencing, the statute is directory and does not prohibit the trial court from taking alternative steps toward providing restitution for victims or in addition to imprisonment. See also **State v. Belfry**, 416 N.W.2d 811, 813 (Minn. Ct. App. 1987) (victims did not waive their claims by failing to appear at the restitution hearing since they had submitted a detailed account of their losses).

The court does not have to order restitution, particularly if the necessary information is not provided by the victim. If the victim requests restitution and the judge does not order it, the judge must explain the reasons. See Minn. Stat. 611A.04, subd. 1(c).

The judge has the ability to order restitution even if the victim has not requested it. See **State v. Gaiovnik**, A09-190 (Minn.

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8. Restitution

Mar. 9, 2011). See also **Brooks v. State**, A11-464 (Minn. Ct. App. Dec. 5, 2011) (*unpublished opinion*) (recognizing the district court's separate power to impose restitution as part of a sentence distinct from statutory rights of crime victim to claim restitution, the establishment of crime victim reparations board, and right of prosecuting attorney to seek restitution).

The offender has the right to object to expenses submitted for payment. The court may hold a restitution hearing due to objections by the offender or the victim. In such a case, the court must notify the victim and the Crime Victims Reparations Board at least five days before the hearing. The offender must submit a detailed sworn affidavit setting forth all challenges to the restitution or items of restitution and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims. The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing. Failure to meet the procedural requirements under section 611A.045 for challenging restitution will bar the defendant's claim. See **State v. Bell**, A09-1736 (Minn. Ct. App., Sept. 28, 2010); see also **State v. Thole**, 614 N.W.2d 231, 235 (Minn. 2000).

Once an offender raises a proper challenge to a restitution order, then the prosecution bears the burden of proving the propriety of the restitution by a preponderance of the evidence. Minn. Stat. 611A.045, subd. 3(a)

The defendant is not entitled to a jury trial to determine the underlying facts on which to base the amount of restitution. See **State v. Maxwell**, A10-1689 (Minn. Ct. App. August 15, 2011) *pet. for review filed Sept. 14, 2011* (relying on Minn. Stat. 609.10, subd. 1(a)(5)).

Under section 611A.04, subdivision 4, when the court orders a defendant to pay both a fine and restitution and the defendant does not pay the entire amount of restitution, the court may order that restitution be paid before the fine. Also if there is more than one victim of a crime, the court must give priority to the victims who are not governmental entities when ordering restitution. See Minn. Stat. 611A.045, subd. 1.

Amount of Restitution

The Minnesota Supreme Court has stated that “[t]he primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime.”

State v. Palubicki, 727 N.W.2d 662, 666 (Minn. 2007).

The word “restitution” connotes restoring or compensating the

victim for his loss.” **State v. Fader**, 358 N.W.2d 42, 48 (Minn. 1984). Restitution is intended to be compensatory, not punitive. **State v. Plfepsen**, 590 N.W.2d 759,769 (Minn. 1999).

Victims of crime have the right to request restitution for all expenses that resulted from the crime. These may include, but are not limited to: medical bills, counseling expenses, transportation, lost wages due to an injury, and stolen or damaged property. Restitution is limited to the recovery of economic damages sustained by the victim and cannot include amounts for pain and suffering. **State vs. Colsch**, 579 N.W.2d 482, 484 (Minn. Ct. App. 1998)

Restitution must be based on a factual determination of the victim's economic injury, and the factual determination must show with reasonable specificity the type of loss and its amount. **State v. Chapman**, 362 N.W.2d 401, 404 (Minn. Ct. App. 1985), review denied (Minn. May 1, 1985). The “loss claimed as an item of restitution by a crime victim must have some factual relationship to the crime committed.” **State v. Nelson**, A10-1382 (Minn. Ct. App. March 22, 2011); see also **State v. Nelson**, A10-1382 (Minn. Ct. App. March 22, 2011) (losses must be directly related to the crime).

A defendant can be ordered to pay restitution to those who are not direct victims if the defendant agrees to such as part of a plea agreement. See **State v. Miller**, A06-1392 (Minn. App. June 5, 2007) (*unpublished opinion*) (citing **State v. Wallace**, 545 N.W.2d 674, 675-77 (Minn. Ct. App. 1996), review denied (Minn., May 21, 1996). In addition, the court may order a defendant to pay restitution in an amount that exceeds the monetary parameters of the offense for which the defendant was convicted. **State v. Terpstra**, 546 N.W.2d 283 (Minn. 1996) (higher amount must be supported by a preponderance of the evidence present).

The Minnesota Court of Appeals has upheld restitution orders for items such as a security system in a terroristic threats case and costs of locating and returning a child in a parental kidnapping case. In 1995, Minnesota Statutes section 611A.04, subdivision 1, was amended to add language that allows restitution for “expenses incurred to return a child who was a victim of a crime under section 609.26 to the child's parents or lawful custodian.” In some cases, requests can be made for anticipated expenses. For example, an offender can be ordered to pay for counseling that the victim may need in the future.

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8. Restitution

The burden of demonstrating the amount of loss sustained by the victim and appropriateness of a particular type of restitution is on the prosecution. The restitution order must include a payment schedule or structure. Minn. Stat. 611A.045.

The court is required to consider the offender's ability to pay restitution in establishing the restitution amount, however, no specific statutory obligation for the court to make findings on the offender's ability to pay the amount exists. Minn. Stat. 611A.045, subd. 1(a).

In **State v. Anderson**, 507 N.W.2d 245 (Minn. Ct. App. 1993), *review denied* (Minn. December 22, 1993), the court of appeals upheld a restitution order for \$10,227 of lost wages in a sexual assault case. The defendant had committed multiple sexual assaults, but pleaded guilty only to one count of criminal sexual conduct. The trial court ordered restitution to the victim of a sexual assault listed in the original complaint, but not of the offense to which he pleaded guilty. The defendant did not object to restitution at the plea or during sentencing. The court syllabus states, "absent a specific agreement concerning restitution, a plea agreement as to charge and sentence neither precludes restitution nor limits the district court in its consideration of the amount of restitution and the defendant's ability to pay." In dicta, the court suggested that trial courts may order the whole amount of the victim's loss, and, if the defendant is lacking in resources, the offender can seek an adjusted payment schedule accordingly. See **State v. Jola**, 409 N.W.2d 17, 20 (Minn. Ct. App. 1987).

The court of appeals has upheld reimbursement for "a forced expenditure of accrued employment leave" as a compensable economic loss recoverable through restitution. In **re Welfare of M.R.H.**, 716 N.W.2d 349 (Minn. Ct. App. 2006), *review denied* (Minn. Aug. 15, 2006).

If the victim disagrees with the amount of restitution listed in a stipulation between the prosecution and the defense and provides proof of the actual loss, then the trial court is not bound by the stipulated amount. In **State v. Wolf**, 413 N.W.2d 620 (Minn. Ct. App. 1987), the judge ordered the amount indicated in the presentence investigation (PSI), rather than the lower amount agreed to by the prosecutor and defense attorney. The court of appeals upheld the district court's order because the victim had provided proof of actual loss, had disagreed with the lower stipulated amount, and had not been involved in the negotiations.

In **State v. Miller**, A06-1392 (Minn. App. June 5, 2007) (unpublished opinion), the district court had, without holding a restitution hearing, ordered the defendant to pay restitution to

six persons who were not direct victims of the crimes to which he pleaded guilty. The court of appeals reversed the restitution order, reasoning that restitution may only be ordered for losses that were directly caused by the conduct for which the defendant was convicted or for losses that the defendant agreed to pay as part of the plea agreement. In addition, the court remanded the case back to the district court for a restitution hearing regarding losses for the direct victim because no finding had been made that the victim's losses were directly caused by the appellant's conduct and the factual basis in the record to support the restitution order was insufficient.

In **State v. Maldi**, 537 N.W.2d 280 (Minn. 1995), the Minnesota Supreme Court upheld the trial court's discretion to order restitution to cover "counter abduction" expenses in the amount of \$147,527.27, plus future losses for counseling expenses for the mother and children in a parental abduction case. The payment schedule of \$200 per month took into account the defendant's ability to pay.

In **State v. Tenerelli**, 598 N.W.2d 668 (Minn. 1999), *cert. denied*, 528 U.S. 1165 (Feb. 22, 2000), the supreme court held that with the broad statutory language in section 611A.04 and the record in the case, the trial court did not abuse its discretion in ordering restitution for the costs of the victim's Hmong healing ceremony as "any" related out-of-pocket losses.

In **State v. Meredyk**, 754 N.W.2d 596 (Minn. Ct. App. 2008), the elderly victims of a financial crime attempted to alleviate the restitution burden on the defendant, a family member who had swindled them out of significant sums. The defendant's plea agreement provided for probation rather than prison and required the defendant to pay \$400,000 in restitution. Over the objection of the prosecutor, the court modified the restitution order, directing the Department of Corrections to convert the order to a judgment and continue collecting payments until the full amount was paid or until all the victims filed a satisfaction of judgment. This ruling allowed the defendant to satisfy the restitution obligation without paying the full amount originally ordered. The court of appeals reversed the district court's modification of the restitution order, holding that the court had abused its discretion, stating, "Given the sheer magnitude of the alteration to the respondent's restitution obligation and the fact that restitution went to the very foundation of the entire plea agreement, the district court's modification materially altered the bargained-for exchange underlying the parties' assent to the agreement."

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8. Restitution

In *State v. Woodson*, A06-2049 (Minn. Ct. App. January 29, 2008), the Minnesota Court of Appeals discussed whether restitution should have been ordered in a case involving a car crash. One of the drivers, Woodson, was convicted of driving without insurance. The district court ordered Woodson to pay restitution for the cost of repairs to the other driver's vehicle. Woodson appealed, stating the other driver was not a "victim" for purposes of restitution since it had not been shown that Woodson caused the crash. The court of appeals remanded the case for a finding that restitution was warranted. On remand, the district court determined that restitution was appropriate because Woodson was initially cited with unsafe change of course, as well as driving without insurance, and the other driver's insurer indicated that Woodson was at fault. The district court, however, failed to consider the previous conciliation court judgment finding the other driver at fault and Woodson not liable for damages. The court of appeals reversed the restitution order, holding that to be a "victim" under the restitution laws, the person seeking restitution must have incurred a loss directly caused by the conduct underlying the conviction. In this case, it had not been determined that Woodson was at fault in the accident; even if Woodson had insurance, the insurer would not have been liable. Therefore, the court of appeals held that the other driver was not a "victim" under the restitution statutes because the conduct for which Woodson was convicted—driving without insurance—did not cause the other driver's losses.

A sentencing order must contain any restitution ordered and whether it is joint and several with others. Minn. Rule Crim. Proc. 27.03, subd. 7(3)(v). See *State v. Graves*, 1993 WL 491259 (Minn. Ct. App. Nov. 30, 1993) (unpublished decision) (where more than one person takes part in a criminal act, each person can be held "jointly and severally liable" for the whole amount; one defendant can be held responsible for all of the harm inflicted on the victim).

Who Can Receive Restitution?

For the purpose of restitution orders, a typical crime victim is defined as "a natural person who incurs loss or harm as a result of crime, including a good faith effort to prevent a crime." Minn. Stat. 611A.01(b). The statute also expands the definition of a victim to include:

- (i) a corporation that incurs loss or harm as a result of a crime,
- (ii) a government entity that incurs loss or harm as a result of a crime, and
- (iii) any other entity authorized to receive restitution under sections 609.10 [sentences available] or 609.125 [sentences for misdemeanor or gross misdemeanor].

Under sections 609.10 and 609.125, restitution is available "to the victim or the victim's family; and if the victim is deceased or already has been fully compensated, payment of money to a victim assistance program or other program directed by the court." Under these sections, restitution also includes "payment of compensation to a government entity that incurs loss as a direct result of a crime."

Restitution can be paid to a victim, who, prior to 2005 was defined as including a "deceased's surviving spouse or next of kin" in cases where the victim was deceased. Minn. Stat. 611A.01 (b) (2004). In *State v. Jones*, 678 N.W.2d 1, 26 (Minn. 2004), the supreme court applied the common law definition of "next of kin" to the restitution statute as the "nearest living blood relation," and restricted the ability to seek restitution to either the surviving spouse or next of kin, but not both.

In 2005, the legislature broadened the definition of victim by replacing the "surviving spouse or next of kin" terminology with language that allowed restitution to be paid to "the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person." Minn. Stat. 611A.01 (b) (2006); see also *State v. Palubicki*, 727 N.W.2d 662, 665 (Minn. 2007) (citing the 2002 statute because it was the law in effect at the time of the offense, but noting the broadening of the statute by the legislature in 2005).

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8. Restitution

An offender may be ordered to pay restitution to victims other than a natural person, e.g., a church, governmental entity, corporation or business, if it sustained a loss resulting from the crime. See Minn. Stat. 611A.01(b); **State v. Jola**, 409 N.W.2d 17,19 (Minn. Ct. App. 1987) (allowing restitution to be paid to an insurance company and car dealership); and **State v. Wolf**, 413 N.W.2d 620 (Minn. Ct. App. 1987) (allowing restitution to a church that was burglarized).

In **State v. O'Brien**, 459 N.W.2d 131 (Minn. Ct. App. 1990), the victim's parents recovered their losses resulting from the crime. In a more recent case, **In re Welfare of M.R.H.**, 716 N.W.2d 349 (Minn. Ct. App. 2006), *review denied* (Minn. Aug. 15, 2006), the court upheld a district court order requiring a juvenile to pay restitution of \$10,663 to the parents of a crime victim for expenses incurred while tending to their son throughout his treatment and recovery. Restitution ordered to the mother of a victim has also been upheld. See **In re Welfare of J.A.D.**, 603 N.W.2d 844 (Minn. Ct. App. 1999) (allowing restitution ordered to pay juvenile victim's mother for expenses incurred in lost wages and transporting victim to the police station as part of the police investigation).

In **State v. Palubicki**, the court determined that the district court did not abuse its discretion when it ordered a defendant to pay restitution for a victim's children's expenses to attend the court proceedings. 727 N.W.2d 662, 667 (Minn. 2007). In an unpublished opinion, **State v. Mentzos**, C8-93-2577 (Minn. Ct. App. Aug. 10, 1994), *review denied* (Minn. Sept. 16, 1994) the court upheld a restitution order to pay for a security system for the family of a victim who had been threatened by a former boyfriend.

Restitution may be ordered to be paid to the Minnesota Crime Victims Reparations Board if the board has paid the victim's expenses. See Minn. Stat. 611A.04, subd. 1a.

The validity of restitution ordered to a police department is not clear. In **State v. Dillon**, 529 N.W.2d 387 (Minn. Ct. App. 1995), *rev'd on other grounds*, 532 N.W.2d 558 (Minn. 1995), the court found that a drug task force was not a "victim" for purposes of restitution. In a similar unpublished opinion, the court

of appeals reversed an order of restitution to the St. Paul Police Department because a police agency was not a "victim" under Minnesota Statutes section 611A.04, subdivision 1(a) (1994). **State v. Soto**, C3-95-577 (Minn. Ct. App. Feb. 6, 1996), *aff'd on other grounds*, 562 N.W.2d 299 (Minn. 1997). However, in **State v. Wallace**, 545 N.W.2d 674, 676 (Minn. Ct. App. 1996), a defendant agreed to payment of restitution to a drug task force as a part of a voluntary plea bargain agreement, and the court of appeals upheld that restitution agreement.

A restitution award to a school stemming from the juvenile's phoning in a bomb threat to a school has been upheld by the court of appeals. **In re Welfare of D.D.G.**, 532 N.W.2d 279 (Minn. Ct. App. 1995), *review denied* (Minn. Aug. 30, 1995). The reward offered by the school district was compensable as restitution, as were custodians' wages for the period during which the building was evacuated. *Id.*

In **State v. Dendy**, 520 N.W.2d 411 (Minn. Ct. App. 1994), the court of appeals held that a landlord was not entitled to restitution for property damage to the door of the leased premises caused by police when executing a no-knock search warrant of the defendant's apartment. The court stated that the damage was not a "personal injury" suffered within the meaning of section 611A.52, subs. 9, 10. Additionally, the definition of "victim" in section 611A.01(b) did not allow restitution for indirect damages.

The 1995 revisions to sections 609.10 and 609.125 appear to partially overrule **State v. Harwell**, 515 N.W.2d 105 (Minn. Ct. App. 1994), *review denied* (Minn. June 15, 1994). In **Harwell**, the court of appeals held that restitution may not be ordered to victim organizations, thus reversing a restitution order to the Missing Children's Fund. The revised statutes now state that restitution includes:

- (1) payment of compensation to the victim or the victim's family, and
- (2) if the victim is deceased or already has been fully compensated, payment of money to a victim assistance program or other program directed by the court.

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8. Restitution

Special Restitution Statutes

In addition to the primary restitution statute covering all crimes, several statutes cover specific crimes.

In the case of identity theft, Minnesota law requires the court to order the offender to pay restitution of not less than \$1,000 to each direct victim of the offense. See Minn. Stat. 609.527, subd. 4(b). This law presumes that it costs each victim at least \$1,000 in time and expenses to repair his or her damaged credit.

In cases of harm to a service animal, the judge is required to order the offender to pay restitution. Costs and expenses include, but are not limited to: the service animal user's loss of income; veterinary expenses; transportation costs and other expenses of temporary replacement assistance services, and service animal replacement or retraining costs incurred by a school, agency, or individual. If the court finds that the convicted person is indigent, the court may reduce the amount of restitution to a reasonable level or order it paid in installments. Minn. Stat. 343.21, subd. 9a.

In the case of harm to a police dog, an offender is required to pay restitution "for the costs and expenses resulting from the crime. Costs and expenses include, but are not limited to, the purchase and training of a replacement dog and veterinary services for the injured dog." Minn. Stat. 609.596, subd. 2a.

There is also a special restitution statute for methamphetamine manufacture cases that enables public entities to seek restitution for the costs of responding to the "meth lab," as well as the property owners' removal and remediation costs of the crime. Minn. Stat. 152.0275.

What if the Offender Has Not Paid the Restitution?

The probation officer is responsible for monitoring the offender's restitution payments. Under section 611A.046, victims have the right to ask the probation officer to schedule a probation review hearing. The probation officer can request a hearing at any time. The probation officer must ask for a hearing if the restitution has not been paid prior to 60 days before the end of the offender's probation. At the review hearing, the judge has the following options:

- (1) order the offender to pay all the restitution within the remaining time;

- (2) extend the offender's probation for an additional year to allow more time for payment (Minn. Stat. 609.135, subd. 1a);
- (3) send the offender to jail or prison;
- (4) allow the offender to complete the probation period without paying restitution; or
- (5) enter a civil judgment against the offender for the remaining amount of restitution owed.

Although judges are usually not willing to send the offender to jail for failure to pay restitution, it should be noted that if they do, this may replace the offender's restitution obligation. In **State v. Fritsche**, 402 N.W.2d 197, 201 (Minn. Ct. App. 1987), the court stated that missed restitution payments only justify a revocation where the defendant has willfully failed to pay or failed to attempt to pay. In **State v. Belfry**, 431 N.W.2d 572 (Minn. Ct. App. 1988), *review denied* (Minn. Jan. 25, 1989), the court of appeals upheld the trial court's discretion to extend the defendant's probation for an additional 14 months to allow for payment of restitution. Procedurally, the court need not revoke the defendant's probation before being able to extend the probation period.

If the offender was sent to prison and is earning wages there, part of the wages can be used to pay restitution. If the offender has been released from prison, he can be held responsible for paying the rest of the restitution during the supervised release period. If the offender fails to make payments, his supervised release can be revoked, causing him to return to prison for the remaining part of his sentence.

Collecting Restitution if the Offender is No Longer under the Court's Supervision

If the offender still has not paid the restitution ordered, any victim named in the restitution order can try to collect through the civil court if the restitution order has been docketed as a civil judgment. The process varies by county, but this docketing typically occurs after the probation period has expired. If victims have not received forms for docketing the judgment, they should contact the court administrator for their county, usually located in the courthouse, and tell them they want to "docket" a restitution order and file an "Affidavit of Identification of Judgment Debtor" form. There is no fee for victims to file this form, which is available on the Minnesota Judicial Branch Website: www.mncourts.gov.

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8. Restitution

Getting a civil judgment does not automatically result in collection of the money from the offender. However, a restitution order recorded as a civil judgment will show up if a credit check is done on the offender. It will prevent the offender from being able to finance a car, for example, until he or she pays the restitution. Also, if the offender still does not pay, the victim can pursue collection procedures to enforce the civil order. Collecting the restitution can cost victims \$50 in court fees or more, so they should consider the amount of the unpaid restitution and whether the offender has the ability to pay. Although it is not required, victims may want to hire a private attorney to attempt to collect the money. For a fee, an attorney can help locate the offender's money or property and collect the restitution from the offender's bank accounts or wages. If the victim wants to collect the money without a lawyer, the court administrator can provide more information on which forms need to be filed, and the fees charged. The court administrator can issue a "Writ of Execution" and, if necessary, an "Order for Disclosure" to get a list of the offender's property and bank accounts. The victim then must deliver the writ to the sheriff's office. Some property is exempt from collection by the sheriff. Interest accrues on the unpaid balance of the judgment. The rate of interest is determined by the court administrator as provided in section 549.09. After the offender has paid in full, the victim must file a "Satisfaction of Judgment" form. There is a fee to file this form.

In juvenile cases, an offender's parents can be held responsible for their child's debt, but only up to a maximum of \$1,000. A separate civil action would need to be brought against the parents, which can usually be handled in conciliation court (also called "small claims court"). The court administrator can provide information regarding this process. There is a filing fee. Minn. Stat. 540.18.

What is the Difference Between Restitution and Reparations?

Restitution is only available if the offender is convicted of a crime and the judge orders it. Restitution can be ordered for all expenses related to the crime, including property losses. Reparations refers to financial assistance from the state government for victims of violent crimes. Victims need to get a claim form from a state agency called the Crime Victims Reparations Board (see section of this manual on reparations for address

and phone number). In most situations, victims must file a reparations claim within three years of the injury. The Reparations Board does not pay for property losses. Victims should file a claim with the Reparations Board even though they are also requesting restitution. If the board pays the expenses and the offender also pays restitution for the same expenses, the victim must reimburse the board for the amount it paid.

Victims of violent crimes should always seek restitution and file a claim for reparations. Victims may have trouble collecting restitution from the offender, or may not be eligible for reparations, so it is a good idea to pursue both at the same time.

How Does a Civil Law Suit Impact Restitution?

Under Minnesota law, the court cannot use an actual or contemplated civil action involving the alleged crime to deny a victim's right to obtain court-ordered restitution. Minn. Stat. 611A.04, subd. 1(a). Further, the court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. Minn. Stat. 611A.04, subd. 1(c). For offenders on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment. Minn. Stat. 611A.04, subd. 1(c). Any restitution paid by the defendant in the criminal case will be credited against any civil judgment for the same conduct. Minn. Stat. 611A.04, subd. 3.

In the case **In the Matter of the Welfare of M.R.H.**, A05-929 (Minn. Ct. App. June 13, 2006), the victim sued the defendant and the defendant's parents for damages related to an assault. The victim settled the lawsuit releasing the defendant and the defendant's parents from all claims arising from the assault. The victim's parents were neither parties to the lawsuit nor to the settlement agreement, nor was any evidence given that the settled-for amount in the victim's civil lawsuit went to the parents for their expenses. The court ordered restitution for the parents, finding that the restitution award to the parents for their out-of-pocket losses related to the crime was not duplicative.

In two 2010 cases, the Minnesota Court of Appeals held that a settlement agreement between the victim and the defendant in a related civil case must be considered when determining the amount of restitution in the criminal case. In **State v. Arends**, A09-2082 (Minn. Ct. App., August 10, 2010), *pet.*

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8. Restitution

for review denied (Minn. October 27, 2010), the court held that a complete and valid settlement of all claims in a civil action between a defendant and a victim of economic loss that relates to the same subject matter as a criminal prosecution precludes the state from seeking restitution for the economic loss on behalf of the victim in the criminal case. In **State v. Ramsay**, A10-28 (Minn. Ct. App., October 19, 2010), the court of appeals found that the district court abused its discretion in refusing to consider the terms of the civil agreement between the defendant and the victim that had suffered economic loss.

Can an Offender Avoid a Restitution Obligation by Filing for Bankruptcy?

Offenders cannot use bankruptcy proceedings to get out of their restitution obligations. Minn. Stat. 611A.04, subdivision 3. The United States Supreme Court ruled in **Kelly v. Robinson**, 479 U.S. 36, 107 S.Ct. 353 (1986), that restitution obligations imposed as part of a state criminal sentence were not subject to discharge under Chapter 7 of the Bankruptcy Code. Then, in 1991, Congress amended Chapter 13 of the bankruptcy code so that restitution ordered as part of a criminal sentence would not be a dischargeable debt under that section either. Chapter 13 now states “The court shall grant the debtor a discharge of all debts...except any debt...(3) for restitution included in a sentence on the debtor’s conviction of a crime.” 11 U.S.C.S 1328 (a). This change overturned the Supreme Court decision in **Pa. Dep’t of Pub. Welfare v. Davenport**, 495 U.S. 552, 110 S.Ct. 2126 (1990) stating that restitution could be discharged under Chapter 13.

Data Privacy

Private or confidential court services data and corrections data about the offender may be released by probation or corrections to victims of adult or juvenile crimes to the extent necessary to enforce the restitution order. See Minn. Stat. 13.84, subd. 6(a)(2); 13.85, subd. 5.

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9. Sexual Assault Cases

Minnesota's crime victim rights include a number of provisions that apply specifically to sexual assault victims, described in this section.

Corresponding Statutes: Minn. Stat. 611A.0315; 609.35; 631.046; 609.3471; and 609.347.

Notice of Decision to Decline Prosecution or Dismiss Charges

Under Minnesota Statutes section 611A.0315 prosecutors must make every reasonable effort to notify a victim of a criminal sexual conduct offense that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Minn. Stat. 611A.0315.

Costs of Medical Examination

Under section 609.35, “[t]he cost of a sexual assault evidentiary exam conducted for the purpose of evidence collection shall be paid by the county in which the sexual assault occurred.”

The county's obligation to pay for the exam is not dependent on whether the victim reports the offense to law enforcement. Correspondingly, payment for the exam is not contingent on the victim cooperating with any investigation or prosecution of the offender. It is not unusual for a medical service provider to suggest that a victim report the assault to law enforcement, however, a medical service provider cannot require reporting to law enforcement as a condition of performing the examination.

A county may seek insurance reimbursement from the victim's insurer only if authorized by the victim and only after the examination has been performed. Counties are required to inform the victim that they do not have to use their own insurance and that the county is legally obligated to pay for the exam.

For confidentiality reasons, victims may choose to use their own insurance rather than have the county pay for the examination. For the same reason, victims may wish not to have their insurance used to cover the cost of the exam.

Under the statute, the costs to be paid by the county include, but are not limited to, the full cost of the rape kit examination, a pregnancy test, and tests for sexually transmitted diseases. The county is not obligated to pay the cost of treatment of injuries related to the sexual assault.

Some counties and hospitals have reached an agreement to pay a standard fee which covers all these costs without seeking payment from the victim, and some hospitals provide prophylactic medication free of charge to the victim.

The statute does not specify who in the county is responsible for processing requests for exam payments, and counties vary greatly with regard to their designated contact. It could be the county attorney's office, social service agency, treasurer's office, law enforcement agency, or other agency.

A contact list for Minnesota counties, identifying which person or department is responsible for processing payments related to sexual assault evidentiary exams, is posted on the OJP Website: [Sexual Assault Evidentiary Exam: Payment and County Contact Information](#).

Section 609.35 does not specify where an examination must take place. Consequently, a victim can seek a sexual assault evidentiary exam outside the county where the offense occurred, and the county where the offense occurred is still responsible for paying for the exam. This is true even if the exam took place outside of Minnesota.

Emergency Care

In 2007, new standards were legislatively mandated regarding the minimum standard of care for all hospitals that provide emergency care to female sexual assault victims. Under Minnesota Statutes section 145.4711, these hospitals must orally inform female sexual assault victims about the option of being provided emergency contraception and immediately provide this contraception to victims who request it, provided it is not medically contraindicated and is ordered by the legal prescriber. The Department of Health must distribute to all hospitals information that is medically and factually accurate and unbiased about emergency contraception from the American College of Obstetricians and Gynecologists. This information can be found on the Department of Health Website.

The standard of care for all hospitals also dictates that both female and male victims must (1) be provided factually accurate and unbiased written and oral medical information about prophylactic antibiotics for treatment of sexually transmitted diseases; (2) be provided information about the option of being provided these antibiotics at the hospital, and (3) be given these antibiotics at the hospital to victims who request it, provided it is not medically contraindicated and is ordered by the legal prescriber.

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Prohibition on Polygraph Examination

Under Minnesota Statutes section 611A.26, law enforcement agencies and prosecutors are prohibited from requiring a victim of a criminal sexual conduct offense to submit to a polygraph examination in order to pursue an investigation. Further, a law enforcement agency or prosecutor may not ask that a victim of a criminal sexual conduct offense submit to a polygraph examination as part of the investigation, charging, or prosecution of such offense unless the victim has been referred to and had the opportunity to exercise the option of consulting with a sexual assault counselor. In addition, in a situation where the victim makes a request to take a polygraph examination, the law enforcement agency may conduct the examination only with the victim's written, informed consent.

Communications with Sexual Assault Counselors

Under Minnesota Statutes section 595.02, subdivision 1(k), sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. In addition, sexual assault counselors must comply with their mandated child abuse reporting obligations under Minnesota Statutes sections 626.556 and 626.557. A "sexual assault counselor" is defined as a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

All sexual assault communication data are classified as private data on individuals. Minn. Stat. 13.822.

Data Practices and Sexual Assault Agencies

Sexual assault agencies that receive government funding are excluded from the provisions of the Minnesota Government Data Practices Act. Minn. Stat. 13.823.

Notwithstanding this provision, personal history information and information from which the identity or location of any victim can be determined are private data protected by Minnesota Statutes sections 13.822 and 611A.46.

Right to Supportive Person

Under Minnesota Statutes section 631.046, a prosecuting witness in any case involving criminal sexual conduct, as defined in sections 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), and 609.345 (criminal sexual conduct in the fourth degree), may choose to be accompanied by a supportive person, whether or not a witness, at the omnibus or other pretrial hearing.

Data Relating to Identity

Under section 609.3471, data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.342 (criminal sexual conduct in the first degree), 609.643 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3453 (criminal sexual predatory conduct) that specifically identifies a victim who is a minor shall not be accessible to the public, except by order of the court. Nothing in this section authorizes denial of access to any other data contained in the records or reports, including the identity of the defendant.

Rape Shield Law

Minnesota law limits the admissibility of evidence concerning the previous sexual conduct of a victim of sexual assault. The purpose of the law, sometimes called a rape shield law, is to prevent an attack on the victim's character and keep out evidence unrelated to the case. Minnesota Statutes section 609.347 and Minnesota Rule of Evidence 412 govern admissibility of previous sexual conduct. There are some differences between the two laws. See Part 4 of this manual for the complete text.

Evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in Rule 412. Such evidence can be admissible only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the following two circumstances:

- (1) When consent of the victim is a defense in the case,
 - (a) evidence of the victim's previous sexual conduct shows a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue, relevant and material to the issue of consent; and

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- (b) evidence of the victim's previous sexual conduct with the accused; or
- (2) When the prosecution's case includes evidence of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct is admissible solely to show the source of the semen, pregnancy, or disease.

Under Minnesota Statutes section 609.347, subd. 3(a)(i), in order to find a common scheme or plan, the judge must find that the victim made prior allegations of sexual assault which were fabricated.

In order to introduce evidence concerning the previous sexual conduct of a victim, the defense must make a motion at least three business days prior to trial, unless good cause is shown for introducing it later.

The court then holds a hearing out of the presence of the jury, if any, and the defense makes a full presentation of the evidence. At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defense regarding the previous sexual conduct of the victim is admissible, and that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court issues an order stating the extent to which evidence can be used.

If new information is discovered after the date of the hearing or during the course of the trial, the defense may request to use the evidence; the court will order an in-chambers hearing to determine whether the proposed evidence is admissible.

Residency Restrictions

A 2011 law made clear the court's authority to prohibit a juvenile sex offender age 15 or older from residing within 1,000 feet or three city blocks from the victim for all or part of the time that the offender is under court jurisdiction. Minn. Stat. 260B.198, subd. 1a.

Prior to the release of a predatory offender from jail, the offender goes through an end-of-confinement review process in which a risk level is assigned. For predatory offenders assigned a risk level III, the end-of-confinement review committee must determine whether residency restrictions should be included in the conditions based upon the offender's pattern of offending behavior. Minn. Stat. 244.052, subd. 3(k).

Cases

Acknowledging that the rape shield law permits evidence of a victim's prior sexual conduct to establish a common plan or scheme when consent is an issue, the court held such evidence was properly excluded when there was no evidence the victim had previously fabricated sexual assault charges. **State v. Enger**, 539 N.W.2d 259 (Minn. Ct. App. 1995).

In a Hennepin County sexual assault case, the trial court refused to allow into evidence entries from the victim's chemical dependency treatment records regarding her behavior while using cocaine and her sexual history. The court also refused to allow "expert" testimony that persons under the influence of cocaine may consent to acts of sexual mutilation. In an unpublished opinion, **Sykes v. State**, C5-93-1094, 1993 WL 491267 (Minn. Ct. App. Nov. 30, 1993), the court said that the defendant failed to proffer evidence which showed a common plan or scheme on the part of the victim to fabricate allegations of sexual assault.

In another unpublished opinion, **State v. Richter**, C7-93-805, 1993 WL 536108 (Minn. Ct. App. Dec. 28, 1993), the court of appeals upheld the trial court's decision to exclude evidence related to the victim's alleged fabrication of a prior rape charge. The court found that where the proof of this prior alleged fabrication was inadequate and consent was not a defense in the case, the trial court did not abuse its discretion by excluding the evidence. Under Minnesota Rule of Evidence 412(1), evidence of fabrication is relevant to attack credibility only where consent is a defense.

State v. Friend, 493 N.W.2d 540 (Minn. 1992). Evidence that the victim had consensual intercourse with a third party two weeks prior to her death was not admissible. The potential for prejudice outweighed the probative value.

State v. Carpenter, 459 N.W.2d 121, 126-27 (Minn. 1990). The court held that evidence to show the cause of a torn hymen was not allowed to come in under the rule allowing evidence to show source of semen, pregnancy, or disease. Letters regarding past sexual conduct were also properly excluded.

State v. Hagen, 391 N.W.2d 888, 891-92 (Minn. Ct. App. 1986), *review denied* (Minn. Oct. 17, 1986). The appellate court ruled that a BCA lab test on a semen specimen obtained from the victim and her inconsistent statements about her last date of intercourse should have been admitted. This evidence was directly relevant to negate the act. Evidence that the defendant and victim had engaged in consensual intercourse one month prior to the crime was not admissible. The goal of the rule is to limit evidence of the victim's unrelated prior sexual conduct when consent is used as a defense.

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State v. Kobow, 466 N.W.2d 747 (Minn. Ct. App. 1991). The court of appeals held that in a criminal sexual conduct case, the trial court properly excluded evidence that the 14-year-old victim made allegations that individuals other than the defendant had sexually abused her. Evidence of the victim's past sexual conduct could not be admitted where the defendant could not submit evidence of the victim's prior allegations on direct examination and when the defendant could not show the falsity of the victim's prior allegations.

In **State v. Enger**, 539 N.W.2d 259, 263 (Minn. Ct. App. 1995), *review denied* (Minn. Dec. 20, 1995), the court of appeals held that the trial court properly exercised its discretion under the rape shield statute when it declined to permit evidence of the victim's prior sexual history as there was no evidence of a common plan or scheme by the victim to fabricate rape allegations.

In **State v. Crims**, 540 N.W.2d 860 (Minn. Ct. App. 1995), an hour after the jury in a sexual conduct trial retired, the foreperson passed a note to the court asking "If someone says no during the act of sexual intercourse, under the law is it rape if the other person continues the act after the other person asks him to stop?" The court of appeals held it was not reversible error for the trial court to refuse to refer the jury to the initial instructions to resolve its confusion when in fact the jury was able to find the answer in those instructions, and did. The court further held that rape includes the forcible continuance of initially-consensual sexual relations. See also Minn. Stat. 609.341, subd. 12.

In **State v. Obeta**, A10-1349 (Minn. Mar. 24, 2011), the Minnesota Supreme Court joined the majority of other states in ruling that the district court has the discretion to admit expert-opinion evidence on the conduct exhibited by sexual assault victims. The court held that in a criminal sexual conduct case in which the defendant argues that the sexual conduct was consensual, the district court has discretion to admit expert-opinion evidence on the typicality of delayed reporting, lack of physical injuries, and submissive conduct by sexual-assault victims when the district court concludes that such evidence is helpful to the jury and the opinion has foundational reliability.

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10. HIV Testing

Minnesota law allows for a victim to request that the prosecutor make a motion for an offender convicted of criminal sexual conduct or a violent crime to be tested for the presence of the human immunodeficiency virus (HIV) antibody under certain circumstances. This section discusses this right as well as other protections given to sexual assault victims who have contracted or are at risk of contracting a sexually transmitted disease as a result of a crime.

Corresponding Statutes: Minn. Stat. 611A.19; 609.341, subd. 12; 13.02, subd. 12; 611A.20; and 72A.20.

Testing of Violent Offenders for HIV

Under Minnesota Statutes section 611A.19, upon the request or with the consent of the victim, the prosecutor shall make a motion in camera (i.e., in the judge's chambers) and the sentencing court shall order an adult convicted of or a juvenile adjudicated delinquent for violating a criminal sexual conduct law (section 609.342, 609.343, 609.344, or 609.345) or any other violent crime (as defined in section 609.1095) to submit to testing to determine the presence of human immunodeficiency virus (HIV) antibody under certain circumstances. The crime needs to have involved sexual penetration, however slight, as defined in section 609.341, subdivision 12, or evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit the human immunodeficiency virus (HIV).

When the court orders an offender to submit to HIV testing, the court shall order that the test be performed by an appropriate health professional who is trained to provide HIV counseling (as described in section 144.7414) and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services, except in the medical record maintained by the Department of Corrections.

The results are considered private data as defined in section 13.02, subdivision 12, when maintained by a person subject to chapter 13. The results are available, on request, to the victim or, if the victim is a minor, to the victim's parent or guardian, and positive test results shall be reported to the Commissioner of Health. Unless the subject of the test is an inmate at a state correctional facility, any test results given to a victim or victim's parent or guardian shall be provided by a health professional

who is trained to provide counseling regarding HIV testing. If the subject of the test is an inmate at a state correctional facility, test results shall be given by the Department of Corrections' medical director to the victim's health care provider, who shall give the result to the victim or victim's parent or guardian. Data regarding the test administration and results are not accessible to any other person for any purpose and shall not be maintained in any record of the court or court services or any other record.

Notice to Victims about Sexually Transmitted Diseases

Under section 611A.20, a hospital shall give a written notice about sexually transmitted diseases to a person receiving medical services in the hospital who reports or evidences a sexual assault or other unwanted sexual contact or sexual penetration. When appropriate, the notice must be given to the parent or guardian of the victim.

A [sample notice](#) has been developed by the Departments of Public Safety, Corrections, and Health and distributed to hospitals. Copies are available directly from the Department of Health.

Insurance Coverage for Victims Protected

Minnesota law protects victims of sexual assault from having their insurance coverage changed, denied, or cancelled due to results of an HIV test on the offenders or themselves. Under Minnesota Statutes section 72A.20, subdivision 29, a health insurance company, nonprofit health services corporation, health maintenance organization, or fraternal benefit society may not use the results of an HIV test performed on an offender under section 611A.19 or performed on a crime victim who was exposed to or had contact with an offender's bodily fluids during commission of a crime that was reported to law enforcement officials, in order to make an underwriting decision, cancel, fail to renew, or take any other action with respect to a policy, plan, certificate, or contract. These organizations are also prohibited from asking an applicant for coverage or a person already covered whether the person has had a test performed for the reason set forth above or has been the victim of an assault or any other crime which involves bodily contact with the offender.

This section does not apply to HIV tests performed at the insurer's direction as part of its normal underwriting requirements.

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11. Domestic Abuse/Stalking/Harassment

Minnesota’s crime victim rights include numerous provisions for victims of domestic abuse, harassment, and stalking related to the frequently complex and ongoing issues surrounding these types of cases. This section discusses these provisions, concluding with a section on applicable case law.

Corresponding Statutes: Minn. Stat. 518B.01 through 518B.02; 609.2242 through 609.2244; 609.02; 609.224; 609.2247; 629.342; 629.341; 13.84, subd. 5; 629.72, subd. 6; 629.73; 504B.206; 609.748; 609.749; 611A.0315; 611A.036; and 624.712, subd. 2.

Domestic Abuse

According to the Minnesota Domestic Abuse Act (chapter 518B), “domestic abuse” means the following, if committed against a family or household member by a family or household member:

- (1) physical harm, bodily injury, or assault;
- (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or
- (3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

Minn. Stat. 518B.01, subd. 2 (a).

For the purpose of the Domestic Abuse Act, “family or household members” means:

- (1) spouses and former spouses;
- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are presently residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
- (7) persons involved in a significant romantic or sexual relationship.

Under section 609.2242, whoever does any of the following against a family or household member as defined in section 518B.01, subdivision 2, commits an assault and is guilty of a misdemeanor:

- (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or
- (2) intentionally inflicts or attempts to inflict bodily harm upon another.

Qualified Domestic Violence-related Offense and Enhancements

Minnesota law classifies a number of offenses as qualified domestic violence-related offenses for the purpose of enhancing the level of charging if the offender commits a new domestic abuse crime. The level of offense for domestic abuse can be enhanced to a gross misdemeanor or felony level if a weapon is used during the offense and if repeated convictions occur within a specific time period of a qualified domestic violence-related offense. Minn. Stat. 609.2242, subsd. 2, 3, 4; 609.224, subsd. 2, 4.

A “qualified domestic violence-related offense” includes the following offenses:

- violation of domestic abuse no contact order, order for protection, or harassment restraining order (Minn. Stat. 518B.01, subd. 22; 518B.01, subd. 14; 609.748, subd. 6);
- first- through fifth-degree assault (609.221; 609.222; 609.223; 609.2231; 609.224);
- domestic assault (609.2242);
- female genital mutilation (609.2245);
- domestic assault by strangulation (609.2247);
- first- through fourth-degree criminal sexual conduct (609.342; 609.343; 609.344; 609.345);
- malicious punishment of a child (609.377);
- terroristic threats (609.713);
- harassment/stalking (609.749);
- interference with an emergency call (609.78, subd. 2);
- similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

Minn. Stat. 609.02, subd. 16.

A qualified domestic violence related offense includes an attempt to violate any of the above listed offenses, and includes the additional offenses of first- and second-degree murder (609.185, 609.19). The provision applies only to crimes committed on or after August 1, 2007.

Under Minnesota Statutes section 609.2247, whoever assaults a family or household member by strangulation is guilty of a

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11. Domestic Abuse/Stalking/Harassment

felony and may be sentenced to imprisonment for not more than three years. The statute defines “strangulation” as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.”

Law Enforcement Assistance to Domestic Abuse Victims

Each law enforcement agency must develop, adopt, and implement a written policy regarding arrest procedures for domestic abuse incidents. Minn. Stat. 629.342.

If a law enforcement officer does not make an arrest when the officer has probable cause to believe the person is committing or has committed domestic abuse or violated an order for protection, the officer shall provide immediate assistance to the victim, including assisting the victim in obtaining necessary medical treatment. Minn. Stat. 629.342, subd. 3.

The law enforcement officer responding to a domestic violence incident, whether or not an arrest is made, shall tell the victim about available services in the community and give the victim notice of the legal rights and remedies available, including the statement specified in section 629.341, subdivision 3:

If you are the victim of domestic violence, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an order for protection from domestic abuse. The order could include the following:

- (1) an order restraining the abuser from further acts of abuse;
- (2) an order directing the abuser to leave your household;
- (3) an order preventing the abuser from entering your residence, school, business, or place of employment;
- (4) an order awarding you or the other parent custody of or parenting time with your minor child or children; or
- (5) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

This notice must include community resources, including the telephone number for the local domestic violence agency.

A copy of the incident report prepared in domestic abuse cases must be provided at no cost upon request to the victim, the victim’s attorney, or designated agency. Minn. Stat. 629.341, subd. 4; 13.84, subd. 5.

Notice of Release from Custody

Before the release of a person arrested or juvenile detained for domestic abuse, harassment, or violation of an order for protection or domestic abuse no contact order, the agency having custody of the person or its designee must make a reasonable and good faith effort to inform orally the alleged victim, and, at the victim’s request, any local battered women’s and domestic abuse programs of:

- (1) the conditions of release, if any;
- (2) the time of release;
- (3) the time, date, and place of the next scheduled court appearance of the arrested person and the victim’s right to be present at the court appearance; and
- (4) if the person arrested is charged with domestic abuse, the location and telephone number of the area battered women’s shelter.

A copy of the written order and written notice of the above information must then be personally delivered or mailed to the victim as soon as practicable. Minn. Stat. 629.72, subd. 6; 629.73, subds. 1, 2.

Presentence Domestic Abuse Investigations

A presentence domestic abuse investigation must be conducted and a report submitted to the court by the corrections agency responsible for conducting the investigation when:

- (1) a defendant is convicted of an offense described in section 518B.01, subdivision 2 (domestic abuse);
- (2) a defendant is arrested for committing an offense described in section 518B.01, subdivision 2, but is convicted of another offense arising out of the same circumstances surrounding the arrest; or
- (3) a defendant is convicted of a violation against a family or household member of:
 - (a) an order for protection under section 518B.01;
 - (b) a harassment restraining order under section 609.748;
 - (c) obscene or harassing telephone calls under section 609.79, subdivision 1; or
 - (d) terroristic threats under section 609.713, subdivision 1.

Minn. Stat. 609.2244.

Order for Protection

An order for protection (OFP) is a court order forbidding a specific family or household member (the respondent) from

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engaging in abusive conduct and having contact with the person requesting the order (the petitioner). An OFP may be requested when the danger of domestic abuse is immediate and present. Any family or household member, or a guardian or household member, or reputable adult age 25 or older on behalf of a minor family or household member may seek an OFP.

An OFP may be filed in the county having jurisdiction over a dissolution action, in the county of residence of either party, the county where completed or pending family court proceedings were brought, or in the county where alleged domestic abuse occurred. The petitioner need not be a resident of Minnesota to file a petition with a Minnesota court. Minn. Stat. 518B.01, subd. 3. The filing fee is waived for petitioners seeking an OFP. Minn. Stat. 518B.01, subd. 3a.

In most cases the petitioner first obtains a temporary order (also called an “ex parte” OFP) which is effective until a court hearing can be held. At the hearing, both parties have the opportunity to be heard, and the court determines if the temporary order should be extended for up to one year. A petitioner who has obtained an OFP may petition the court to extend the order up to 50 years upon a showing that:

- (1) the respondent has violated a prior or existing order for protection on two or more occasions; or
- (2) the petitioner has had two or more orders for protection in effect against the same respondent. An order issued under this paragraph may restrain the abusing party from committing acts of domestic abuse or prohibit the abusing party from having any contact with the petitioner, whether in person, by telephone, mail or electronic mail or messaging, through electronic devices, through a third party, or by any other means.

Relief Available

In the application for the OFP, the petitioner can request that the court grant certain orders. In particular, upon notice and hearing, the court may grant the following relief:

- (1) restrain the abusing party from committing acts of domestic abuse;
- (2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) exclude the abusing party from a reasonable area surrounding the petitioner’s residence or place of employment;
- (4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim

and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award;

- (5) award temporary child and spousal support;
- (6) temporary possession of property;
- (7) no contact by telephone, mail, email, or other electronic means;
- (8) award possession of pets and companion animals, and restrain abusing party from harming them.

Minn. Stat. 518B.01, subd. 6.

Upon the petitioner’s request, information maintained by the court regarding the petitioner’s location or residence is not accessible to the public and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order. Minn. Stat. 518B.01, subd. 3b.

Domestic Abuse Victim’s Right to Terminate Lease

A tenant to a residential lease who is a victim of domestic abuse and fears imminent domestic abuse against the tenant or the tenant’s minor children if the tenant or the tenant’s minor children remain in the leased premises may terminate a lease agreement without penalty or liability as provided in Minnesota Statutes section 504B.206.

The tenant must:

- (1) Provide advance written notice to the landlord stating that:
 - (a) The tenant fears imminent domestic abuse from a person named in an order for protection or no contact order;
 - (b) The tenant needs to terminate the tenancy; and
 - (c) The specific date the tenancy will terminate.
- (2) The written notice must be delivered before the termination of the tenancy by mail, fax, or in person, and be accompanied by a copy of the order for protection or no contact order.

The statute indicates that “[f]or the purpose of this section, an order for protection means an order issued under chapter 518B. A no contact order means a no contact order currently in effect, issued under 518B.01, subdivision 22, or chapter 609.”

The tenant will still be responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month’s rent.

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Communications with Domestic Abuse Advocates

A domestic abuse advocate may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. In addition, domestic abuse advocates must comply with their mandated child abuse reporting obligations under Minnesota Statutes sections 626.556 and 626.557. A “domestic abuse advocate” is defined as an employee or supervised volunteer from a community-based battered women’s shelter and domestic abuse program eligible to receive grants under section 611A.32 that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, prosecutor’s office, or by a city, county, or state agency. Minn Stat. 595.02, subd. 02 (j).

Data Practices and Domestic Abuse Agencies

Domestic violence agencies that receive government funding are excluded from the provisions of the Minnesota Government Data Practices Act. Minn. Stat. 13.823.

Personal history information and information from which the identity or location of any victim can be determined are private data protected by Minnesota Statutes sections 611A.32, subdivision 5; 611A.371, subdivision 3; and 611A.36.

Stalking

Stalking is defined as engaging in intentional conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and causes this reaction on the part of the victim. Minn. Stat. 609.749, subd. 1. The state is not required to prove the actor’s specific intent to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated. Minn. Stat. 609.749, subd. 1a. Stalking can be prosecuted as either a felony or gross misdemeanor.

Gross Misdemeanor Stalking

A person who stalks another by committing any of the following acts is guilty of a gross misdemeanor:

- (1) directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;

- (2) stalks, follows, monitors, or pursues another, whether in person or through technological or other means;
- (3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
- (4) repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;
- (5) makes or causes the telephone of another repeatedly or continuously to ring;
- (6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, or other objects; or
- (7) knowingly makes false allegations against a peace officer concerning the officer’s performance of official duties with intent to influence or tamper with the officer’s performance of official duties. Minn. Stat. 609.749, subd. 2(a).

Felony Stalking

Felony stalking occurs where a person commits any of the following acts: 28

- (1) commits harassing conduct listed above (in gross misdemeanor stalking section) because of the victim’s or another’s actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin;
- (2) commits any offense described above by falsely impersonating another;
- (3) commits any offense described above and possesses a dangerous weapon at the time of the offense;
- (4) commits harassment with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, or a prosecutor, defense attorney, or officer of the court, because of that person’s performance of official duties in connection with a judicial proceeding; or
- (5) commits any offense described above against a victim under the age of 18, if the actor is more than 36 months older than the victim. Minn. Stat. 609.749, subd. 3(a).

Felony stalking violations are punishable by up to five years in prison and a fine of up to \$10,000. Minn. Stat. 609.749, subd. 3. In addition, a person who is more than 36 months older than the victim and who commits an offense with sexual or aggressive intent against a victim under the age of 18 is guilty of a felony with imprisonment for up to 10 years and a fine of up to \$20,000. Minn. Stat. 609.749, subd. 3(b).

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A person who repeatedly stalks another may face enhanced charges for subsequent acts. A person who commits gross misdemeanor stalking during the time period between a previous qualified domestic violence-related offense conviction or adjudication of delinquency and the end of the 10 years following discharge from the sentence for that conviction or disposition is guilty of a felony (punishable by up to five years in prison and a fine of up to \$10,000). Minn. Stat. 609.749, subd. 4(a).

A person who commits a stalking offense within 10 years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony (punishable by up to 10 years in prison and a fine of up to \$20,000). Minn. Stat. 609.749, subd. 4(b).

Pattern of Stalking Conduct – Felony Stalking

A person who engages in a pattern of stalking conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and who does cause this reaction on the part of the victim is guilty of a felony. Minn. Stat. 609.749, subd. 5(a).

A “pattern of stalking conduct” means two or more acts within a five-year period that violate or attempt to violate the provisions of any of the following:

- (a) this stalking under section 609.749;
- (b) terroristic threats under section 609.713;
- (c) assault in the fifth degree under section 609.224;
- (d) domestic assault under section 609.2242;
- (e) violation of an order for protection under section 518B.01, subdivision 14;
- (f) violation of a restraining order under section 609.748, subdivision 6;
- (g) trespass under section 609.605, subdivision 1(b)(3), (4), and (7);
- (h) obscene or harassing telephone calls under section 609.79;
- (i) harassment via letter, telegram, or package under section 609.795;
- (j) burglary under section 609.582;
- (k) damage to property under section 609.595;
- (l) criminal defamation under section 609.765; or
- (m) criminal sexual conduct in the first to fifth degree under sections 609.342 to 609.3451.

Minn. Stat. 609.749, subd. 5(b). If violations have occurred in more than one county, the accused may be prosecuted in any county where one of the acts occurred for all of the acts constituting the pattern. Minn. Stat. 609.749, subd. 5(c).

Venue

If the acts of stalking are committed in more than one county, the accused may be prosecuted for all stalking acts in any of the counties in which one of the acts was committed. Minn. Stat. 609.749, subd. 1b. In addition, stalking by telephone may be prosecuted either at the place where the call is made or where it is received or, in the case of wireless or electronic communication, where the actor or victim resides. Stalking through the mail may be prosecuted either where the mail is deposited or where it is received. Minn. Stat. 609.749, subd. 1b.

Mental Health Assessment and Treatment

When a person is convicted of a felony stalking offense, or another felony offense arising out of a charge based on this section, the court shall order an independent professional mental health assessment of the offender’s need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to conviction. Minn. Stat. 609.749, subd. 6(a).

Harassment Restraining Orders

Harassment includes the following: (1) a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target; (2) targeted residential picketing; and (3) a pattern of attending public events after being notified that the actor’s presence at the event is harassing to another. Minn. Stat. 609.748, subd. 1.

A person who is a victim of harassment may seek a harassment restraining order (HRO) from the district court. The parent, guardian, or step-parent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. The statute does not specify in which county the petition must be filed. Typically, a petition for relief is filed in the county where the victim lives or in the county where the harassment occurred. The court administrator or victim assistance program can assist victims with completing the proper form.

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There are substantial filing fees for HROs, however, these fees can be waived for the petitioner if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2 or 3 (stalking crimes; aggravated violations), or sections 609.342 to 609.3451 (criminal sexual assault in the first through fifth degree).

Normally, an “ex parte,” or temporary HRO, is granted if danger is claimed to be immediate and present. The temporary HRO must be personally served on the respondent (usually by a law enforcement officer) and becomes effective upon personal service. Upon request of either party, a hearing shall be set to review the temporary HRO. If no hearing is requested, the temporary HRO can become effective for a time period of up to two years. If a hearing is requested, the court must review whether there are reasonable grounds to believe that the respondent engaged in harassment. The victim must appear at this hearing. If the victim does not appear, the temporary HRO will be dismissed. Sometimes the hearing is delayed because the respondent cannot be located. The victim should still appear, and the hearing will be rescheduled.

At the HRO hearing, the judge reviews the order and asks if the petitioner still wants the order. The judge then asks if the respondent has read the request for the restraining order and has a response. The court then listens to both the petitioner and respondent. If the court decides to issue a HRO, it may be issued for a period of up to two years. If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing order on two or more occasions, the order can be granted for a period of 50 years. Minn. Stat. 609.748, subd. 5

The language of the HRO should be clear so that it can be later enforced. An order must contain a conspicuous notice to the respondent of the specific conduct that will constitute a violation.

The petitioner and respondent both receive a copy of the HRO. If the respondent is an organization, the order may be issued against and apply to all members of the organization. If the request for the HRO is denied, the reason(s) for denial will be stated by the court. If the request is denied for lack of sufficient evidence, the petitioner may file a petition again if further incidents occur.

Domestic Abuse No Contact Orders

Under Minnesota Statutes section 629.75, a domestic abuse no contact order (DANCO) can be issued in a criminal proceeding related to domestic abuse, harassment, or stalking and for violations of an order for protection.

A DANCO may be issued as a pretrial order before final disposition of the underlying criminal case or as a post-conviction probationary order. A domestic abuse no contact order is independent of any condition of pretrial release or probation imposed on the defendant. Minn. Stat. 629.75, subd. 1(b).

A peace officer has the ability to make a warrantless arrest for violations of a DANCO even if the violation did not take place in the presence of the officer. Minn. Stat. 629.75, subd. 3.

DANCOs are entered into a statewide database available to law enforcement. Minn. Stat. 299C.46, subd. 6.

Mutual Orders (OFPs or HROs)

Some courts will grant an OFP or HRO to both parties to the proceeding, effectively barring either from contacting the other. This is called a mutual order, and sometimes seems the most convenient resolution for a judge who would rather not sort out conflicting stories, or for the victim who does not want the hassle of a hearing.

It is never a good idea for anyone to voluntarily allow an order for protection or harassment restraining order to be placed against him or her. There is a stigma attached to having such an order in place, and the existence of an OFP or HRO may negatively affect employment or housing. In addition, the existence of an OFP or HRO subjects the person against whom the order is placed to being charged with a violation of the order. A petitioner should demand that the respondent seeking the mutual order be required to file a petition for the order and prove a need for an OFP or HRO just as the victim has to prove the need for one.

Statewide Tracking of Protective Orders

When an OFP is issued, the court must enter the information into the court OFP system which is accessible to court personnel. Selected information from this system is automatically transferred to another system called the Criminal Justice Information System (CJIS) Hot Files, which is accessible to law enforcement. The court administrator is also responsible for forwarding a copy of an OFP to the local law enforcement agency within 24 hours of the order being granted. Minn. Stat. 518B.01, subd.13.

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Foreign and tribal protective orders must also be entered into the statewide system. See Minn. Stat. 518B.01, subd. 19a(e).

Minnesota law requires the statewide data communications network to include orders for protection issued under section 518B.01 and no contact orders issued under section 629.715, subdivision 4. In addition, a no contact order must be accompanied by a photograph of the offender for the purpose of enforcement of the order, if a photograph is available and verified by the court to be an image of the defendant.

Violation of an OFP or HRO

A copy of the order is sent by the court to remain on file with local law enforcement. It is also important for petitioners to keep a copy of the order with them, in their home, in their car or at their workplace where it may be available in case of the need for police intervention. The law states that the police shall arrest the respondent when they have probable cause to believe the respondent is violating the order. In such a case, the party violating the restraining order may face a misdemeanor charge or be held in contempt of court for violating the court order. The victim may request a hearing on the contempt of court issue by filing an affidavit with the court.

Notice of Decision Not to Prosecute

Under Minnesota Statutes section 611A.0315, a prosecutor is required to make a good faith effort to notify a victim of domestic assault, sexual assault, or harassment that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. This section defines “domestic assault” as an assault committed by the actor against a family or household member. Minn. Stat. 611A.0315, subd. 2(b). “Harassment” is defined simply as a violation of 609.749, which includes stalking as a form of harassment.

Efforts to notify the victim should include, in order of priority:

(1) contacting the victim or a person designated by the victim by telephone; and (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt must be made before the suspect is released from custody. Minn. Stat. 611A.0315, subd. 1(a).

Along with notice of a dismissal of charges, section 611A.0315, subdivision 1(b) requires the prosecutor to make a record of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor must indicate the specific reason that the witness is unavailable.

The prosecution is also required to inform the victim of the method and benefits of seeking an order for protection or a restraining order, and that the victim may seek an order without paying a fee. Minn. Stat. 611A.0315, subd. 1(c).

Protection Against Employer Retaliation

Employers are prohibited from retaliating against an employee who takes reasonable time off from work to attend order for protection, harassment restraining order, or criminal proceedings. Minn. Stat. 609.748, subd. 10; 611A.036. The employee must give a 48-hour advance notice, except in cases of imminent danger. The employer may ask for verification, but any information related to the leave must be kept confidential. An employer who violates this provision is guilty of a misdemeanor and may be punished for contempt of court. The court may order the employer to pay back wages and offer job reinstatement. Further, the employee may bring civil action for recovery of damages, together with costs and disbursements, including reasonable attorney fees.

Requesting Protection of Certain Information

Victims who have grave concerns for their safety or the safety of their family may ask the Department of Public Safety Driver and Vehicle Services to keep their name and address private and unavailable to the public. Victims must submit a request in writing to the department, and must furnish an alternative, valid mailing address where they agree to receive any legal notices that would ordinarily be delivered or mailed to their home. The request can be done through the [Private Data Request form](#) (PS32202-11). For questions, call 651-296-6911.

Firearms

If a person is convicted of stalking or harassment under section 609.749, the court shall prohibit the defendant from possessing a pistol for three years from the date of the conviction. Minn. Stat. 609.749, subd. 8. A pistol is typically defined as “a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches” and does not include a “BB gun.” See Minn. Stat. 624.712, subd. 2.

If the court determines that a person convicted of a stalking or harassment crime under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited. Additionally, the court may prohibit the offender from possessing

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any type of firearm for any period longer than three years.
Minn. Stat. 609.749, subd. 8.

Violation of the court's prohibition against possessing a pistol is a gross misdemeanor.

Safe at Home

Victims of domestic violence, sexual assault, stalking, and others who fear for their safety can enroll in the *Safe at Home* program, which provides participants with a substitute address for all private and public records. To participate in the *Safe at Home* program, a person must apply with the assistance of an accredited application assistant. To find an accredited application assistant in your area, go to the [Safe at Home](#) page on the [Secretary of State Website](#).

Cases

In **Beach v. Jeschke**, 649 N.W.2d 502 (Minn. Ct. App. 2002), the court determined that a “two-sentence statement, uttered on one occasion, does not meet the requirements of ‘repeated incident’ necessary to constitute verbal harassment.” See also **State v. Collins**, 580 N.W.2d 36 (Minn. Ct. App. 1998), *review denied* (Minn. July 16, 1998) (stating that, as used in the felony harassment statute, “repeatedly” means more than once).

In **State v. Egge**, 611 N.W.2d 573, 575 (Minn. Ct. App. 2000), *review denied* (Minn. Aug. 15, 2000), the court of appeals found a violation of a harassment restraining order when respondent initiated contact with petitioner through a third party, even though the restraining order did not specifically mention contact instigated by the appellant and completed by a third party.

In **Dayton Hudson v. Johnson**, 528 N.W.2d 260, 263 (Minn. Ct. App. 1995), the court of appeals held that “a corporation fits the statutory definition of a party entitled to a restraining order under Minn. Stat. 609.748.” Here, the Dayton’s department store sought a restraining order against a person who assaulted several employees after he was caught shoplifting.

In **State v. Persons**, 528 N.W.2d 278 (Minn. Ct. App. 1995), a harassment restraining order had been issued against the defendant in the city of St. Joseph. The victims of the harassment lived in St. Joseph. Later the defendant went on a trip to St. Cloud with a group of people, including one of the victims. He was arrested in St. Cloud for violating the restraining order. The prosecutor for St. Joseph prosecuted the case. The court

of appeals stated that misdemeanor violations of state law must be prosecuted by the attorney of the city where the violation occurred. The case should have been prosecuted by the St. Cloud city attorney, because that is where the violation happened.

In **Anderson v. Lake**, 536 N.W.2d 909 (Minn. Ct. App. 1995), petitioner and his current girlfriend filed separate petitions for restraining orders against his former girlfriend. A hearing under Minnesota Statutes section 609.748 was held and the court issued restraining orders lasting one year. At the hearing the parties were not sworn and witnesses were not examined. The court of appeals vacated the orders and remanded for a hearing, stating that a “full hearing” includes the right to be present and cross-examine witnesses, to produce documents, and to have the case decided pursuant to the findings required by Minnesota Statutes section 609.748. A court must base its findings in support of a harassment restraining order upon testimony properly entered into evidence.

The guardian of an adult ward may obtain a harassment restraining order to protect the adult ward. **State v. Nodes**, 538 N.W.2d 158, 161 (Minn. Ct. App. 1995), *review granted* (Minn. Dec. 20, 1995), *review dismissed* (Minn. Feb. 9, 1996).

In **State v. Clark**, A06-1464 (Minn. October 4, 2007), the Minnesota Supreme Court considered the issue of what constitutes a past pattern of domestic abuse for the purpose of supporting a conviction for domestic abuse murder under Minnesota Statutes section 609.185(a)(6). Although appellant Clark’s history included two recent incidents of domestic abuse and two incidents of abuse occurring 13 to 15 years before the murder, the court held that the earlier acts were not sufficiently proximate in time to the later incidents to establish a past pattern of domestic abuse. Further, the court held that the two more recent incidents were insufficient to prove that Clark engaged in a past pattern of domestic abuse. Consequently the defendant’s conviction for domestic abuse murder was vacated; however, the defendant’s conviction for first-degree premeditated murder was affirmed.

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12. Motor Vehicle Theft

Given that many stolen vehicles are eventually recovered and taken to the local impound lot, this section discusses the victim notification responsibilities when a vehicle is recovered, the responsibility for paying any towing and storage fees, and financial assistance options for auto theft victims.

Corresponding Statutes: Minn. Stat. 169.042, 611A.675.

Towing/Storage: Notice, Emergency Fund

When a stolen vehicle is located, law enforcement will typically have the vehicle towed to a storage or impound lot.

Under Minnesota Statutes section 169.042, the law enforcement agency that originally received the report of vehicle theft shall make a reasonable and good faith effort to notify the victim of a reported vehicle theft within 48 hours after the agency recovers the vehicle or receives notice that the vehicle has been recovered by another law enforcement agency. The notice must specify when the recovering law enforcement agency expects to release the vehicle to the owner and where the owner may pick up the vehicle. The law enforcement agency that recovers the vehicle must promptly inform the agency that received the theft report that the vehicle has been recovered, where the vehicle is located and when the vehicle can be released to the owner. This statute was enacted to prevent the accumulation of unnecessary storage fees for the victim.

The owner of the car is usually held responsible for towing and storage fees. There is currently no provision in Minnesota law to waive the towing and storage fee for victims of auto theft. Law enforcement agencies differ in their policies regarding waiver of impound fees for victims. Most agencies will waive storage fees that are assessed during a period in which the vehicle is being held by the agency for evidence collection.

Some insurance policies cover towing and storage charges related to the theft of a vehicle once the insured has met their deductible amount. Victims should file with their insurance company for reimbursement of this expense.

Emergency assistance awards may be available to help victims of motor vehicle theft pay for these towing and storage fees. This assistance is available through grants to local victim assistance programs and is limited in the following ways:

- No award may be granted to a victim that fails to provide proof of insurance stating that security had been provided for the vehicle at the time the vehicle was stolen; and

- An award paid to a victim shall compensate the victim for actual costs incurred but shall not exceed \$300. Minn Stat. 611A.675.

Under section 169.042, a traffic violation citation given to the owner of the vehicle as a result of the vehicle theft must be dismissed if the owner presents, by mail or in person, a police report or other verification that the vehicle was stolen at the time of the violation.

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13. Witnesses

The rights, protections, and provisions related to witnesses in a criminal proceeding, including crime victims, are discussed in this section. Also included are a discussion of the potential ramifications when a witness refuses to obey a subpoena or testify and a discussion of **Crawford v. Washington** a landmark U.S. Supreme Court case that set a more stringent standard for the admission of witnesses' out-of-court statements.

Corresponding Statutes: Minn. Stat. 357.22; 357.24; 357.241; 611A.034; 631.046; 631.045; 609.498; 595.001 to 595.08; 588.20; and 260B.154.

Witness Fees

Under Minnesota law, witnesses can receive some compensation for loss of wages, mileage, and other expenses related to attending court proceedings pursuant to a subpoena.

Fees paid to witnesses include the following:

- (1) Twenty dollars per day (\$20/day) to a witness for attending any action or proceeding in any court of record or before any officer, person, or board authorized to take the examination of the witness. Minn. Stat. 357.22.
- (2) Mileage reimbursement in the amount of 28 cents per mile (\$.28/mile) for travel going to and returning from the place of attendance, to be estimated from the witness's residence, if within the state, or from the boundary line of the state where the witness crossed the same, if from out of state. Minn. Stat. 357.22.
- (3) Up to 60 dollars per day (\$60/day) for reasonable expenses actually incurred for meals, loss of wages, and child care. This applies to witnesses for the state, and witnesses attending on behalf of any defendant represented by a public defender, in either adult or juvenile proceedings. Minn. Stat. 357.24, 357.241.

Right to a Separate Waiting Area in the Courthouse

Under Minnesota Statutes section 611A.034, the court "shall provide a waiting area for victims during court proceedings which is separate from the waiting area used by the defendant, the defendant's relatives, and defense witnesses, if such a waiting area is available and its use is practical." If a separate area is not available or practical, the court shall provide "other safeguards," such as increased bailiff surveillance and victim escorts, to minimize the victim's contact with these people.

This statute does not specifically protect witnesses, other than a witness who is a victim, but in the spirit of this statute, a witness may contact the court administrator or the bailiff with any concerns for their safety while waiting to testify.

Right to Have a Support Person

Some witnesses may have a support person accompany them in court and to be present when they testify.

Minor Prosecuting Witnesses

Minnesota Statutes section 631.046, subdivision 1 states that:

a prosecuting witness under 18 years of age in a case involving child abuse as defined in section 630.36, subdivision 2, a crime of violence, as defined in section 624.712, subdivision 5, or an assault under section 609.224 or 609.2242, may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial, during testimony of the prosecuting witness. If the person so chosen is also a prosecuting witness, the prosecution shall present on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

Witnesses in Criminal Sexual Conduct Cases

A prosecuting witness in any case involving criminal sexual conduct in the first through fourth degrees may choose to be accompanied by a supportive person at the omnibus or other pretrial hearing. Minn. Stat. 631.046, subd. 2. If the requested supportive person is also a witness, the prosecution and the court shall follow the motion procedure outlined in subdivision 1 of that section to determine whether or not the supportive person's presence will be permitted.

Closure of the Courtroom

The trial court may exclude the public from the courtroom during a minor victim's testimony regarding sex crimes committed against them. Minn. Stat. 631.045. According to the

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13. Witnesses

statute, the judge shall give the prosecutor, defendant, and members of the public the opportunity to object to the closure before a closure order. The judge shall specify the reasons for closure in an order closing all or part of the trial.

The Minnesota Court of Appeals upheld the application of this statute in **Austin Daily Herald v. Mork**, 507 N.W.2d 854 (Minn. Ct. App. 1993), *review denied* (Minn. Dec. 13, 1993).

In that case, the trial judge made specific findings that the juvenile victims would suffer embarrassment and fright and be traumatized further if required to testify before a public forum. The appellate court found that an order excluding the public during testimony of juveniles, while admitting the media on condition that they not report names of juvenile victims or information about their juvenile records, was a permissible restriction on access.

In **State v. Fageroos**, 531 N.W.2d 199, 203 (Minn. 1995), the Minnesota Supreme Court remanded for an evidentiary hearing as to whether there was adequate evidence to support closure of the courtroom during the testimony of the complainant and her sister, both minors. Factors to be considered by the trial court include “the minor victim’s age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives.” *Id.* at 202 (quoting **Global Newspaper Co. v. Superior Court for the County of Norfolk**, 457 U.S. 596, 608, 102 S. Ct. 2613, 2621 (1982)).

Witness Tampering

Tampering with a witness is a crime and should be immediately reported to the police or the judge. Minn. Stat. 609.498. Witness tampering includes any of the following acts:

- (a) intentionally preventing or dissuading or intentionally attempting to prevent or dissuade a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;
- (b) intentionally coercing or attempting to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;
- (c) intentionally causing injury or threatening to cause injury to any person or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry or within a year following the actor’s release from incarceration, whichever is later;
- (d) intentionally preventing or dissuading or attempting to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime;
- (e) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities;
- (f) intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information or within a year of the actor’s release from incarceration, whichever is later.

Competency

Under Minnesota Statutes section 595.02, subdivision 1(m), a child under 10 years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age. Under Minnesota law, the defendant has a right to be present at a competency hearing. See Minn. Rules of Criminal Procedure 26.03, subd. 1; **State v. Robinson**, 476 N.W.2d 896 (Minn. Ct. App. 1991).

There is no express age at which a person is presumed to be incompetent to testify. Minn. Stat. 595.06. A child of a very young age can be found to be a competent witness. **State v. Brovold**, 477 N.W.2d 775 (Minn. Ct. App. 1991), *review denied* (Minn. Jan. 17, 1992) (in which a three-year-old was found to be competent to testify).

If there are questions about a witness’s competency to testify, a judge will typically ask questions of that witness to determine competency. A child witness is usually privately interviewed in chambers, however all parties may be present at the hearing. The judge will ask the witness a series of questions to determine whether the witness can tell the difference between the truth and a lie, whether the witness understands the importance of telling the truth, and whether the witness can remember and relate the facts.

In **State ex rel. Dugal v. Tahash**, 278 Minn. 175, 177-78, 153 N.W.2d 232, 234 (1967), the court stated:

Determination of a person’s competency as a witness is within the sound discretion of the trial court and is

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ordinarily made by such preliminary examination of the proposed witness as may be deemed necessary by the court. If it appears from the examination that the witness understands the obligation of an oath and is capable of correctly narrating facts to which his testimony relates, the witness is competent in fact and should be permitted to testify.

Protected Communications

Sexual assault counselors and domestic abuse advocates cannot be compelled to testify about any opinion or information received from or about a victim they served without the consent of the victim, however, this protection is not absolute. Minn. Stat. 595.02, subd. 1(k) and 1(l).

Sexual assault counselors may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs.

Domestic abuse advocates may also be compelled by the court to disclose information. In doing so the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and advocate or counselor, and the services if disclosure occurs.

Notwithstanding these provisions, domestic violence advocates and sexual assault counselors are both still obligated to report suspected abuse of a child or vulnerable adult to the appropriate authorities.

Cameras in the Courtroom

Minnesota has rules permitting the video and audio recording of court proceedings. The rules specify that in order for a proceeding to be recorded:

- The judge and all of the parties must agree to the recording of the proceeding.
- Coverage is prohibited in child custody and marriage dissolution cases, as well as cases involving juveniles, police informants, relocated witnesses, sex crimes, trade secrets, and undercover agents.
- Coverage is not permitted during recesses and when the jury is not present, such as hearings on motions to suppress, in limine, and to dismiss.

- Coverage is not permitted of jurors or during jury selection.
- Coverage is not permitted of witnesses who object.
- Coverage is not permitted of confidential attorney-client conferences and side-bar communications.

There are also rules in place regarding the technical standards for photographic and electronic coverage of judicial proceedings, such as pooling of cameras and requirements regarding light, sound, location, and the media personnel present in the courtroom. The rules give the judge the ability to regulate any aspect of the coverage to ensure that the means of recording does not distract participants or impair the dignity of the proceeding. Minn. General Rules of Practice 4.

In 2009, the Minnesota Supreme Court ordered the creation of a pilot project to provide for media access to the trial court subject to the judge's discretion. Consent from all parties is not required, and, if a witness objects, the judge will decide if audio or video coverage of that witness will be permitted. A goal of this project is to assess the impact of cameras on court proceedings and contemplates further expansion of media access to court proceedings.

Failure to Obey a Subpoena and Contempt of Court

A witness who fails to obey a subpoena or who, in court, refuses to testify or otherwise disrupts or obstructs the proceeding may be held in contempt of court.

Felony Contempt: A knowing and willful violation of a subpoena, lawfully issued in relation to a crime of violence as defined in section 609.11, subd. 9, with the intent to obstruct the criminal justice process is a felony level offense. Minn. Stat. 588.20, subd. 1 (2006). A felony charge may be submitted upon a person's non-appearance, however, it must be dismissed if the person voluntarily appears within 48 hours after the time of appearance on the subpoena and reappears as directed by the court.

Misdemeanor Contempt: Minnesota Statutes section 588.20 makes committing a contempt of court in any of the following ways a misdemeanor:

- disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

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- behavior of like character in the presence of a referee, while actually engaged in a trial or hearing, pursuant to an order of court, or in the presence of a jury while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law;
- breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of a court, jury, or referee;
- willful disobedience to the lawful process or other mandate of a court other than the conduct constituting felony contempt;
- resistance willfully offered to its lawful process or other mandate other than the conduct constituting felony contempt;
- contumacious (willful disobedience of a court order) and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory; or
- publication of a false or grossly inaccurate report of its proceedings.

In a juvenile delinquency proceeding, if a witness, including the victim, who is personally served with a summons or subpoena, fails to appear, without reasonable cause, “the person may be proceeded against for contempt of court or the court may issue a warrant for the person’s arrest, or both.” Minn. Stat. 260B.154. This is also the case if the court has reason to believe the person is avoiding personal service, or if any custodial parent or guardian fails to accompany a child to a hearing as required under 260B.168.

Out of Court Statements

The United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. CONST. amend. VI. This is commonly referred to as the Confrontation Clause and is applicable to the states through the Fourteenth Amendment. Article 1, section 6 of the Constitution of the State of Minnesota includes an identical confrontation clause.

The underlying purpose of the clause is to encourage a witness to tell the truth by giving a defendant the right to observe the testimony and cross-examine the witness regarding that testimony. Even given these important goals, this right is not absolute.

Admission of out of court statements is and has long been possible. For over 20 years, the controlling standard for admitting statements that unavailable witnesses made to other persons was

that of **Ohio v. Roberts**, 448 U.S. 56, 100 S. Ct. 2531 (1980). According to the *Roberts* Court, if a witness was unavailable, that witness’s testimony could be admitted through a third person if it bore an “adequate indicia of reliability” falling within a “firmly rooted hearsay exception” or had “particularized guarantees of trustworthiness.” *Id.* at 66, 100 S. Ct. at 2539.

In the landmark case, **Crawford v. Washington**, 541 U.S. 36, 124 S. Ct. 1354 (2004), the United States Supreme Court ruled that the Confrontation Clause bars the admission of testimonial out-of-court statements unless the declarant is unavailable to testify and the defendant had a prior opportunity to cross-examine the declarant. The Supreme Court did not define “testimonial” for the purposes of the Confrontation Clause, but it did describe three types of statements that “share a common nucleus and . . . define the Clause’s coverage at various levels of abstraction.” *Id.* at 52, 124 S. Ct. at 1364.

The first type of testimonial statement is *ex parte* in-court testimony, or its functional equivalent (such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine or similar pretrial statements that declarants would reasonably expect to be used prosecutorially). The second type is an extrajudicial statement, contained in formalized testimonial materials (such as affidavits, depositions, prior testimony, or confessions). The third type is a statement that was made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. As a corollary to the final category, the Court added that “[s]tatements taken by police officers in the course of interrogations” are similarly testimonial. *Id.* at 52, 124 S. Ct. at 1364.

Cases to Which *Crawford* Does Not Apply

In general, *Crawford* does not apply to civil child protection proceedings or criminal proceedings at which a child testifies. The confrontation clause applies to “criminal prosecutions,” and child hearsay statements are generally admitted in civil child protection proceedings without regard to whether the prior statements are testimonial.

The *Crawford* Court specifically stated that “when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements.” *Id.* at 59, 124 S. Ct. at 1369. Accordingly, in any criminal case in which the child testifies, the child’s hearsay statements may be admitted under exceptions, even if the prior statements are testimonial.

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Crawford does not apply if the defendant's conduct made the witness unavailable for trial. A concurring opinion, written by Justice Thomas and joined by Justice Scalia, states that "the rule of forfeiture by wrongdoing (which we accept) extinguishes confrontation claims. . . ." *Id.* at 62, 124 S. Ct. at 1370. Minnesota courts agree that when the state proves that a defendant engaged in wrongful conduct, that he intended to procure the witness's unavailability, and that wrongful conduct actually does procure the witness's unavailability, the defendant will be found to have forfeited his confrontation clause claim. **State v. Fields**, 679 N.W.2d 341, 347 (Minn. 2004).

Cases to which *Crawford* does apply

In a criminal case in which the witness is unavailable to testify, *Crawford* bars the admission of hearsay statements that are testimonial unless the defendant was afforded an opportunity of prior cross-examination of the witness.

Whether or not *Crawford* applies in a given case hinges on whether the statements are considered testimonial. This determination will depend greatly upon the circumstances surrounding the statement. A child making a statement to a parent or teacher is likely making a "casual remark," and thus is not appreciative that the statement might be used in a trial. Thus, such statements would be non-testimonial. Statements made to a doctor may be viewed as statements for purposes of treatment and not made in preparation for trial. As such, they would be considered non-testimonial and the statements would be admissible under traditional hearsay rules, even if the victim does not testify at the trial.

The issue becomes more complex if the statement is made to a government official or someone acting as an agent for the government. In dicta, the *Crawford* Court questioned whether the excited utterances made to a police officer in response to questioning in **White v. Illinois**, 537 U.S. 831, 123 S. Ct. 134 (2002), could survive the Court's new confrontation clause analysis. *Crawford*, 541 U.S. at 58, 124 S. Ct. at 1358 n.8.

In **Davis v. Washington**, 126 S. Ct. 2266, (2006), the United States Supreme Court considered whether alleged victims' statements to a 911 operator and police investigator constituted "testimonial" statements subject to the Confrontation Clause restriction established in *Crawford*. The Court's decision was based on two cases heard in tandem, **Davis v. Washington** and **Hammon v. Indiana**.

In *Davis*, the victim had just been assaulted and the victim told the 911 operator that Davis used his fists to beat her and that

he had just left her residence moments earlier. In *Hammon*, the police were at the residence, questioning the victim about an assault. Neither victim testified at trial.

The Court defined "testimonial" as it relates to statements made during police interrogations. Such statements are non-testimonial "under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Id.* at 2273-74. Statements are testimonial if the circumstances objectively indicate no emergency "and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 2274.

Thus, the Court found that Hammon's right to confront the witness was violated, but Davis' right was not.

Retroactive application of *Crawford*

In **Danforth v. Minnesota**, 718 N.W. 2nd 451, No.06-8273 (February 20, 2008), a U.S. Supreme Court case that originated out of Minnesota, the Court addressed the issue of the retroactive application of the Court's ruling in the *Crawford* case. The appellant, Danforth, was convicted of criminal sexual conduct in Minnesota in 1996. The child victim was found incompetent to testify at the trial. Instead, a videotaped interview of the victim was admitted into evidence. After the *Crawford* decision changed the rules governing admissibility of taped statements, Danforth, in his second petition for postconviction relief, sought retroactive application of the new ruling. The Minnesota Supreme Court held that the appellant was not entitled to have the *Crawford* ruling applied retroactively, stating that state courts could not give broader application of retroactivity than that given by the U.S. Supreme Court. The U.S. Supreme Court reversed the Minnesota decision and held that state courts may give broader retroactive effect to new rules of criminal procedure than is required under federal law. The Court said the fundamental interest in federalism outweighed concerns about uniformity.

Minnesota Case Law under *Crawford*

The following is a summary of Minnesota case law as it has developed since *Crawford*.

In **State v. Wright**, A03-1197 (Minn. January 25, 2007), the defendant, Wright, was convicted of assaulting his girlfriend and her sister. The girlfriend and sister were deemed unavailable to testify in the trial, so the court allowed into evidence tapes and transcripts of calls the women made to the 911 operator, as well as their statements to police officers during an on-scene

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investigation. In 2005, the Minnesota Supreme Court affirmed the conviction, concluding that statements made to the 911 operator were not testimonial, and were therefore admissible. The court also held that the statements made to police were not testimonial because the officers were making a preliminary determination of what happened and whether there was immediate danger. Wright appealed to the United States Supreme Court. The Supreme Court granted the petition, vacated the Minnesota Supreme Court decision, and remanded the case for further consideration in light of **Davis v. Washington**. On remand, the Minnesota Supreme Court affirmed its previous decision that all the statements made to the 911 operator were non-testimonial and therefore admissible. However, the court held that the women's statements to the police during the on-scene investigation were not admissible. The police interviews occurred at the victim's apartment after the emergency had ended and Wright was in police custody. The interviews were conducted to establish facts that were relevant to the future prosecution. Therefore, it was an error for the district court to admit those statements at the trial. The court also concluded that the error was not harmless because the statements were highly persuasive and featured prominently in the state's closing argument. The court also addressed the issue of whether the defendant had forfeited his rights by engaging in wrongful conduct intended to procure the witnesses' unavailability. An advocate testified that one of the victims was fearful and that Wright had threatened her in a telephone call made from jail. The advocate's testimony was brief and the victim's statements were contradictory, so the court was unable to decide the forfeiture issue. The court remanded the case for an evidentiary hearing to give the state an opportunity to establish that Wright forfeited his confrontation claim. If the state cannot prove that forfeiture occurred, then Wright is entitled to a new trial that does not include the on-scene statements made to police.

In **State v. Washington**, 725 N.W.2d 125 (Minn. Ct. App. 2006), *review denied* (Minn. Mar. 20, 2007), the court of appeals held that it was not a *Crawford* violation for the trial court to admit a 911 tape and statements made by a victim during an on-site interview. The victim called 911 and stated that she had been assaulted by the appellant, and it also appeared that the caller was being assaulted again during the call. The caller also stated that the appellant ran out the back door and would likely be driving. The court of appeals held that the 911 statements were non-testimonial under *Crawford*, because they closely parallel the *Davis* standard, which states that when a purpose of interrogation is to enable police to meet an ongoing

emergency, the statements are non-testimonial. *Id.* at 132. The court also found that the onsite interview, under these particular circumstances, departed from the facts of *Davis*. In *Davis*, the assailant was in another room while the complainant filled out a battery affidavit. This case differed because the assailant was still at large and posed an ongoing threat. Hence, the circumstances "objectively indicate that the primary purpose of the interrogation was not to establish or prove past offense potentially relevant to later criminal prosecution, but to enable the police to meet an ongoing emergency." *Id.* at 133. The court refers to the scenario as an "emergent situation."

In **State v. Scachetti**, 711 N.W.2d 508, 515-16 (Minn. 2006), the Minnesota Supreme Court held that the pediatric nurse practitioner who assessed a three-year-old sexual abuse victim was not a government questioner or acting as an agent of the government, and thus the child's statements were not testimonial in nature. Admission of these statements at trial in which the child was unavailable to testify was not barred by the Confrontation Clause. Moreover, the court stated that even if the nurse was acting in concert with or as an agent of the government, the victim's statements to the nurse would still not be testimonial. *Id.* at 515.

In **State v. Bobadilla**, 709 N.W.2d 243, 254 (Minn. 2006), *cert. denied*, 127 S. Ct. 82 (2006), the Minnesota Supreme Court found that neither the child-protection worker nor the three-year-old victim was acting during a risk-assessment interview to a substantial degree to produce a statement for trial. Thus, the victim's statements to the worker were not testimonial and were admissible at trial, despite the defendant's lack of prior opportunity to cross examine the victim, who was determined incompetent to testify.

Similarly, in **State v. Krasky**, 736 N.W.2d 636 (2007), the Minnesota Supreme Court permitted the admission of a child's videotaped examination and interview by a nurse. The court concluded that the statements were non-testimonial because the primary purpose of the child's statements was to assess and protect the child's health and welfare.

In **State v. Her**, A06-1743 (Minn. May 28, 2008), the Minnesota Supreme Court considered whether a deceased victim's previous statements about past abuse by her estranged husband were admissible to show a pattern of abuse. The supreme court held that the victim's statements made to family members at a family meeting were non-testimonial and that their admission did not violate the appellant's Sixth Amendment right to confrontation.

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In addition, with regard to the victim's statement given to a police officer following an earlier assault, the court held that the appellant had forfeited his right to confrontation by intentionally killing the victim. However, the basis for the second part of this ruling was rejected by the U.S. Supreme Court in a case decided soon after, **Giles v. California**, 128 S. Ct. 2678 (2008). The *Giles* court held that the forfeiture by wrongdoing exception, which had been applied in *Her*, applies only where the defendant engaged in conduct designed to prevent the witness from testifying. Thus, the forfeiture by wrongdoing exception only permitted the introduction of statements of a witness who was purposely kept away by the defendant to prevent the witness from providing evidence or testifying. The U.S. Supreme Court vacated the *Her* case and remanded for reconsideration in light of the *Giles* ruling. The Minnesota Supreme Court held that *Giles* changed the Minnesota law regarding the forfeiture by wrongdoing doctrine and remanded the case to the trial court to determine if the state's evidence was sufficient to satisfy the *Giles* standard. *State v. Her*, A06-1743 (Minn. May 6, 2010).

In *State v. Cox*, A08-145 (Mar. 18, 2010), the district court granted the state's motion to introduce the grand jury testimony of a witness who was afraid to testify because of threatening statements made by a friend and a family member of the defendant. The witness responded to the subpoena and testified at an evidentiary hearing about being threatened. The Minnesota Supreme Court, relying on *Giles*, held that admission of the grand jury testimony violated the defendant's Sixth Amendment right to confrontation. Under *Giles*, the exception for intentional interference with the judicial process applies if: (1) the witness is unavailable; (2) the defendant engaged in wrongful conduct; (3) the wrongful conduct made the witness unavailable; and (4) the defendant intended to procure the unavailability of the witness. The Minnesota Supreme Court reversed the conviction, holding that the state failed to establish that the witness was unavailable to testify.

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14. Emergency Funds

This section discusses the Emergency Fund, a financial assistance program that distributes small grants to crime victims through local victim assistance programs located throughout the state to meet the emergency needs of crime victims in the wake of a crime.

Corresponding Statute: Minn. Stat. 611A.675; 169.042.

To apply for reimbursement, a crime victim should contact the victim assistance program close to where they live. If their local program is out of funding for the year, they may contact another program. A listing of victim assistance programs and their current emergency fund balances is located on the [Emergency Fund](#) page of the [OJP Web site](#).

Emergency Funds

The Emergency Fund Grant Program was established by the legislature in 1996. Through this program, small grants are distributed to local victim assistance programs throughout the state. Grant funds are used to meet the emergency needs of crime victims.

Under Minnesota Statutes section 611A.675, emergency assistance includes, but is not limited to, the following expenses:

- Replacement of necessary property that was lost, damaged, or stolen as a result of a crime;
- Purchase and installation of necessary home security devices;
- Transportation to locations related to the victim's needs as a victim, such as medical facilities and facilities of the criminal justice system;
- Cleanup of a crime scene;
- Reimbursement for reasonable travel and living expenses that the victim incurred to attend court proceedings that were held at a location other than the place where the crime occurred due to the change in venue; and
- Reimbursement of towing and storage incurred due to impoundment of a recovered stolen vehicle.

Victims of crime have received funding through this program for items such as repairing a broken door, installing new locks, replacing broken windows, and replacing clothing or bedding taken as evidence.

(Victims of a violent crime, who have expenses other than those listed above, should be referred to Crime Victims Reparations, which is discussed more fully in Part 2.)

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15. Victim Notification: Minnesota VINE and Minnesota CHOICE

Crime victims often find relief when an offender is jailed or incarcerated, however, they may be unsure about the release date or may feel uneasy as it approaches and worry about being caught unawares. Minnesota has two services that allow victims, and members of the public, to check on the custody status of offenders and request notification of a change in custody status.

Minnesota Victim Information and Notification Everyday (VINE) is an automated service for victims of offenders in a county facility. Through VINE, victims and others can anonymously obtain offender information and request to be notified of a custody status change.

Victims of offenders who are incarcerated in a Department (DOC) facility following a conviction can create an account with the web-based service Minnesota CHOICE and obtain information about the offender, provide information to DOC personnel if desired, and request notification of an offender's change in custody status.

Minnesota law requires jails and custodial facilities to notify victims of *violent crime* of an offender's release during the pre-trial phase of the prosecution process. Following an offender's conviction, however, notification will be given only if the victim has made a specific request to the jail or DOC facility. (See part 1, section 2) Victims are encouraged to use the two automated services to ensure timely notifications regarding the offender.

VINE – County facilities

VINE is a statewide, automated service with two important features: offender custody status information and release notification.

Custody status:

Individuals who contact VINE through the 24-hour number or the *VINELink* Website can find out if an individual is in a jail or detention facility. To search for offender information through VINE, users must provide either an offender name (or alias) or offender identification number. In those situations where more than one offender shares the same name, a secondary search can be made using the offender's middle initial, the incident date, the offender's date of birth, or the arresting agency.

Notification:

Individuals can register with VINE to receive automatic telephone or email notification (or both) upon a change in the offender's custody status. Registered persons are notified upon the transfer, release, escape, or death of an inmate. When VINE receives a change in inmate status from the county, the service automatically

calls all persons who requested phone notification. Calls continue for 48 hours or until a successful notification is verified with the registered person's Personal Identification Number (PIN). Persons who have requested email notification will be sent an email to the address provided.

Using VINE

The telephone VINE service is available in English, Spanish, Hmong, and Somali. Assistance in other languages is available through the AT&T translation service. Live operators are available at the call center 24 hours a day, every day. The *VINELink* website is available in English and Spanish, however, users can request that their email notification be in any of the four available languages.

VINE is free and anonymous and is available to anyone—victims, friends and family members of the victim, criminal justice professionals, and the public.

To access Minnesota VINE:

1-877-MN-4-VINE (1-877-664-8463)

www.vinelink.com

Victims are cautioned not to depend solely on the VINE service for their protection, but to use this service as part of an overall safety plan. Victims who feel they may be at risk should take precautions as if the offender has already been released.

Minnesota CHOICE – DOC Facilities

Under Minnesota law, victims of offenders in a DOC facility (prison) have additional rights to notification and information. These rights include: notice of conditions of release; additional notification related to released predatory offenders; notification of transfers to a less secure facility; and, if the offender re-enters a facility after having been released, the offender's subsequent release. To request release notification, as well as these other rights, a victim must make a request to the DOC, which can be done by creating an account in Minnesota CHOICE.

www.minnesotachoice.com

Victims can pick and chose which notifications they would prefer receiving and in what manner. In addition, victims have access to information about the offender's case manager as well as restorative justice opportunities at the DOC.

The DOC Victim Assistance Program can assist with creating an account for those individuals without Internet access. DOC Victim Assistance Program: 800-657-3830.

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15. Victim Notification: Minnesota VINE and Minnesota CHOICE

History of Victim Notification in Minnesota

VINE was first implemented in Scott County in 1998, and the statewide Minnesota VINE system was launched in 2002. Currently, nearly all Minnesota counties are participating. For a listing of these counties, please call the Minnesota Office of Justice Programs at 651-201-7300, or view the map on the OJP Website.

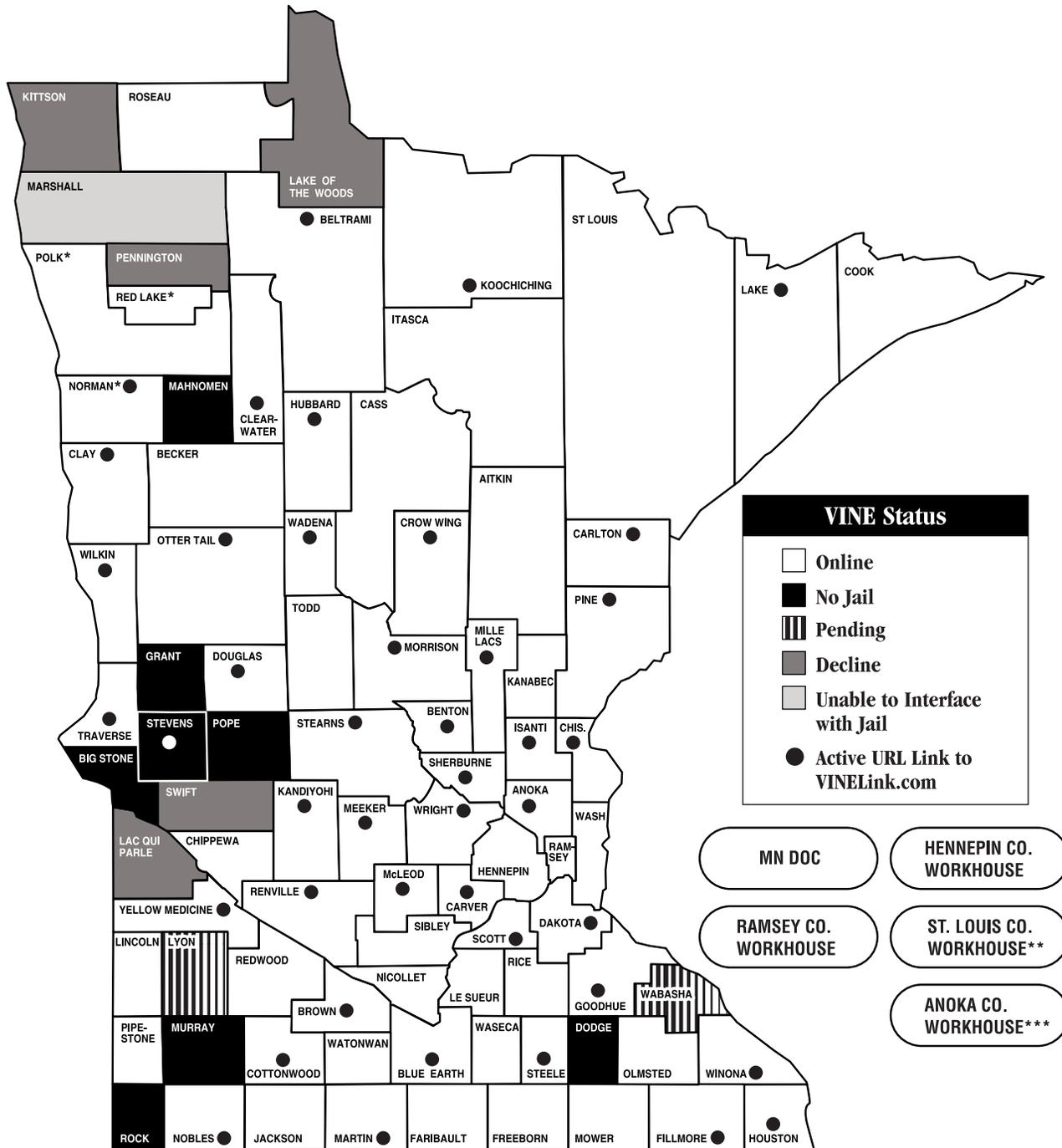
The DOC was added to the VINE system in 2006, and starting in 2010, the Minnesota CHOICE system was launched to improve the DOC's ability to provide statutorily required notices to crime victims, including release notification and notifications related to predatory offenders. Minnesota CHOICE allows victims to more easily update their contact information and make choices about the types and methods of notification to receive, as well as to communicate with DOC personnel and explore restorative justice opportunities.

Counties that participate in VINE provide inmate information to a centralized, national call center located in Louisville, Kentucky, which constantly monitors inmate activity through an interface with the counties' on-site booking or record-keeping system. Updated county inmate records from Minnesota are automatically sent to the call center every 15 minutes. Records from the DOC are sent to the call center every 24 hours.

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15. Victim Notification: Minnesota VINE and Minnesota CHOICE

Minnesota VINE Implementation Status as of April 2010



* Norman, Polk and Red Lake Counties are all served by the Tri-County Community Corrections Facility located in Polk County.

** St. Louis County workhouse is online as a part of the St. Louis County jail.

*** Anoka County workhouse is online as part of the Anoka County jail.

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16. A Guide to the Court System

This section provides an overview of the court system, including the state, federal, and special courts, and the path civil and criminal cases take as they move through it.

The State Court System

The Minnesota Judicial Branch is made up of three levels of courts: district courts, the court of appeals, and the supreme court.

Most disputes brought to the court system start at the district court level, which operate in county courthouses across the state. The district court is a court of general jurisdiction, which means that district court judges can hear a wide variety of cases – from traffic offenses to murder trials and from small claims cases to major civil trials. Some district courts have separate divisions, such as probate, family, and juvenile courts.

There are more than 280 judges serving the state's district courts. For administrative purposes, the district courts are organized into 10 judicial districts. Each district is managed by a chief judge and assistant chief judge, as well as by a district administrator.

At the state level, the Minnesota Court of Appeals reconsiders decisions of the district courts if one of the parties is unhappy with the result and files a timely appeal. The court of appeals is an error-correcting court; it does not retry cases. The 16 court of appeals judges divide into three-judge panels and travel to cities throughout Minnesota to hear cases. A panel reviews the district court record to see if any errors were committed in the original court proceedings. If serious errors are found, the court can reverse the decision of the district court, or send the case back for a new trial or other proceeding.

The highest state court is the Minnesota Supreme Court. This court of seven judges, who are called justices, hears appeals from the court of appeals, the Workers' Compensation Court of Appeals, and the Tax Court. All first-degree murder convictions are reviewed by the Minnesota Supreme Court. Disputes about legislative elections also go directly to the supreme court. The state supreme court has discretion to determine which cases it will hear. This court reviews matters on certiorari, meaning it selects cases to set state-wide precedent, to clarify important legal issues, to resolve statutory conflicts, or to answer constitutional questions.

For more information about the Minnesota Judicial Branch, go to www.mncourts.gov.

The Federal Court System

The federal court system also has a presence in Minnesota, just as it does in every state. The federal courts are separate from the state courts. They hear different kinds of cases including cases that involve:

- A federal law, such as the federal kidnapping law, firearms laws, assassination cases, civil rights protections or banking laws.
- A question of interpreting the United States Constitution, such as free speech, racial discrimination, or other constitutional freedoms.
- A lawsuit between citizens of two states that involves more than \$75,000.

In the federal system, the federal district court – which in Minnesota operates in Minneapolis, St. Paul, Duluth and Fergus Falls – is the trial court where people file their federal claims. Seven judges, all appointed for life by the president, serve on the United States District Court for the District of Minnesota.

Much like the state district court, the federal district court is the place where trials are conducted. Decisions may be appealed to one of the 13 federal circuit courts of appeal. Minnesota appeals go to the Eighth Circuit Court of Appeals in St. Paul. Appeals from the circuit court of appeals may be made to the U.S. Supreme Court in Washington, D.C.

Also in the federal system, the bankruptcy court – which has offices in Minneapolis, Duluth, and Fergus Falls – is the court where people file their bankruptcy petitions and where disputes regarding their property and debts are resolved. Four judges, all appointed to terms of fourteen years, serve on the federal bankruptcy bench.

For more information about the federal judicial system, go to www.uscourts.gov.

Special Courts Not in the Judicial Branch

The Minnesota Tax Court and Workers' Compensation Court of Appeals are executive-branch agencies created by state law to deal with a specific and technical area of the law.

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Tax Court

Three judges, appointed by the governor to six-year terms with approval from the state senate, serve on the Tax Court. They must be knowledgeable about taxes, but they don't have to be lawyers. The Tax Court hears non-criminal tax cases from all over the state. The Tax Court is in St. Paul but hears cases in the locality where the taxpayer lives or in the same district if the case was heard in district court.

For more information about the tax court go to www.taxcourt.state.mn.us.

Workers' Compensation Court of Appeals

Five judges, appointed by the governor to six-year terms with the approval of the state Senate, hear workers' compensation cases that are appealed from compensation hearings or that are transferred from district court. Judges must be lawyers. They have offices in St. Paul and hear cases there or elsewhere in the state. Workers' compensation cases include issues that arise when workers are injured while on the job.

For more information about the Workers' Compensation Court of Appeals go to www.workerscomp.state.mn.us.

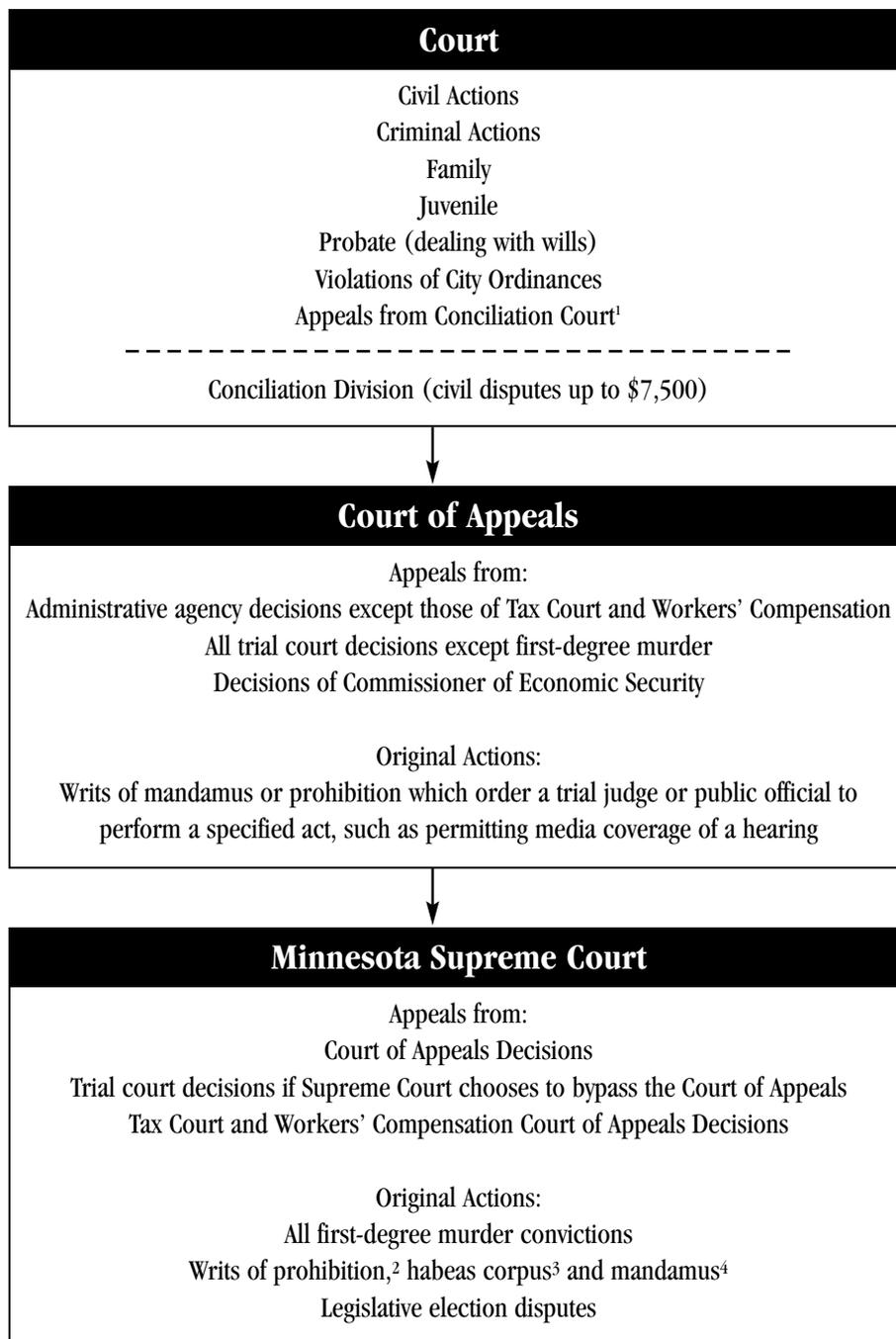
Tribal Courts

There are 14 tribal courts located in Minnesota. Each tribe develops its own justice system. There is considerable variety in the types of forums and the law applied in these tribal courts that is distinctly unique to each tribe. Some tribal courts resemble Western-style judiciaries where written laws and rules of court procedure are applied. Other tribal courts use traditional means of resolving disputes through the use of peacemaking, elders' councils, and sentencing circles. Many tribes, in establishing new tribal courts, or enhancing established ones, are developing hybrid or blended systems that incorporate traditional dispute resolution elements that have proven effective within their culture and community while also insuring that due process is provided.

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How the Minnesota Court System is Structured



¹ Called Trial De Novo — Actually a new trial, not just a review of the conciliation court decision.

² Writ of Prohibition — Asks that a governmental body or official be prevented from doing something that might cause harm.

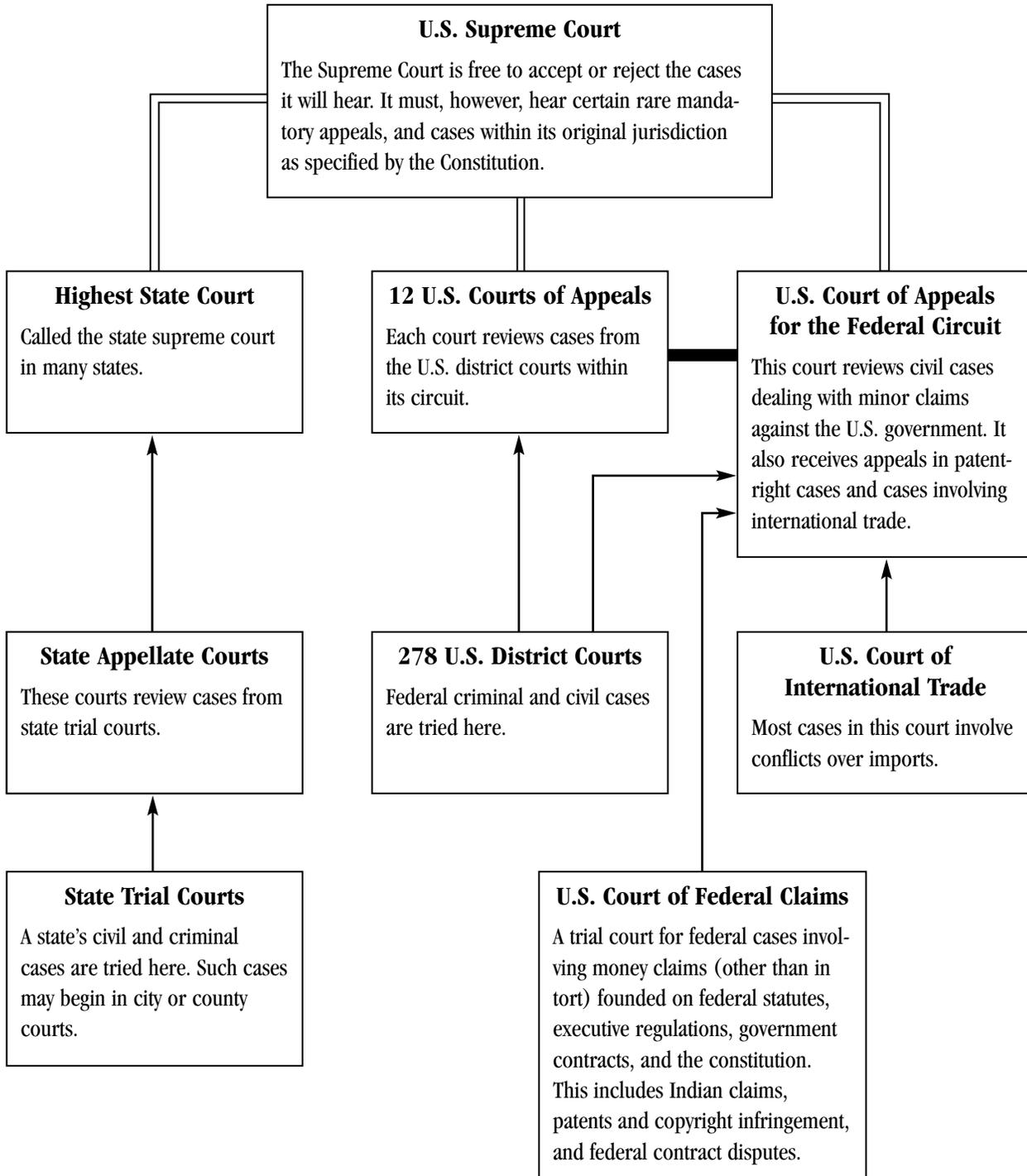
³ Habeas Corpus — A complaint alleging that someone has been unlawfully confined and is asking for release.

⁴ Mandamus — Asks that a governmental body or official be ordered to do something which they are refusing to do.

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How Cases Travel Through America’s Judicial System



— Together, these make up the 13 U.S. Courts of Appeals.

— Cases that reach the U.S. Supreme Court only if four justices agree to review them (“writ of certiorari”).

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Types of Cases

All legal matters filed in the courts are broadly classified as either civil or criminal.

Civil

Civil cases are usually disputes between private citizens, corporations, governmental bodies or other organizations. They may involve property or personal rights – for example, actions arising from landlord and tenant disputes, auto or personal injury accidents, breach of warranty on consumer goods, contract disputes, adoptions, marriage dissolutions (divorce), wills, and guardianships.

In a civil action, the focus is on civil liability and the damages sought are almost always money. The party bringing the action (the plaintiff or petitioner) must prove his or her case by presenting evidence that is more convincing to the judge or jury than is the evidence brought by the opposing side (the defendant or respondent). The plaintiff or petitioner is usually represented by a private attorney, as the district court has many rules that must be followed for a lawsuit to proceed. Success in a civil suit does not prove that a criminal act occurred, only that the other party is civilly liable for the damage done. A civil lawsuit never results in the losing party having to go to jail or prison. It may only result in a judgment or order being filed against the losing party.

(For more information, see the separate topic summary section on civil lawsuits.)

Criminal

Criminal cases are brought by the government against individuals or corporations accused of committing a crime. “Crime” means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine. The government makes the charge because a crime is considered an act against all of society. The prosecuting attorney prosecutes the charge against the accused person (the defendant) on behalf of the government (the city, county, state or United States). In criminal cases, the prosecution must prove that the defendant is guilty beyond a reasonable doubt.

There are three major classifications of crimes: felonies, gross misdemeanors, and misdemeanors. The more serious crimes are called felonies. A felony is a crime for which a sentence of imprisonment for more than one year may be imposed.

Examples of felonies include murder, manslaughter, kidnapping, robbery, and assaulting a firefighter or emergency medical personnel.

A misdemeanor is a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed. Some examples of misdemeanors include disorderly conduct, loitering with intent to participate in prostitution, fleeing a police officer on foot, trespassing, open bottle, and providing false information to police.

A gross misdemeanor is a crime for which the defendant may be sentenced to more than 90 days in jail, but not more than one year and the maximum fine which may be imposed is \$3,000. Some examples of gross misdemeanors include fleeing a police officer in a motor vehicle, abduction, and a second domestic assault within 10 years.

Many crimes, such as arson, sex crimes, contempt of court, and driving while impaired (DWI) have varying degrees of seriousness and, depending on the facts of the specific case, might be a misdemeanor, a gross misdemeanor, or a felony.

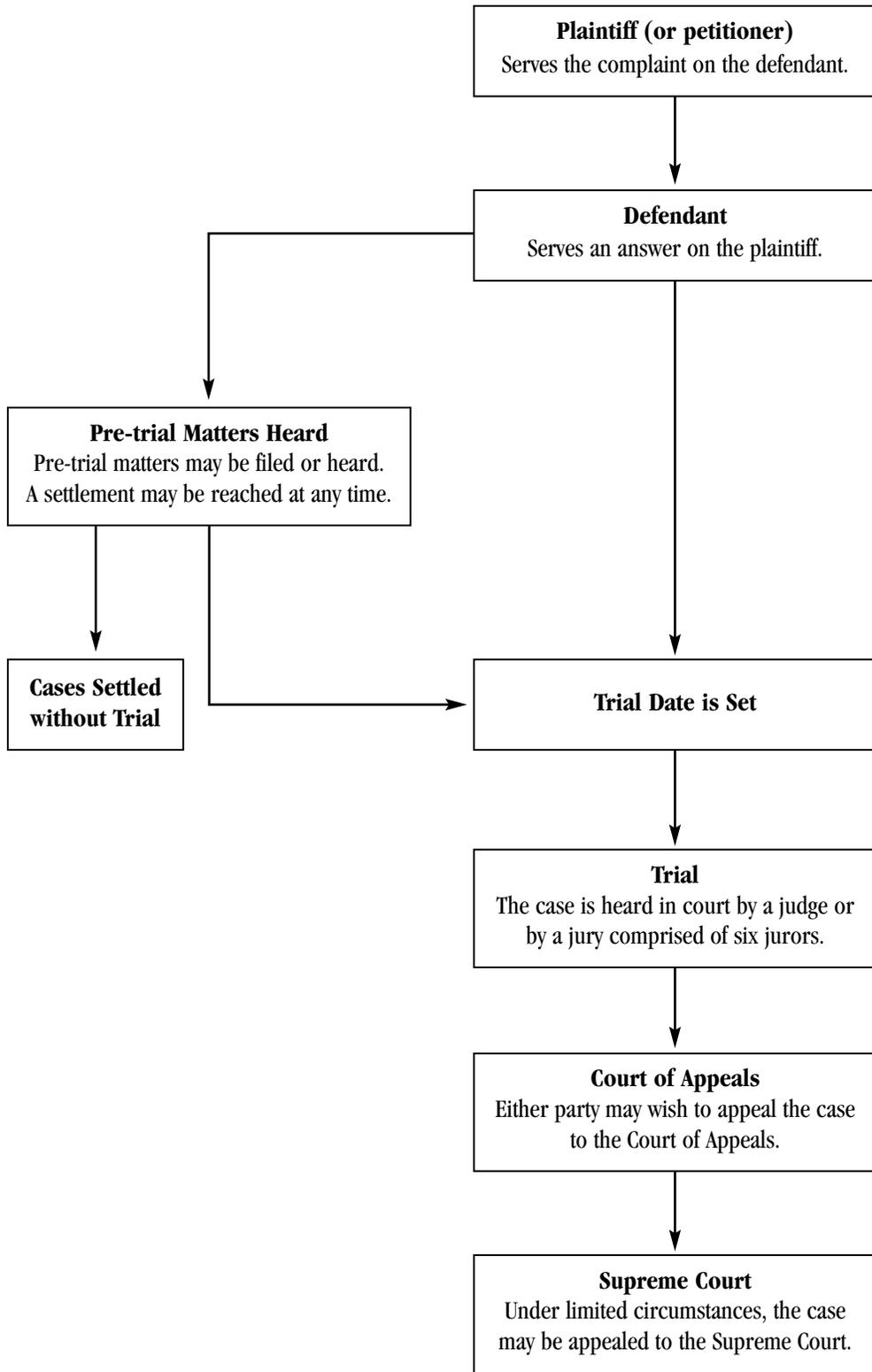
Finally, a petty misdemeanor is a petty offense which is prohibited by statute, and for which a sentence of a fine of not more than \$300 may be imposed. Because no imprisonment can be imposed, a petty misdemeanor does not meet the definition of a crime. Examples of petty misdemeanors include most traffic and parking violations.

It is very important to remember that the government has the burden in any criminal case of proving the defendant guilty beyond a reasonable doubt. The defendant is presumed innocent and does not have to prove his or her innocence.

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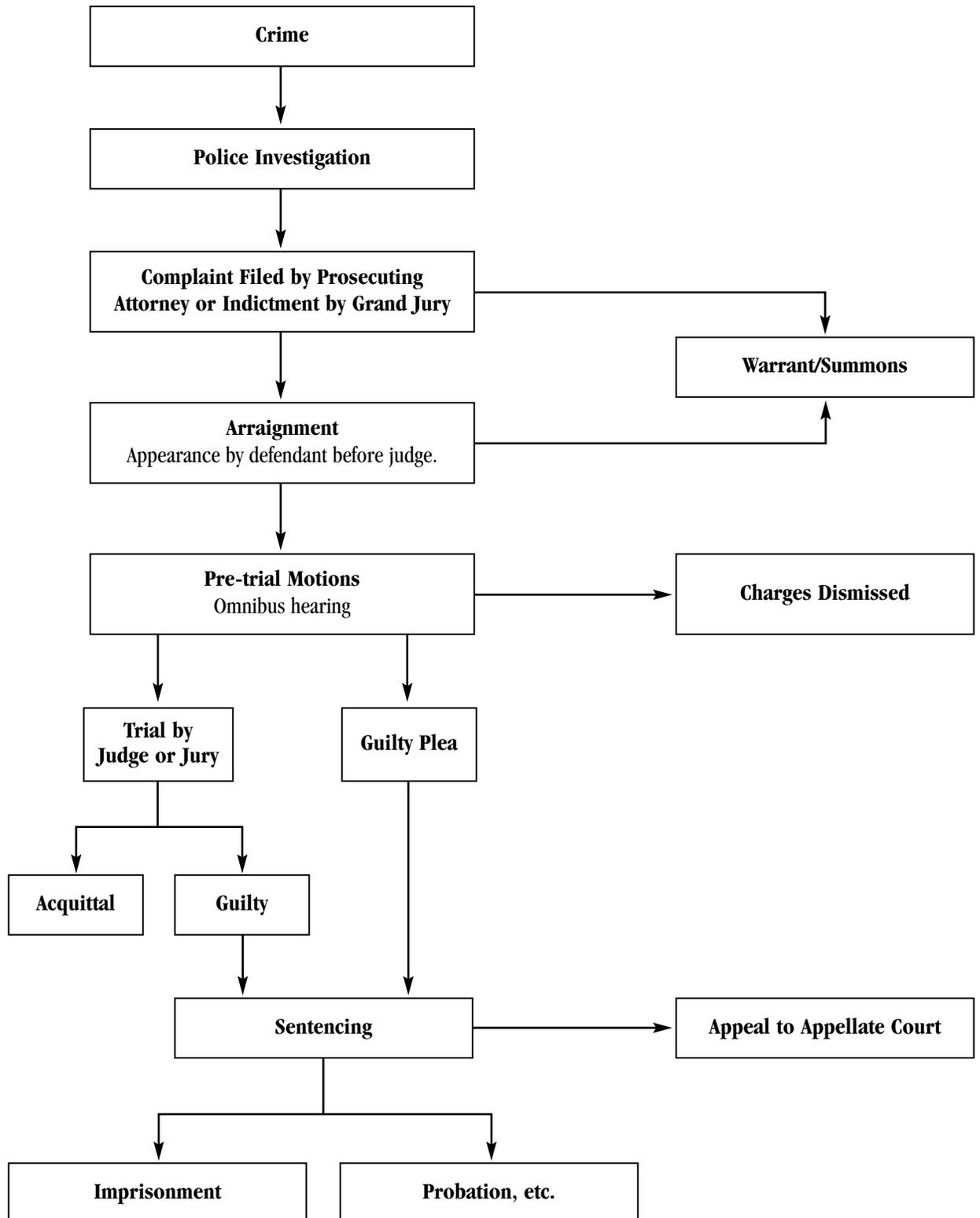
Civil Case Process



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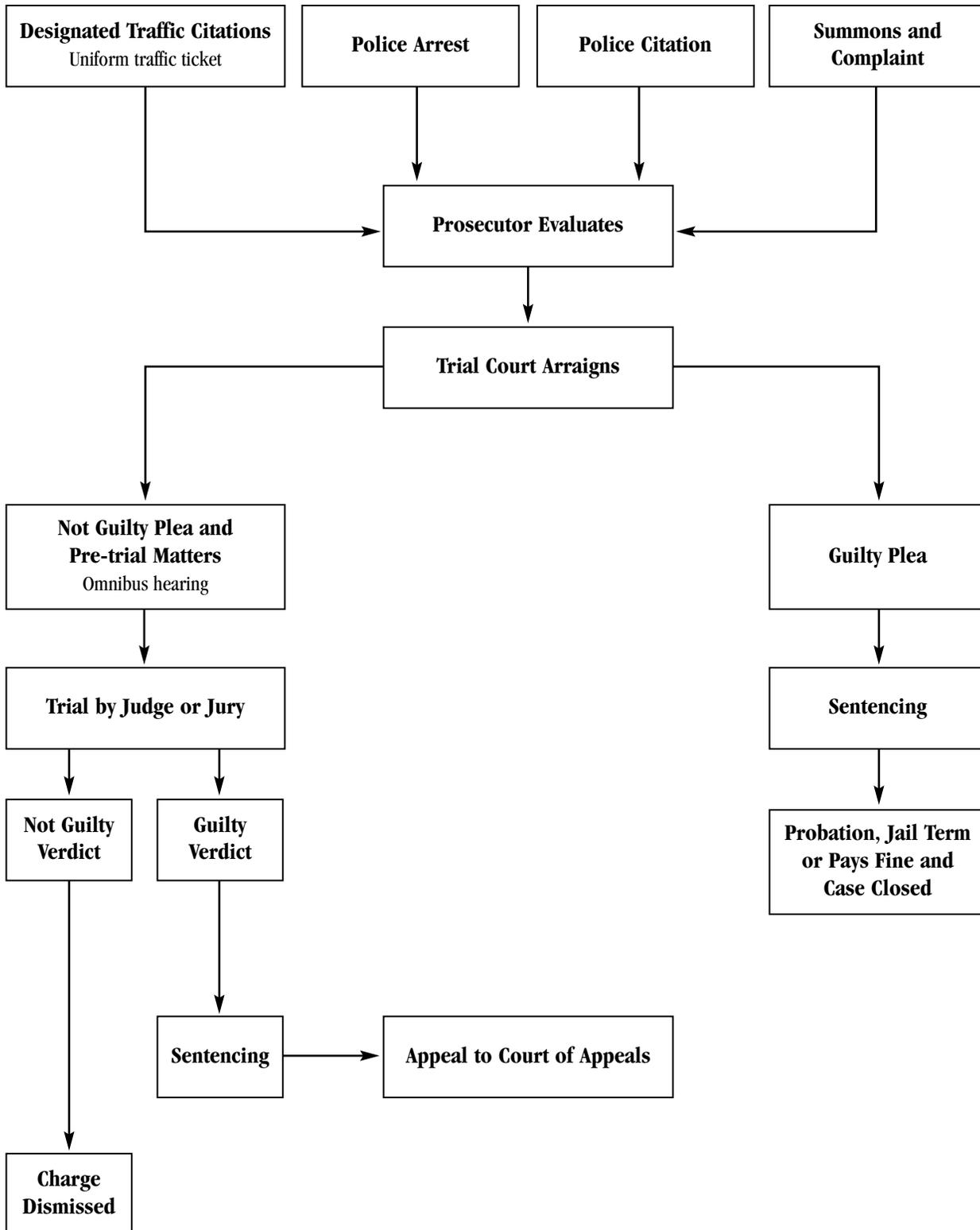
Felony Case Process



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Misdemeanor Case Process



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The Trial Process

Depending on the kind of action, a case may be tried before a judge or before a judge and jury. But whether the case is civil or criminal, or is tried by a judge or jury, the procedure is essentially the same. The following is a general step-by-step description of the trial process.

Jury Selection

A panel of persons randomly chosen from the voter registration list, driver's license list, and Minnesota identification cardholders' list in their county is called for jury duty. At the beginning of the trial, a jury selection process (called *voir dire*) is used to choose a panel of six or 12 people for the trial. It is required that the pool from which the jury is drawn must be representative of the community (however, the final jury does not have to be).

Criminal defendants have a right to a jury trial under the Minnesota Constitution. In felony criminal matters the jury consists of 12 people. In criminal cases, alternate jurors may be assigned to a case. Alternate jurors hear all of the evidence and must be prepared to fill in if any seated juror is unable to complete jury service. In both misdemeanor and civil cases the jury consists of six people.

During *voir dire* there are usually between 15 to 35 prospective jurors present in the courtroom at one time to be questioned. First, a group of prospective jurors is selected. Next, the judge explains the case to be heard. The names of the parties in the matter are announced, as are those of the attorneys.

General questions, such as whether the prospective jurors are acquainted with the parties in the case, are sometimes asked of the group as a whole, either by the judge or by one of the attorneys. Each person may then be specifically questioned by the attorneys. The questions are designed to reveal a prospective juror's background and general beliefs and whether those beliefs indicate a prejudice toward either of the parties in the case.

A juror may be excused for a particular reason – for cause – or for no particular reason that the lawyer can describe. Excusing for no reason is called a peremptory challenge and may be used only a limited number of times.

If an answer by a prospective juror indicates he or she may not be acceptable, one of the attorneys will challenge for cause. If the judge determines the prospective juror could not be impartial, or fair, in the case, or that there might be an appearance of unfairness, he or she will excuse the juror for cause.

After all challenges have been made, the six or 12 people remaining make up the jury. The courtroom deputy or judge then administers the oath to the jury.

Trial Procedures

All interested parties and observers are seated in the courtroom before the trial is scheduled to begin. Everyone stands as the judge enters the courtroom and remains standing until the judge is seated.

Beginning with the plaintiff's side, each party's attorney usually makes an opening statement. Opening statements outline the facts that each party expects to establish during the trial. Opening statements only introduce the attorney's theory of the case and may outline expected testimony and evidence, but it is not considered to be evidence.

After opening statements, the attorneys present evidence. Evidence may include physical exhibits, such as photographs, objects, or documents. It can also include a spoken statement from someone under oath, also known as testimony. On occasion, people may testify before the trial begins. Testimony that is written down or videotaped before trial and submitted to the court is called a deposition. The judge will decide what evidence the law allows jurors to consider.

The plaintiff's attorney, or the state's attorney, presents his or her evidence first. Witnesses are often called to testify. Each witness takes an oath, promising to tell the truth. Under *direct examination*, the attorney asks questions of each witness. After the questions, the attorney for the other party may ask questions of the same witnesses. This is called *cross-examination*.

After the plaintiff has presented witnesses, the defense is entitled to present its case and a similar process of direct and cross-examination takes place. Remember that defendants are not required to prove that they are not guilty, and may rely on a lack of proof as their defense.

The court sets guidelines for conducting a fair and orderly trial. Sometimes, however, one of the attorneys may feel that the questions or evidence presented by the opposing attorney is improper or should not be considered by the jury. It is the attorney's responsibility in these instances to make objections to the judge. If the judge considers the question improper or the evidence inadmissible, the objection will be sustained. Otherwise, the objection is overruled. The judge's ruling does not mean that the judge favors one side or attorney over the other, and jurors are not supposed to allow themselves to be influenced by the rulings.

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Sometimes a witness may say something that fails to answer a question or should not be allowed in a case. The judge may strike the remark from the record. If this happens, the jury is told to disregard the testimony as if it was not given.

On occasion, the attorneys may need to speak to the judge privately. This may occur at the sidebar, in the judge's chambers, or the judge may excuse the jury from the courtroom. Usually, the judge will explain the reasons for these delays. Generally, the attorneys and judge are privately discussing legal matters about the case, covering sensitive matters to minimize the possibility of a mistrial, or clarifying issues that could lead to an appeal and possible retrial. Sometimes, the parties reach a settlement agreement during these conferences.

After each party's attorney has finished questioning the witnesses and presenting evidence to support his or her case, the attorney rests the case.

Next, the attorney for each party in the case presents a closing argument. Closing arguments sum up the evidence and testimony, in a final effort to persuade the jury and/or judge in favor of the attorney's client.

In a jury trial, after all evidence has been presented and all witnesses have been heard, the judge instructs the jury on the law that governs the case, defines the issues the jury must decide, and charges them to reach a fair verdict based on the evidence presented.

In a jury trial, the bailiff then takes the jurors from the courtroom to the jury room to consider the case. This is called *jury deliberation*. The jury remains in the jury room until a verdict is reached, unless the judge specifically allows separation or a recess for meals. In a civil trial, five out of six jurors must agree on the final verdict. In a criminal trial, all jurors must agree.

When the jury reaches its verdict, the judge will call everyone back to the courtroom to have the verdict read. A "not guilty" verdict is called an *acquittal*. In a civil trial, a guilty verdict will likely include a finding regarding the amount of damages, if any, that a defendant will be responsible to pay. In a criminal trial, a guilty verdict does not include a sentence. Typically, a separate sentencing hearing will occur at a later time.

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17. Juvenile Court

Minnesota's juvenile courts handle cases in which an offender was under the age of 18 when the delinquent act was committed. Although juvenile court involves a different process and data practices rules compared to adult court, victims of juvenile offenders nonetheless enjoy the same rights as victims of adult offenders. This section looks at specific aspects of the juvenile court and how a delinquency case moves through it.

Corresponding Statutes: Minn. Stat. 611A.015; 260B.001 through 260B.446 (Juvenile Court Act); and 260C.001 through 260C.451 (the child protection provisions of the Juvenile Court Act).

Scope of Victims' Rights

Victims of crimes in which the offender is a juvenile are entitled to the same rights as cases in which the offender is an adult. Specifically, the rights afforded to crime victims in Minnesota Statutes sections 611A.01 through 611A.06 are applicable to juvenile delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs, and proceedings involving any other act committed by a juvenile that would be a crime as defined in section 609.02, if committed by an adult. Minn. Stat. 611A.015; 260B.005.

The juvenile court is responsible for distributing a copy of a notice of rights of victims in juvenile court to each victim of a juvenile crime who attends a juvenile court proceeding, along with a notice of services for victims available in that judicial district. Minn. Stat. 611A.02, subd. 3. A [sample brochure](#) that can be customized by individual agencies is available on the OJP Website.

Jurisdiction

Except as provided in sections 260B.125 (certification) and 260B.225 (adult traffic offenses), the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent, a juvenile traffic offender, a juvenile petty offender, and in proceedings concerning any minor alleged to have been a delinquent, a juvenile petty offender, or a juvenile traffic offender prior to having become 18 years of age. The juvenile court shall deal with such a minor as it deals with any other child who is alleged to be delinquent or a juvenile traffic offender. Minn. Stat. 260B.101.

The district court — not the juvenile court — has jurisdiction over a first-degree murder case where the juvenile is 16 years of age or older. If the juvenile committed a felony offense at age 14 or older, the juvenile court may send the case to district court under the certification process, discussed below.

Access to Juvenile Hearings

Juvenile court proceedings are closed to the public except as provided by law. Minn. R. Juv. Delinq. P. 2.01. The general public is generally excluded from juvenile hearings, except in delinquency or extended jurisdiction juvenile (EJJ) proceedings where the offense was a felony and the child was at least 16 years of age. Minn. Stat. 260B.163, subd. 1(c).

In all cases, the court shall admit persons who, in the discretion of the court, have a direct interest in the case or in the work of the court. A victim of the crime is expressly mentioned in the statute as a person with a direct interest in the case:

The court shall permit the victim of a child's delinquent act to attend any related delinquency proceeding, except that the court may exclude the victim: (1) as a witness under the Rules of Criminal Procedure; and (2) from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public.

Minn. Stat. 260B.163, subd. 1(c).

However, the court may exclude any person — except counsel and the guardian ad litem — from portions of a hearing when it is in the best interest of the child to do so. Minn. R. Juv. Delinq. P. 2.02. In such cases, the court is required to note on the record the reasons a person is excluded.

In all delinquency cases, a person named in the petition as the victim is entitled, upon request, to be notified by the court administrator in writing of the date of the certification or adjudicatory hearings, and the disposition of the case. Minn. Stat. 260B.163, subd. 1(d).

In any delinquency proceeding in which the victim is testifying, the victim may choose to have a supportive person present during the victim's testimony. Minn. Stat. 260B.163, subd. 3.

Records/Data Privacy

Juvenile court records are not open to public inspection. Juvenile records are retained by the court until the person reaches the age of 28.

The records are available without a court order to the following persons: court personnel, the juvenile's attorney; the juvenile's parent's attorney; the juvenile's guardian ad litem; and the prosecuting attorney. Minn. Juv. Delinq. R. 30.02, subd. 2.

The Court may order juvenile court records to be made available to certain persons providing supervision and custody of the

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17. Juvenile Court

child and to the public. The court must find that release of the information is in the best interests of the child, in the interests of public safety, or is necessary for the function of the juvenile court. Minn. Juv. Delinq. R. 30.02, subd. 3(B).

Under Minnesota Statutes section 260B.171, subdivision 4, some information about a juvenile offender may be released including name and age of the juvenile, act for which the juvenile was petitioned, date of the offense, and disposition. However, the name of the juvenile can be withheld from the victim, if the request appears prompted by a desire to engage in unlawful activities on the part of the requester.

Under section 260B.171, subdivision 5 the prosecuting attorney has the authority to release investigative data collected by law enforcement agencies to the victim upon the victim's written request. The victim's request for data can be denied if the prosecutor believes the release will interfere with the investigation or the request is prompted by a desire to engage in unlawful activities. Also, the data cannot be released if it involves videotaping of a child abuse victim, which is prohibited from release under the data privacy act. Minn. Stat. 13.821.

Victims of juvenile crime may obtain information from court services in order to assert their right to restitution pursuant to Minnesota Statutes 13.84.

Victims of juvenile crime may obtain information necessary to assert their right to notice of release from the juvenile correctional agency. The data that may be released include: the name, home address, and placement site of a juvenile who has been placed in a juvenile correctional facility as a result of a delinquent act. Minn. Stat. 13.84.

Certification

Certification is the process by which it is determined that a juvenile will be prosecuted as if he or she were an adult when the crime was committed. The prosecution is removed from the juvenile court to the adult court. The juvenile court may certify the proceeding to adult court where the juvenile is over 14 years old and the crime was a felony. See Minn. Stat. 260B.125.

Presumption in Favor of Certification

There is a presumption in favor of certification if:

- the juvenile is 16 or 17 at the time of the offense, and
- the alleged offense would result in a presumptive commitment to prison under the sentencing guidelines *or* the child committed a felony while using a firearm.

Minn. Stat. 260B.125, subd. 3.

In order to rebut this presumption, the juvenile must show by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety. If the court finds the juvenile has not rebutted the presumption, the court shall certify the juvenile to district court.

Non-presumptive Certification

If the presumption in favor of certification does not apply, but the prosecutor wants the juvenile to be certified, the prosecutor must demonstrate by clear and convincing evidence that retaining the case in juvenile court would not serve the interests of public safety. Minn. Stat. 260B.125, subd. 2.

The court shall consider the following factors in determining whether public safety is better served by certification to adult court: seriousness of the offense; culpability of the juvenile, including level of participation in planning and carrying out the offense; prior record of delinquency; programming history; adequacy of punishment or programming available; and dispositional options available. The court must give greater weight to the seriousness of the offense and the child's delinquency record than to the other factors. Minn. Stat. 260B.125, subd. 4.

Previous certification: If the juvenile has previously been certified to adult court on a felony and was convicted, the court shall certify the juvenile on any new felony case. Minn. Stat. 260B.125, subd. 5.

Offender now an adult: The juvenile court has jurisdiction to hold a certification hearing if an adult is alleged to have committed an offense when he was less than 18 and a petition is filed before expiration of the statute of limitations. Minn. Stat. 260B.125, subd. 6.

If the court decides not to certify the juvenile, the court shall designate the proceeding an Extended Jurisdiction Juvenile (EJJ) case and include in writing the reasons why retention of the case in juvenile court serves public safety.

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17. Juvenile Court

Extended Jurisdiction Juvenile (EJJ) Prosecutions

Extended jurisdiction juvenile is a process by which the offender has the opportunity to have the case stay in juvenile court, but may face adult sanctions if he or she does not comply with the conditions of the disposition. A case can become an extended jurisdiction juvenile (EJJ) case in three ways:

- (1) the child was age 14-17, a certification hearing was held, and the court decided to designate the proceeding an extended jurisdiction juvenile prosecution;
- (2) the child was age 16-17, the presumption for certification applies; and the prosecutor designated the case as an EJJ prosecution in the delinquency petition;
- (3) the child was age 14-17, the prosecutor requested an EJJ prosecution, a hearing was held on the EJJ issue, and the court designated the case an EJJ prosecution.

Minn. Stat. 260B.130, subd. 1.

When the prosecutor requests an EJJ prosecution, the court must hold a hearing to consider the request. The prosecution must show by clear and convincing evidence that designating the case an EJJ proceeding serves public safety. A child who is the subject of an EJJ prosecution has the right to a trial by jury and effective assistance of counsel.

If an EJJ prosecution results in a guilty plea or finding of guilt, the court shall impose one or more juvenile dispositions under section 260B.198 and an adult criminal sentence stayed on the condition the offender not violate the provisions of the juvenile disposition order and not commit a new offense. The court has many options for the juvenile disposition, including but not limited to: issuing a warning; ordering payment of restitution to the victim and/or fines; community service; probation; electronic monitoring; foster care; out-of-home placement; or detention. The disposition will depend on the offense, the juvenile's attitude, the juvenile's criminal history, or the availability of appropriate services.

When a person convicted under EJJ violates the conditions imposed or is alleged to have committed a new offense, the court may revoke the stay and direct the offender to be taken into custody. The offender is then entitled to a hearing with representation by counsel. After the hearing, if reasons exist to revoke the stay, the court shall impose the adult sentence. Upon revocation, extended jurisdiction status and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the commissioner of corrections, is with the adult court.

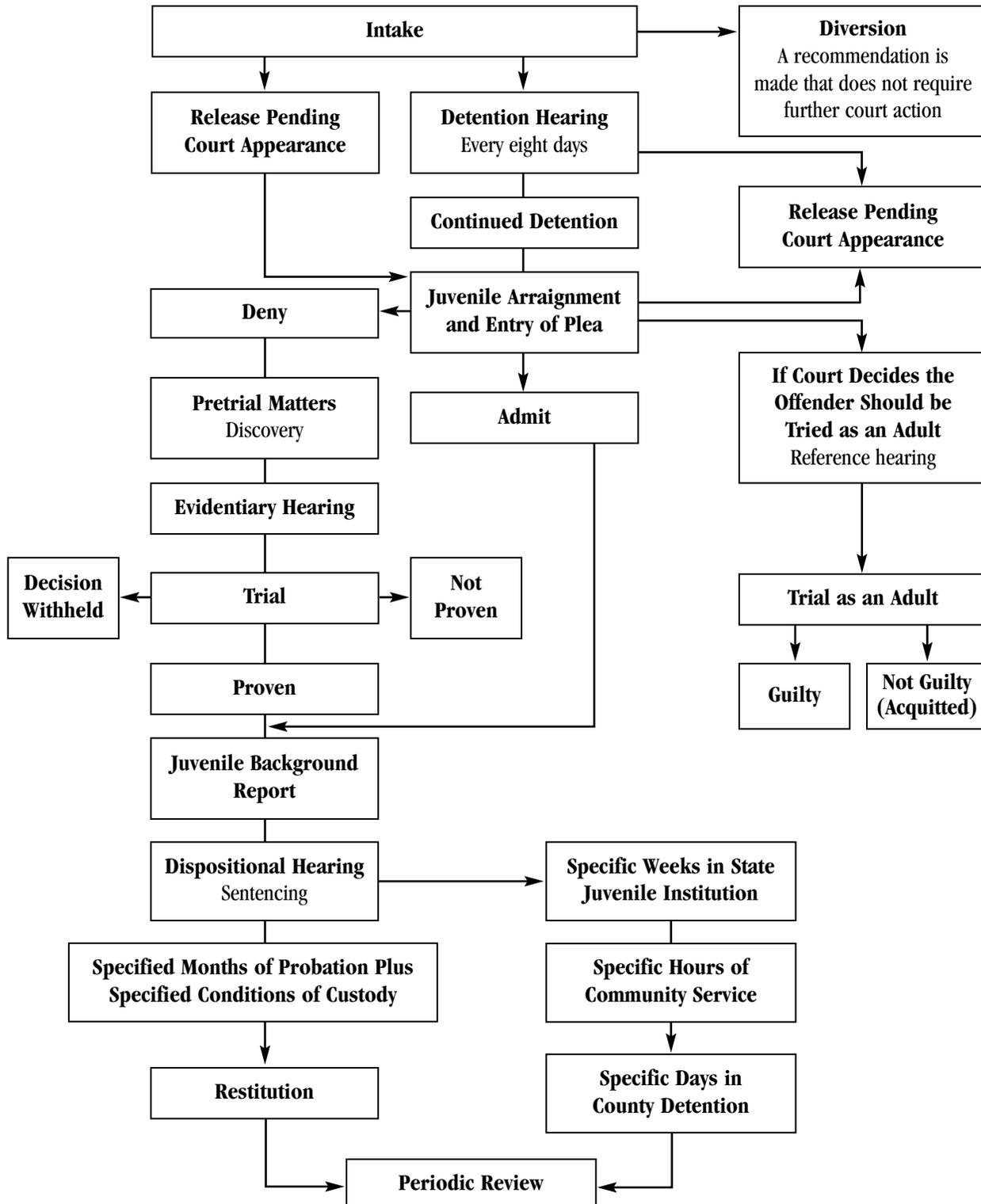
The jurisdiction of the court over an EJJ extends until the offender becomes 21 years of age. Minn. Stat. 260B.193, subd. 5(b).

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17. Juvenile Court

Juvenile Court Procedure

Offender only — does not apply to cases of adoption, child abuse, or other issues related to social services



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18. Civil Lawsuits

In some cases, filing a civil lawsuit may be another way for victims to recover their financial losses. Victims may wish to consult with an attorney about the possibility of suing the offender, as well as other parties, e.g., a property owner whose negligence may have contributed to the crime.

Generally, victims may be able to file a suit where there has been either an intentional or reckless act by the offender or other responsible party that caused the harm to the victim. The act must be an unpermitted offensive contact, a threat to physically harm the victim where the offender has the ability to carry out that threat, or other extreme and outrageous conduct. There must also be some actual damage to the victim such as property loss, physical injury, or very severe emotional distress.

Of course, it does not make sense to file a lawsuit unless the offender or some other responsible party has money or assets that can be used to pay the victim. An offender often has no money to pay to the victim, however, if there are other responsible parties, there is a greater likelihood of collecting. Other parties who may be sued include owners or operators of the premises where the crime occurred, if they were negligent in some way, or the offender's insurance company. Some property owners are responsible for maintaining adequate security. If they fail to do so, they may be sued. For example, if the victim was assaulted while staying at a hotel, the hotel may be held responsible if it did not have adequate security measures in place. In recent years, the law regarding civil suits against third parties such as hotels, apartment complexes, parking ramps, restaurants, and bars has developed in favor of crime victims.

In addition to obtaining compensation for actual costs, crime victims may be able to obtain punitive damages in certain cases. The law regarding punitive damages, requires that the premises owner's actions showed a "deliberate disregard for the rights or safety of others." For example, in a case involving a sexual assault that occurred in an apartment complex, the court allowed a crime victim to request punitive damages. The victim was assaulted in her apartment by a maintenance person employed at the complex who got into her apartment with a master key. The victim was able to show that the apartment owners knew the assailant was potentially dangerous and did not follow their own security policy regarding access to apartment keys. This case resulted in a large settlement for the victim.

Insurance Policies

If the offender was insured, (e.g., with homeowners or renters insurance, malpractice insurance, or automobile insurance) and the crime occurred in a car, a home, or the offender is a professional, there may be a possibility of recovery from the insurance company. This will depend on the offender's insurance contract, which specifies what types of losses are covered under the contract.

Parental Liability for Damage Done by Minor Child

Parents and guardians of minor offenders are liable for some of the costs related to willful and malicious acts done by the minor that cause personal injury or property damage. Parents or guardians of the minor living with them are jointly and severally liable for such acts by the minor to an amount not exceeding \$1,000. This provision does not relieve the minor child from personal liability for such injury or damage. Minn. Stat. 540.18.

Differences between Criminal and Civil Cases

In a criminal case, the end result of a guilty verdict is a criminal record and the possibility of the offender having his or her freedom taken away (i.e., jail, prison, or probation). While a criminal trial may result in an order for restitution, the main focus is on placing blame and punishing the criminal behavior. In contrast, a civil case focuses on civil liability and money damages. A civil lawsuit is almost always about money (who owes whom what).

Because a person's freedom is not at issue in a civil suit, the burden of proof is lower. In criminal court the defendant's guilt must be proven *beyond a reasonable doubt*. In civil cases, the plaintiff (i.e., the person filing the complaint) merely has the burden of proving the case *by a preponderance of the evidence*. In other words, the plaintiff's evidence must be greater than that presented by the defendant. This is sometimes called the 51% rule, as the standard of proof is met if it is more likely than not (51% likely) that the defendant acted unlawfully and caused the complainant harm.

In civil cases, victims must hire their own attorney. This differs from the criminal system where the prosecutor represents the

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18. Civil Lawsuits

state at trial and does so at no cost to the victim. The Minnesota State Bar Association will provide attorney referrals. Contact it at www.mnfindalawyer.com. The Hennepin County Bar Association also has a Lawyer Referral and Information Service, which can be accessed either by calling 612-752-6666 or online at www.hcba.org.

Victims should seek an attorney with experience in the type of case they are pursuing (e.g., personal injury or wrongful death cases). There are statutes of limitation (time periods after which a lawsuit can no longer be brought) on civil lawsuits, so victims should not delay seeking legal advice.

Depending on the likelihood of success, civil attorneys are usually willing to take a case on a contingency fee basis. The attorney will then take part of the victim's award, usually around one-third. The attorney may also charge the client for costs of litigation. If an attorney does not consider a case to be likely to succeed, the attorney will decline to represent the victim. When victims consult with a civil attorney, they should discuss the likelihood of success, the fees, and other costs with the attorney, making certain they have a clear understanding of how much the attorney will be charging. When making the decision whether to sue civilly, complainants should consider the stress and hardship that can accompany the legal proceedings. Ultimately it is the complainant's — not the attorney's — decision whether to seek civil damages.

Victims must file a civil case within a certain time from the date of the offense. This is called the statute of limitations. In addition, pursuing a civil case takes time; it may a year or more for a civil case to be completed.

If a claim for damages is less than \$7,500 an affordable alternative to a civil lawsuit is to file a claim in conciliation court (sometimes referred to as small claims court). Conciliation court is not very expensive (typically around \$55–\$75 to file a claim). The goal of the conciliation court is to provide litigants with a forum to resolve a civil dispute without the need of an attorney. Courtroom procedures are loosely applied and decisions are relatively quick. More information and forms needed for Minnesota conciliation courts can be found at the Minnesota Judicial Branch Website, www.mncourts.gov. In addition, many courthouses in Minnesota have self-help centers or information on this process.

Note: Victims may pursue all possible options for financial recovery, including restitution from the offender, reparations from the state Crime Victims Reparations Board, and possibly a civil lawsuit depending on the case. Victims who are successful in collecting through a civil lawsuit will have to reimburse the Crime Victims Reparations Board for any amounts that the board paid on their claim.

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19. Statute of Limitations

Corresponding Statutes: Minn. Stat. 628.26; 541.01 through 541.36.

A statute of limitations creates a legal time period within which indictments or complaints must be found or made and filed in the proper court. The reasoning behind such a limitation is that over time, key witnesses may no longer be available to testify (e.g., due to death, physical or mental illness or infirmity, or relocation). In addition, evidence, including a witness's recollection, deteriorates, making the case harder to prove. The following sections discuss statutes of limitations in criminal and civil cases.

Criminal Cases

Some crimes are considered so serious that the legislature allows prosecution of those crimes any time after their commission (no limitation). These crimes include:

- murder,
- kidnapping,
- labor trafficking of a person under the age of 18; and
- criminal sexual conduct in the first through third degree when the offense was committed on or after August 1, 2000, and physical evidence has been collected and preserved that is capable of being tested for its DNA characteristics.

Minn. Stat. 628.26.

Other crimes have statutes of limitation ranging from three years to nine years. Typically, criminal indictments for a majority of criminal acts must be filed within 3 years of the offense.

But there are some exceptions, such as:

- a 5 year limitation for the crime of arson in the first through third degree;
- a 6 year limitation for medical assistance fraud and bribery of a public official; and
- a 9 year limitation for certain criminal sexual conduct offenses.

How the Statute Applies

Generally, the statute of limitations begins to run when the crime has been completed. If the crime continues being committed, the statute does not begin to run. The time limit does not run while the suspect is out of the state. The time limit does not include any period of time during which physical evidence relating to the offense was undergoing DNA analysis. The time limit also does not include any period during which the offender participated under a written agreement in a pretrial diversion program relating to the offense.

If the legislature amends the statute of limitation law, this does not apply retroactively unless the legislature specifically says that it does.

Civil Lawsuits

The statute of limitations for civil lawsuits is complex and is based on the particular cause of action being brought. See Minn. Stat. 541.01 through 541.36. Anyone considering entering into a civil lawsuit should consult an attorney to determine the limitation applicable to the specific cause of action.

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20. Minnesota Sentencing Guidelines

The material provided in the following sections was adapted from the Minnesota Sentencing Guidelines and Commentary manual, revised August 1, 2009. The sentencing guidelines are updated at least annually. Current and past versions of the Minnesota Sentencing Guidelines and Commentary manual are available on the Minnesota Sentencing Guidelines Commission Website and in alternate formats upon request. Persons with questions about the guidelines may contact the guidelines office.

Minnesota Sentencing Guidelines Commission
Capitol Office Building
525 Park Street, Suite 220
St. Paul, MN 55103
651-296-0144
651-297-5757 Fax
Email: sentencing.guidelines@state.mn.us
Website: www.msgc.state.mn.us

In addition, the Sentencing Guidelines Grid and Sex Offender Grid are located at the end of this section.

Overview of the Minnesota Sentencing Guidelines

Minnesota adopted a sentencing guidelines system on May 1, 1980, as an effort to create a more uniform and determinate sentencing system. A sentencing guidelines system offers a structure to the legislature for determining and maintaining a rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines what the goals and purposes of the sentencing system will be.

The guidelines represent the general goals of the criminal justice system while they also specifically presume what the appropriate sentence should be for an individual offender, given the offender's conviction offense and criminal record. The judge pronounces the guidelines sentence or may depart from this sentence if the circumstances of the case are substantial and compelling. The judge must state the reasons for departure and both the prosecution and the defense may appeal the pronounced sentence. Regardless of whether the judge follows the guidelines, the sentence pronounced is fixed and there is no parole board to grant any early release from prison. When an offender receives an executed (prison) sentence, the sentence pronounced by the court consists of two parts: a term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The amount of time the offender actually serves in prison may

be extended by the Commissioner of Corrections if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender serving the entire executed sentence in prison.

General Structure of the Guidelines

Presumptive Sentence

The sentence recommended by the Sentencing Guidelines Commission is called the presumptive sentence. The presumptive sentence depends on two factors: (1) the defendant's **criminal history**, and (2) the **severity of the conviction offense**. The commission has ranked each crime according to its severity, and there is a point system for determining an offender's criminal history. The severity of the sentence increases in direct proportion to increases in the severity of the offense and the defendant's criminal history score. First-degree murder is not included in the guidelines because by law the mandatory sentence is "life" in prison (an offender must serve at least 30 years before being considered for release, and some offenders are not eligible for release).

Sentencing Grids

The sentencing guidelines grid specifies the presumptive sentence for felony crimes, depending on the severity level of the crime (vertical axis) and the defendant's criminal history score (horizontal axis). The number in the appropriate box gives the duration of the presumptive sentence.

Offense Severity

The offense severity level is determined by the offense of conviction and is the *vertical axis* on the sentencing grid. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. Felony offenses, other than specified sex offenses, are arrayed into eleven levels of severity, ranging from low (Severity Level I) to high (Severity Level XI). Specified sex offenses are arrayed on a separate grid into eight severity levels labeled A thru H. First-degree murder is excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life.

Offenses listed within each level of severity are deemed to be generally equivalent in severity. The severity level for each felony offense is governed by the Offense Severity Reference Table. Some offenses are designated as unranked offenses in the Offense Severity Reference Table. When unranked offenses

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are being sentenced, sentencing judges shall exercise their discretion by assigning an appropriate severity level for that offense and specify on the record the reasons a particular level was assigned.

For the most up-to-date Offense Severity Reference Table check the current Sentencing Guidelines and Commentary at www.msgc.state.mn.us. For your convenience a condensed copy of the August 1, 2009 Offense Severity Table has been provided at the end of this section.

Criminal History

A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grids. An offender is given a criminal history score. The score is determined by the offender's

- (1) prior felony record;
- (2) custody status at the time of the offense;
- (3) prior misdemeanor and gross misdemeanor record; and
- (4) prior juvenile record for young adult felons.

The offender's prior felony convictions and extended jurisdiction juvenile convictions are weighted according to their severity level. If the current offense is not a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

- Severity Level I – II = 1/2 point;
- Severity Level III – V = 1 point;
- Severity Level VI – VIII = 1 1/2 points;
- Severity Level IX – XI = 2 points;
- Murder 1st Degree = 2 points;
- Severity Level A = 2 points;
- Severity Level B – E = 1 1/2 points;
- Severity Level F – G = 1 point; and
- Severity Level H = 1/2 point for first offense and 1 point for subsequent offenses.

If the current offense is a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

- Severity Level I – II = 1/2 point;
- Severity Level III – V = 1 point;
- Severity Level VI – VIII = 1 1/2 points;
- Severity Level IX – XI = 2 points;

- Murder 1st Degree = 2 points;
- Severity Level A = 3 points;
- Severity Level B – C = 2 points;
- Severity Level D – E = 1 1/2 points;
- Severity Level F – G = 1 point; and
- Severity Level H = 1/2 point for first offense and 1 point for subsequent offenses.

Another criminal history point is assigned if the defendant committed the crime while on probation, parole, supervised release, conditional release, release pending sentencing, or confined; or within the period of the initial length of stay pronounced by the sentencing judge, if that status follows a conviction for a felony, gross misdemeanor, or extended jurisdiction juvenile offense. No point is assigned if the person was on juvenile probation or parole status (excluding status following an extended jurisdiction juvenile conviction), or was committed for treatment under Rule 20.

Some misdemeanor or gross misdemeanor crimes are also counted. As a general rule, each misdemeanor or gross misdemeanor is a quarter of a point, or one unit. Four units equals one point.

Felony convictions that are more than 15 years old are not counted toward the criminal history score, and misdemeanor and gross misdemeanor convictions that are more than 10 years old are not counted.

Felony offenses committed by juvenile offenders committed after the offenders turned 14 years of age are given 1/2 point. In order to be counted as an offense, the juvenile court must have issued findings pursuant to an admission in court or after trial; and each offense must have been a separate behavioral incident or must have involved separate victims. Also, juvenile offenses are no longer counted if the offender was 25 at the time the current offense was committed. Generally, offenders may receive a total of only one juvenile point. This one point limit does not apply to offenses committed and prosecuted as a juvenile for which the sentencing guidelines would presume imprisonment regardless of criminal history. Two presumptive imprisonment juvenile offenses are required for each additional point.

Once all of the offender's criminal history points are added together, the number is rounded down to the nearest whole number. This number corresponds to the "0" through "6 or more" on the sentencing grid.

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Using the Sentencing Grid

To find the presumptive sentence, one need only find the applicable offense severity number and follow the horizontal row to the vertical column which corresponds to the offender's criminal history score. The box in which the two intersect contains the presumptive sentence range.

If the offense falls in the non-shaded portion of the grid, the guidelines dictate that the offender should be committed to a state prison for the number of months indicated. For example, the presumptive sentence for first time criminal sexual conduct in the first-degree offenses is an executed sentence of at least 144 months, and the presumptive sentence for certain criminal sexual conduct in the second degree offenses is an executed sentence of at least 90 months.

If the offense falls in the shaded portion of the grid, the presumptive sentence is "stayed" and the offender may be given jail time up to a year and be put on probation with conditions specified by the judge. There are a few exceptions where commitment is the presumptive disposition even though the offense may fall in the shaded half of the grid. Offenses which carry a presumptive commitment sentence include: third-degree controlled substance crimes when the offender has a prior felony drug conviction, burglary of an occupied dwelling when the offender has a prior burglary conviction, felony DWI with a previous conviction for felony DWI, second and subsequent criminal sexual conduct offenses, and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., second-degree assault).

Stayed Sentences

A stayed sentence means the offender is put on supervised probation for a certain period of time. The offender may also have to serve some jail time, perform community work service, pay a fine and restitution, etc.

If the judge grants a "stay of execution," the duration of the prison sentence is that specified in the grid, and its execution is stayed. If the judge grants a "stay of imposition," the judge determines the length of probation, which may exceed the duration given in the grid, and the imposition is stayed. This is typically used for offenders with less serious offenses and short criminal histories. A stayed sentence may be revoked and, pursuant to a hearing, the offender sent to prison if the offender does not comply with the conditions of probation. The Sentencing Guidelines Commission's recommendation to judges is that they revoke only when:

- (1) The offender commits a new felony with a presumptive commitment sentence; or
- (2) The offender persists in violating conditions of the stay despite the use of more severe conditions.

Mandatory Sentences

When an offender has been convicted of an offense with a mandatory minimum sentence of a year and a day, the presumptive duration of the sentence is the mandatory sentence or that provided in the appropriate box of the grid, whichever is longer.

First-degree murder and certain sex offenders convicted under Minn. Stat. sections 609.109, subdivision 3, or 609.3455, subdivision 2, which have a mandatory life imprisonment sentence, are excluded from offenses covered by the sentencing guidelines.

When an offender has been sentenced under Minnesota Statutes section 609.107 Mandatory Penalty for Certain Murderers, the statutory provision determines the presumptive sentence.

When an offender has been convicted of an offense with a mandatory minimum sentence under section 609.11, which would otherwise be a presumptive stayed sentence under the guidelines, the court on its own motion or on the motion of the prosecutor may sentence without regard to the mandatory minimum sentence. The presumptive disposition, however, is a commitment. A stay of imposition or execution, while provided for under section 609.11, subdivision 8, would constitute a departure.

When an offender has been sentenced under section 609.11, subdivision 5a, the presumptive duration of the prison sentence is the mandatory minimum sentence for dangerous weapon involvement plus the mandatory minimum sentence for the second or subsequent controlled substance offense or the duration provided in the grid, whichever is longer.

Concurrent/Consecutive Sentences

Generally, the presumption is that sentences run concurrent when there are multiple offenses or when an offender has a current offense and a prior felony sentence that has not expired. However, in certain situations, consecutive sentences are presumptive and, in other situations, consecutive sentences are permissive. These situations are outlined in detail in the sentencing guidelines.

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Presumptive Sentence Modifiers

Attempted Crimes or Conspiracy

For attempted crimes or conspiracy, the presumptive sentence is generally one half of the sentence indicated for the completed crime on the grid, except that the sentence should not be less than one year and one day.

Gang Crimes

For offenders convicted under Minnesota Statutes section 609.229, subdivision 3(a) where the offense was committed for the benefit of a gang, the severity level is the same as that for the underlying crime with the highest severity level. The presumptive duration is increased by 12 months. The presumptive disposition is commitment to the Commissioner of Corrections due to the mandatory minimum under section 609.229, subdivision 4.

There are several detailed exceptions, such as an exception for conspiracy to commit a drug offense under section 152.096, which is not reduced, and a 50% increase in the presumptive sentence duration for an offense committed in furtherance of terrorism. Consult the sentencing guidelines for details.

Jail Credit

If a felon is committed to the custody of the commissioner of corrections, time which the offender spends in custody in connection with the offense, between arrest and sentencing, is deducted from the time to be served. This includes time spent for examinations under Rule 20 or 27.03, subd. 1(A). If the offender served time in jail as a condition of a stayed sentence, including time spent in confinement under Huber Law, and the stay is revoked, this time is deducted from the sentence imposed.

Certified Juveniles

If the juvenile offender has been certified as an adult, the guidelines sentence applies as if the offender were 18 or over.

Presentence Mental or Physical Examination for Sex Offenders

The Sentencing Guidelines Commission recommends that any state, local, or private agency make a physical or mental examination of an offender convicted of criminal sexual conduct in the first through fourth degree and for incest.

Modifications

The Minnesota Sentencing Guidelines and Commentary are applied to offenders whose date of offense is on or after the specified modification effective date of the guidelines.

Departures

Judges may depart from the presumptive sentence if there are substantial and compelling circumstances. Judges must provide written reasons to justify a departure. Factors that a judge may not consider include race, sex, employment, social factors, and the exercise of constitutional rights by the defendant. Factors that a judge may use as reasons for a departure are listed below. This is not an exclusive list.

Downward Departure (Mitigating Circumstances)

- (1) The victim was the aggressor.
- (2) The offender played a minor or passive role or was coerced.
- (3) The offender lacked the capacity for judgment because of physical or mental impairment (excluding use of drugs/alcohol).
- (4) The offender's presumptive sentence is a commitment, but not a mandatory minimum sentence and:
 - (a) The current offense is a severity level 1 or 2 and the offender received all of his prior felony sentences during less than three court appearances; or
 - (b) The current offense is at severity level 3 or 4 and the offender received all of his sentences during one court appearance.
- (5) Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.
- (6) Alternative placement for offender with serious and persistent mental illness (See Minn. Stat. 609.1055).

Upward Departure (Aggravating Circumstances)

- (1) The victim was vulnerable due to age, infirmity, or reduced physical or mental capacity.
- (2) The victim was treated with particular cruelty for which the individual offender should be held responsible.
- (3) The current conviction is for a criminal sexual conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a criminal sexual conduct offense or an offense in which the victim was otherwise injured.

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- (4) The offense is a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
- (a) the offense involved multiple victims or multiple incidents per victim;
 - (b) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;
 - (c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
 - (d) the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or
 - (e) the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.
- (5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
- (a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or
 - (b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or
 - (c) the offense involved the manufacture of controlled substances for use by other parties; or
 - (d) the offender knowingly possessed a firearm during the commission of the offense; or
 - (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or
 - (f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
 - (g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships (e.g., pharmacist, physician or other medical professional).
- (6) the offender committed, for hire, a crime against the person.
- (7) offender is a “patterned sex offender.”
- (8) offender is a “dangerous offender who commits a third violent crime” (See Minn. Stat. 609.1095, subd. 2).
- (9) offender is a “career offender” (See Minn. Stat. 609.1095, subd. 4).
- (10) Effective January 1, 1995, the offender committed the crime as part of a group of three or more persons who all actively participated in the crime.
- (11) the offender intentionally selected the victim or the property against which the offense is committed, in whole or in part, because of the victim’s, the property owner’s or another’s actual or perceived race, color, religion, sex, sexual orientation, disability, age or national origin.
- (12) the offender’s use of another’s identity without authorization to commit a crime.

In 2009, the “aggravating factors” that can be used as reasons for departures from the sentencing guidelines were incorporated into statute. Minn. Stat. 244.10, subd. 5a.

Sentencing Issues and Case Law

Through a series of recent cases, the United States Supreme Court and the Minnesota Supreme and Appellate Courts have ruled that any fact other than a prior conviction that increases the penalty for the crime beyond the prescribed statutory maximum must be submitted to the jury and proven beyond a reasonable doubt. Sentencing procedures that fail to provide this process are unconstitutional and violate a defendant’s Sixth Amendment right under the United States Constitution. Although the ruling by the Court appears clear, there are multiple issues surrounding what constitutes an enhancement, as well as what constitutes a statutory maximum sentence, that are being addressed by the courts.

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In 2007, the Minnesota Sentencing Guidelines Commission provided the following summary of court decisions to date involving *Blakely* sentencing issues. See 2007 Report to the Legislature, Appendix, Sentencing Guidelines Modification, Post-Blakely Sentencing Issues, pg. 47 (Jan. 2007), available at www.msgc.state.mn.us. Please note that because this area of the law is evolving, new cases are expected to be decided that further clarify the issues. Consequently, the following summaries are not an exhaustive list of all relevant cases.

Statutory Maximum Sentence

Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), involved a defendant who pleaded guilty to second-degree possession of a firearm for unlawful purposes that carried a prison sentence of between five and 10 years. The state requested the court to make the factual finding necessary to impose the state's Hate Crime Law sentencing enhancement provision increasing the sentence to between 10 and 20 years. The judge held the requested hearing, listened to the evidence, and determined by a preponderance of the evidence standard that the crime met the Hate Crime Law criteria. The court's imposition of an enhanced prison sentence based on the hate crime statute exceeded the statutory maximum sentence for the underlying offense. The Supreme Court ruled that any factor other than a prior conviction that increases the penalty for the crime beyond the statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.

Presumptive Sentence

Blakely v. Washington, 542 U.S. 296, 1264 S. Ct. 2531 (2004), involved the court's imposition of an exceptional sentence under the state's sentencing guidelines, for which justifiable factors were provided, which exceeded the presumptive guidelines sentence but was less than the statutory maximum sentence for the offense. The court reaffirmed and clarified its earlier ruling in *Apprendi* stating that under the Sixth Amendment, all factors other than prior criminal convictions that increase a criminal defendant's sentence beyond what it would have been absent those facts, must be presented to a jury and proven beyond a reasonable doubt. The jury trial right does not just mean that a defendant has the right to present a case to the jury; it also means that a defendant has a right to have a jury, not the court, make all the factual findings required to impose a sentence in excess of the presumptive guideline sentence, unless the defendant formally admits some or all of the factors or formally waives that right.

State v. Shattuck, 704 N.W.2d 131 (Minn. 2005), involved a defendant who was convicted of two counts of kidnapping, two counts of first-degree sexual conduct, and one count of aggravated robbery. The presumptive guideline sentence for these offenses would have been 161 months given the severity level VII ranking with a criminal history score of 9, including a custody status point. Under the Repeat Sex Offender Statute, for certain types of first- and second-degree sexual conduct offenses, the court shall commit the defendant to not less than 30 years if the court finds (1) an aggravating factor exists which provides for an upward departure, and (2) the offender has previous convictions for first-, second-, or third-degree criminal sexual conduct. The court imposed a 161-month sentence for the kidnapping conviction and 360 months for the first-degree criminal sexual conduct, using the Repeat Sex Offender Statute. The court found that a jury, not the court, must make the determination that aggravating factors are present to impose an upward durational departure under the sentencing guidelines, citing the *Blakely* ruling. The decision also held that Minnesota Statutes, section 609.109 is unconstitutional since it authorizes the court to impose an upward durational departure without the aid of a jury.

The court also ruled that the Minnesota Sentencing Guidelines are not advisory and that the imposition of the presumptive sentence is mandatory absent additional findings. This finding specifically rejects the remedy that the guidelines are advisory as set forth in the United States Supreme Court in **United States v. Booker**, 543 U.S. 220, 125 S. Ct. 738 (2005). In addition, the decision stated that Minnesota Sentencing Guidelines Section II.D, which pertains to the manner in which aggravated departures are imposed, is "facially unconstitutional" and must be severed from the remainder of the guidelines. However, the remainder of the guidelines shall remain in effect and mandatory upon the courts. The court also noted in *Shattuck* that Minnesota Courts have the inherent authority to authorize the use of sentencing juries and bifurcated proceedings to comply with *Blakely*.

While the supreme court was deciding the *Shattuck* case, the legislature amended Minnesota Statutes, section 609.109 to comply with the constitutional issues raised in *Blakely*. However, the court took no position on the constitutionality of legislative action. Acknowledging the court's inherent authority to create rules and procedures, the decision stated that it was the belief of the court that the legislature should decide the manner in which the sentencing guidelines should be amended to comply with the constitutional requirements of *Blakely*. On October 6, 2005,

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the Minnesota Supreme Court issued an order amending the *Shattuck* opinion clarifying that the legislature has enacted significant new requirements for sentencing aggravated departures which included sentencing juries and bifurcated trials. It further clarified that these changes apply both prospectively and to re-sentencing hearings. This clarification enables re-sentencing hearings to include jury determination of aggravating factors and the imposition of aggravated departure sentences.

State v. Allen, 706 N.W.2d 40 (Minn. 2005), involved a defendant who pleaded guilty to first-degree test refusal as part of a negotiated plea agreement in exchange for the dismissal of other charges and the specific sentence to be determined by the court. The district court determined the defendant had a custody point assigned to his criminal history score, since the defendant was on probation for a prior offense at the time of the current offense. The presumptive guidelines sentence was a 42-month stayed sentence. However, based on the defendant's numerous prior alcohol-related convictions and history of absconding from probation, the court determined the defendant was not amenable to probation and sentenced the defendant to a 42-month executed prison sentence, representing an aggravated dispositional departure under the sentencing guidelines.

This case was on appeal when *Blakely v. Washington* was decided. The court ruled that a stayed sentence is not merely an alternative mode of serving a prison sentence, in that the additional loss of liberty encountered with an executed sentence exceeds the maximum penalty allowed by a plea of guilty or jury verdict, thus violating the defendant's Sixth Amendment Constitutional right. The court viewed a sentence disposition as much an element of the presumptive sentence as the sentence duration. Dispositional departures that are based on offender characteristics are similar to indeterminate sentencing model judgments and must be part of a jury verdict in that "amenability to probation" is not a fact necessary to constitute a crime. When the district court imposed an aggravated dispositional departure based on the aggravating factor of unamenability to probation without the aid of a jury, the defendant's constitutional rights were violated under *Blakely*. Unamenability to probation may be used as an aggravating factor to impose an upward dispositional departure, but it must be determined by a jury and not the court.

The *Allen* case also raises the issue and much speculation whether probation revocations resulting in an executed prison sentence are also subject to *Blakely* provisions. Although the *Allen* case focuses on imposition of an executed prison sentence as the result of an aggravated dispositional departure sentence based on the defendant's unamenability to probation, the court's

stated reasons in its ruling could be interpreted as to be applicable to probation revocations that result in the imposition of an executed sentence due to an offender's lack of progress or success on probation. The Sentencing Guidelines Commission awaits further action by the Minnesota Courts addressing this specific issue.

State v. Conger, 687 N.W.2d 639 (Minn. Ct. App. 2004), involved a defendant who pleaded guilty to aiding and abetting in a second-degree intentional and unintentional murder. At sentencing, the judge determined that multiple aggravating factors were present and imposed an upward durational departure. The court ruled that the presumptive sentence designated by the guidelines is the maximum sentence a judge may impose without finding facts to support a departure. Any fact other than a prior conviction used to impose a departure sentence must be found by a jury or admitted by the defendant. The court also ruled that when a defendant pleads guilty, any upward departure that is not entirely based on the facts admitted in the guilty plea is a violation of the defendant's Sixth Amendment rights and unconstitutional.

State v. Mitchell, 687 N.W.2d 393 (Minn. Ct. App. 2004) involved a defendant who was arrested for theft with a presumptive guidelines sentence of 21 months. The judge determined the defendant is a career criminal under Minnesota Statutes, section 609.1095, subdivision 4 (2002) after determining the defendant had one or more prior felony convictions and the current conviction was part of a "pattern of criminal conduct." The judge imposed an upward departure of 42 months. The court ruled that a pattern of criminal conduct may be shown by criminal conduct that is similar but not identical to the charged offense in such factors as motive, results, participants, victims, or shared characteristics. This determination goes beyond the mere fact of prior convictions since prior convictions do not address motive, results, participants, victims, etc. A jury, not a judge, must determine if the defendant's prior convictions constitute a "pattern of criminal conduct" making him a career criminal.

State v. Fairbanks, 688 N.W. 2d 333 (Minn. Ct. App. 2004), involved a defendant who was convicted of first-degree assault of a correctional employee and kidnapping. The judge sentenced the defendant under the Dangerous Offender Statute which provides for a durational departure from the presumptive guideline sentence. Criteria necessary for sentencing under this statute include (1) two or more convictions for violent crimes and (2) offender is a danger to public safety. Defendant stipulated to the past criminal behavior during trial but that admission by

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the defendant alone does not permit a finding that the defendant is a danger to public safety. That finding must be determined by a jury. A judge can only depart upward based solely on prior convictions. The court also ruled that a defendant's waiver of *Blakely* rights must be knowing, intelligent, and voluntary.

Mandatory Minimum

Minnesota Statutes section 609.11 provides for a mandatory minimum prison sentence when the fact-finder determines that the defendant possessed a deadly weapon while committing the predicate offense. If an offense that occurred before August 1, 2006, is charged under 609.11, the defendant cannot be sentenced to the mandatory minimum when the resulting sentence is higher than the presumptive sentence for the predicate offense, unless the same *Blakely*-based procedure is followed. **State v. Barker**, 705 N.W.2d 768 (Minn. 2005). In cases where the weapon is an element of the offense, there is no *Blakely* issue.

Custody Status Point

State v. Brooks, 690 N.W.2d 160 (Minn. Ct. App. 2004), involved a defendant convicted of a fifth degree assault and tampering with a witness. The defendant had a criminal history score of six or more prior to the sentencing for this conviction. The guidelines provide for a three-month enhancement for the custody status point. The defendant argued the three-month enhancement is in violation of *Blakely*. The court ruled that determination of the custody status point is analogous to the *Blakely* exception for "fact of prior conviction." Like a prior conviction, a custody status point is established by court record based on the fact of prior convictions and not by a jury. Presumptive sentencing is meaningless without a criminal history score, which includes the determination of custody status points.

Retroactivity

In **State v. Petschl**, 692 N.W.2d 463 (Minn. Ct. App. 2004), the Minnesota Court of Appeals determined that the *Blakely* provisions applied to all cases sentenced or with direct appeals pending on or after June 24, 2004.

In **State v. Houston**, 702 N.W.2d 268, 273 (Minn. 2005), the Minnesota Supreme Court determined that *Blakely* could be applied retroactively to cases on direct review, but not collateral review. *Teague v. Lane* stated that in order for an issue to be retroactive for collateral review, the case needs to state a rule of law that is either: (1) new or not dictated by precedent or (2) a "Watershed" rule meaning it requires an observance of those criminal procedures that are implicit in the concept of liberty. The court ruled that *Blakely* is not a rule of "watershed"

magnitude since the accuracy of the conviction is not diminished. A *Blakely* violation results only in a remand for sentencing rather than a new trial to determine the validity of the conviction, thus *Blakely* does not apply to appeals on collateral review.

State v. Beaty, 696 N.W.2d 406 (Minn. Ct. App. 2005), involved a defendant who pleaded guilty to a charge of violating an order for protection (OFP) and terroristic threats. At sentencing the court imposed the presumptive guideline sentence of an 18-month stay of execution. The defendant subsequently violated probation and admitted to the violations. The court revoked the defendant's probation, executed the 18-month sentence for the terroristic threats, and vacated the stay of imposition for the violation of the OFP, imposing a 36-month concurrent executed sentence, which is an upward departure from the presumptive guideline sentence. Departure was based on the aggravating factors that the victim suffered extreme adverse effect from the violation of the OFP and probation did not appear to deter the defendant. *Blakely* was issued the day after the defendant was sentenced. Defendant challenged his probation revocation and the imposition of the departure under the retroactive provisions of *Blakely*. **United States v. Martin** addressed retroactivity of a standard of review for sentencing procedures and compels courts to apply procedural changes to all sentences that are not final. The defendant's sentence is not final for retroactivity purposes and still subject to appeal. The court held that when a district court imposes a stay of imposition of a sentence, thereby precluding challenge to the sentence on direct review and then subsequently vacates the stay of imposition and imposes an upward departure, *Blakely* will apply retroactively.

Blakely Waiver Issues

State v. Hagen, 690 N.W.2d 155 (Minn. Ct. App. 2004), involved a defendant who pled guilty to Minnesota Statutes, section 609.342, subdivision 1(g), sexual penetration of a victim under the age of 16 involving a significant relationship. Defendant lived in the same house as the 13-year-old victim and there were numerous aggravating factors associated with the offense such as zone of privacy, particular vulnerability, and great psychological harm, which the defendant does not deny. Defendant admitted the sexual penetration and stated his attorney discussed the "significant relationship" element with him. District court stated this is one of the worst child sex abuse cases it had seen and imposed an aggravated durational departure from the 144-month presumptive guideline sentence to 216 months. Defendant appealed his sentence on *Blakely* issues. The court ruled that *Blakely* has blurred the distinction between offense elements and sentencing factors. When the defendant

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stipulates to an element of an offense, it must be supported by an oral or written waiver of the defendant's right to a jury trial on that aggravating element. In *Hagen*, the admissions were made at the sentencing hearing rather than at the guilty/not guilty plea hearing where he could waive his right to a jury trial. The record must clearly indicate the aggravating factor was present in the underlying offense. Admissions must be effective and more than just not objecting to the aggravating factors.

State v. Senske, 692 N.W. 2d 743 (Minn. Ct. App. 2005), involved a defendant who pleaded guilty to two counts of first-degree criminal sexual conduct with no agreement on the sentence as part of the plea. Defendant admitted to multiple acts of penetration with his stepdaughter and son, including blindfolding the son. The district court determined the defendant's actions warrant an upward durational departure due to the psychological harm to the victims, vulnerability due to age, the planning and manipulation involved in the act and death threats made to the victims. The court imposed 216-month consecutive sentences, representing a 50 percent increase over the presumptive guideline sentence. Defendant appealed his sentence on a *Blakely* issue and the imposition of consecutive sentences. The court ruled that even though the sentence to be imposed was not part of the plea agreement, the defendant nonetheless was not advised that the aggravating factors he admitted to could be used to impose an aggravated departure. Even though the defendant admitted to the aggravating factors, those admissions were not accompanied by a waiver of the right to a jury determination of the aggravating factors. The court further stated that the imposition of consecutive sentences did not violate *Blakely* principles since the consecutive sentences were based on the fact the offenses involved were "crimes against a person" and involved separate sentences for separate offenses.

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Sentencing Guidelines Grid

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

| Severity Level of Conviction Offense (Common offenses listed in italics) | | Criminal History Score | | | | | | |
|--|------|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------------------|-----------------------------------|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
| <i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings) | XI | 306 <i>261-367</i> | 326 <i>278-391</i> | 346 <i>295-415</i> | 366 <i>312-439</i> | 386 <i>329-463</i> | 406 <i>346-480²</i> | 426 <i>363-480²</i> |
| <i>Murder, 3rd Degree; Murder, 2nd Degree</i> (unintentional murder) | X | 150 <i>128-180</i> | 165 <i>141-198</i> | 180 <i>153-216</i> | 195 <i>166-234</i> | 210 <i>179-252</i> | 225 <i>192-270</i> | 240 <i>204-288</i> |
| <i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i> | IX | 86 <i>74-103</i> | 98 <i>84-117</i> | 110 <i>94-132</i> | 122 <i>104-146</i> | 134 <i>114-160</i> | 146 <i>125-175</i> | 158 <i>135-189</i> |
| <i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i> | VIII | 48 <i>41-57</i> | 58 <i>50-69</i> | 68 <i>58-81</i> | 78 <i>67-93</i> | 88 <i>75-105</i> | 98 <i>84-117</i> | 108 <i>92-129</i> |
| <i>Felony DWI</i> | VII | 36 | 42 | 48 | 54 <i>46-64</i> | 60 <i>51-72</i> | 66 <i>57-79</i> | 72 <i>62-84²</i> |
| <i>Controlled Substance Crime, 3rd Degree</i> | VI | 21 | 27 | 33 | 39 <i>34-46</i> | 45 <i>39-54</i> | 51 <i>44-61</i> | 57 <i>49-68</i> |
| <i>Residential Burglary</i> <i>Simple Robbery</i> | V | 18 | 23 | 28 | 33 <i>29-39</i> | 38 <i>33-45</i> | 43 <i>37-51</i> | 48 <i>41-57</i> |
| <i>Nonresidential Burglary</i> | IV | 12 ¹ | 15 | 18 | 21 | 24 <i>21-28</i> | 27 <i>23-32</i> | 30 <i>26-36</i> |
| <i>Theft Crimes (Over \$5,000)</i> | III | 12 ¹ | 13 | 15 | 17 | 19 <i>17-22</i> | 21 <i>18-25</i> | 23 <i>20-27</i> |
| <i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251 – \$2,500)</i> | II | 12 ¹ | 12 ¹ | 13 | 15 | 17 | 19 | 21 <i>18-25</i> |
| <i>Sale of Simulated</i> <i>Controlled Substance</i> | I | 12 ¹ | 12 ¹ | 12 ¹ | 13 | 15 | 17 | 19 <i>17-22</i> |

Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section II.E., Mandatory Sentences, for policy regarding those sentences controlled by law.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See, Guidelines Sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

¹ One year and one day

² M.S. 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

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Sex Offender Grid

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

Criminal History Score

| Severity Level of Conviction Offense | | Criminal History Score | | | | | | |
|--|---|---|--------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------------------|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
| <i>CSC 1st Degree</i> | A | 144 <i>144-173</i> | 156 <i>144-187</i> | 168 <i>144-202</i> | 180 <i>153-216</i> | 234 <i>199-281</i> | 306 <i>260-360</i> | 360 <i>306-360²</i> |
| <i>CSC 2nd Degree – (c)(d)(e)(f)(h)</i> | B | 90 <i>90-108</i> | 110 <i>94-132</i> | 130 <i>111-156</i> | 150 <i>128-180</i> | 195 <i>166-234</i> | 255 <i>217-300</i> | 300 <i>255-300²</i> |
| <i>CSC 3rd Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)</i> | C | 48 <i>41-58</i> | 62 <i>53-74</i> | 76 <i>65-91</i> | 90 <i>77-108</i> | 117 <i>99-140</i> | 153 <i>130-180</i> | 180 <i>153-180²</i> |
| <i>CSC 2nd Degree – (a)(b)(g)</i> <i>CSC 3rd Degree – (a)(b)²(e)(f)</i> <i>Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i> | D | 36 | 48 | 60 <i>51-72</i> | 70 <i>60-84</i> | 91 <i>77-109</i> | 119 <i>101-143</i> | 140 <i>119-168</i> |
| <i>CSC 4th Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)</i> <i>Use Minors in Sexual Performance</i> <i>Dissemination of Child Pornography²</i> | E | 24 | 36 | 48 | 60 <i>51-72</i> | 78 <i>66-94</i> | 102 <i>87-120</i> | 120 <i>102-120²</i> |
| <i>CSC 4th Degree – (a)(b)(e)(f)</i> <i>Possession of Child Pornography (Subsequent or by Predatory Offender)</i> | F | 18 | 27 | 36 | 45 <i>38-54</i> | 59 <i>50-71</i> | 77 <i>65-92</i> | 84 <i>71-101</i> |
| <i>CSC 5th Degree</i> <i>Indecent Exposure</i> <i>Possession of Child Pornography</i> <i>Solicit Children for Sexual Conduct²</i> | G | 15 | 20 | 25 | 30 | 39 <i>33-47</i> | 51 <i>43-60</i> | 60 <i>51-60²</i> |
| <i>Registration of Predatory Offenders</i> | H | 12 ¹ <i>12¹-14</i> | 14 <i>12¹-17</i> | 16 <i>14-19</i> | 18 <i>15-22</i> | 24 <i>20-29</i> | 30 <i>26-36</i> | 36 <i>31-43</i> |

Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See Guidelines Section I.E., Mandatory Sentences, for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. 609.3455, subd. 4. See, Guidelines Sections II.C. Presumptive Sentence and I.E. Mandatory Sentences.

¹ One year and one day

² M.S. 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

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Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. 609.3455, subdivision 2, are excluded from the guidelines by law.

XI

Adulteration — 609.687, subd. 3(1)

Murder 2 (intentional murder; unintentional drive-by shootings) — 609.19, subd. 1

Murder 2 of an Unborn Child — 609.2662(1)

X

Fleeing a Peace Officer (resulting in death) — 609.487, subd. 4(a)

Murder 2 (unintentional murder) — 609.19, subd. 2

Murder 2 of an Unborn Child — 609.2662(2)

Murder 3 — 609.195(a)

Murder 3 of an Unborn Child — 609.2663

IX

Assault 1 — 609.221

Assault 1 of an Unborn Child — 609.267

Controlled Substance Crime in the First Degree — 152.021

Criminal Abuse of Vulnerable Adult (death) — 609.2325, subd. 3 (a) (1)

Death of an Unborn Child in the Commission of Crime — 609.268, subd. 1

Engage or Hire a Minor to Engage in Prostitution — 609.324, subd. 1(a)

Importing Controlled Substances Across State Borders — 152.0261

Kidnapping (w/great bodily harm) — 609.25, subd. 2(2)

Manslaughter 1 — 609.20(1), (2) & (5)

Manslaughter 1 of an Unborn Child — 609.2664(1) & (2)

Murder 3 — 609.195(b)

Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree — 609.322, subd. 1

Tampering with Witness, Aggravated First Degree — 609.498, subd. 1b

VIII

Aggravated Robbery 1 — 609.245, subd. 1

Arson 1 — 609.561

Burglary 1 — 609.582, 1(b) & (c)

Controlled Substance Crime in the Second Degree — 152.022

Criminal Abuse of Vulnerable Adult (great bodily harm) — 609.2325, subd. 3 (a) (2)

Criminal Vehicular Homicide or Operation — 609.21, subd. 1a(a)

VIII Drive-By Shooting (toward a person or occupied motor vehicle or building) — 609.66, subd. 1e (b)

Escape from Custody — 609.485, subd. 4(b)

Great Bodily Harm Caused by Distribution of Drugs — 609.228

Identity Theft — 609.527, subd. 3(5)

Kidnapping (not in safe place or victim under 16) — 609.25, subd. 2(2)

Malicious Punishment of Child (great bodily harm) — 609.377, subd. 6

Manslaughter 1 — 609.20 (3) & (4)

Manslaughter 1 of an Unborn Child — 609.2664(3)

Manslaughter 2 — 609.205 (1) & (5)

Manslaughter 2 of an Unborn Child — 609.2665(1)

VII

Financial Exploitation of a Vulnerable Adult (over \$35,000) — 609.2335

First Degree (Felony) Driving While Impaired — 169A.24

VI

Aggravated Robbery 2 — 609.245, subd. 2

Assault 2 — 609.222

Burglary 1 — 609.582, subd. 1(a)

Certain Persons Not to Have Firearms — 624.713, subd. 2(b); 609.165, subd. 1b

Controlled Substance Crime in the Third Degree — 152.023

Discharge of Firearm at Occupied Transit Vehicle/Facility — 609.855, subd. 5

Explosive Device or Incendiary Device — 609.668, subd. 6

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Failure to Affix Stamp on Cocaine — 297D.09, subd. 1

Failure to Affix Stamp on Hallucinogens or PCP —
297D.09, subd. 1

Failure to Affix Stamp on Heroin — 297D.09, subd. 1

Failure to Affix Stamp on Remaining Schedule I & II Narcotics —
297D.09, subd. 1

Fleeing Peace Officer (great bodily harm) —
609.487, subd. 4(b)

Kidnapping (safe release/no great bodily harm)—
609.25, subd. 2(1)

Price Fixing/Collusive Bidding — 325D.53, subd. 1 (2) (a)

Theft over \$35,000 — 609.52, subd. 2 (3), (4), (15), & (16)
with 609.52, subd. 3 (1)

V

Arson 2 — 609.562

Burglary 2 — 609.582, subd. 2(a)(1)&(2), 2(b)

Check Forgery over \$35,000 — 609.631, subd. 4 (1)

Criminal Vehicular Homicide or Operation — 609.21, subd. 1a(b)

Engage or Hire a Minor to Engage in Prostitution —
609.324, subd. 1(b)

Financial Exploitation of a Vulnerable Adult (over \$5,000) —
609.2335

Financial Transaction Card Fraud over \$35,000 —
609.821, subd. 3 (1) (i)

Harassment/Stalking (third or subsequent violations) —
609.749, subd. 4(b)

Harassment/Stalking (pattern of harassing conduct) —
609.749, subd. 5

Interference with Emergency Communications — 609.776

Manslaughter 2 — 609.205 (2), (3), & (4)

Manslaughter 2 of an Unborn Child — 609.2665 (2), (3), & (4)

Negligent Discharge of Explosive — 299E.83

Perjury — 609.48, subd. 4 (1)

Possession of Substances with Intent to Manufacture
Methamphetamine — 152.0262

Possession or Use (unauthorized) of Explosives —
299E.79; 299E.80, subd. 1; 299E.82, subd. 1

Price Fixing/Collusive Bidding — 325D.53, subd. 1 (1),

and subd. 1 (2) (b) & (c)

Riot 1 — 609.71, subd. 1

Simple Robbery — 609.24

Solicits, Promotes, or Receives Profit Derived from Prostitution;
Sex Trafficking in the Second Degree — 609.322, subd. 1a

Tampering with Witness in the First Degree — 609.498, subd. 1a

IV

Adulteration — 609.687, subd. 3 (2)

IV Assault 2 of an Unborn Child — 609.2671

Assault 3 — 609.223, subd. 1, 2, & 3

Assault 5 (3rd or subsequent violation) — 609.224, subd. 4

Bribery — 609.42; 90.41; 609.86

Bribery, Advancing Money, and Treating Prohibited — 211B.13

Bring Contraband into State Prison — 243.55

Bring Dangerous Weapon into County Jail — 641.165, subd. 2 (b)

Burglary 2 — 609.582, subd. 2(a)(3)&(4)

Burglary 3 — 609.582, subd. 3

Controlled Substance Crime in the Fourth Degree — 152.024

Criminal Abuse of Vulnerable Adult (substantial bodily harm) —
609.2325, subd. 3 (a) (3)

Domestic Assault — 609.2242, subd. 4

Domestic Assault by Strangulation — 609.2247

False Imprisonment (substantial bodily harm) —
609.255, subd. 3

Financial Exploitation of a Vulnerable Adult (\$5,000 or less) —
609.2335

Fleeing a Peace Officer (substantial bodily harm) —
609.487, subd. 4 (c)

Harassment/Stalking (aggravated violations) —
609.749, subd. 3(a),(b)

Harassment/Stalking (2nd or subsequent violation) —
609.749, subd. 4(a)

Injury of an Unborn Child in Commission of Crime —
609.268, subd. 2

Malicious Punishment of Child (2nd or subsequent violation) —
609.377, subd. 3

Malicious Punishment of Child (bodily harm) —
609.377, subd. 4

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- Malicious Punishment of Child (substantial bodily harm) — 609.377, subd. 5
- Negligent Fires — 609.576, subd. 1 (1)
- Perjury — 609.48, subd. 4 (2)
- Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (second or subsequent violations) — 609.526
- Receiving Stolen Property (firearm) — 609.53
- Security Violations (over \$2,500) — 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3 (a) & (b)
- Sports Bookmaking — 609.76, subd. 2
- Terroristic Threats — 609.713, subd. 1
- Theft From Person — 609.52
- Theft of Controlled Substances — 609.52, subd. 3 (2)
- Theft of Firearm — 609.52, subd. 3 (1)
- Theft of Incendiary Device — 609.52, subd. 3 (2)
- Theft of Motor Vehicle — 609.52, subd. 2 (1)
- Use of Drugs to Injure or Facilitate Crime — 609.235
- Violation of a Domestic Abuse No Contact Order — 518B.01, subd. 22(d)
- Violation of an Order for Protection — 518B.01, subd. 14(d)
- Violation of Harassment Restraining Order — 609.748, subd. 6(d)
- Weapon in Courthouse or Certain State Buildings — 609.66, subd. 1g
- III**
- Anhydrous Ammonia (tamper/theft/transport) — 152.136
- Arson 3 — 609.563
- Bringing Stolen Goods into State (over \$5,000) — 609.525
- Check Forgery (over \$2,500) — 609.631, subd. 4 (2)
- Coercion — 609.27, subd. 1 (1)
- Coercion (\$2,500, or more) — 609.27, subd. 1 (2), (3), (4), & (5)
- Computer Damage (over \$2,500) — 609.88
- Computer Theft (over \$2,500) — 609.89
- Criminal Vehicular Homicide or Operation — 609.21, subd. 1a(c)
- Damage or Theft to Energy Transmission, Telecommunications — 609.593
- Damage to Property — 609.595, subd. 1 (1)
- Damages; Illegal Molestation of Human Remains; Burials; Cemeteries — 307.08, subd. 2(a)
- Dangerous Smoking — 609.576, subd. 2
- Dangerous Trespass, Railroad Tracks — 609.85(1)
- Dangerous Weapons/Certain Persons Not to Have Firearms — 609.67, subd. 2; 624.713, subd. 2(a)
- Depriving Another of Custodial or Parental Rights — 609.26, subd. 6 (a) (2)
- Disarming a Peace Officer — 609.504
- Drive-By Shooting (unoccupied motor vehicle or building) — 609.66, subd. 1e (a)
- Embezzlement of Public Funds (over \$2,500) — 609.54
- Engage or Hire a Minor to Engage in Prostitution — 609.324, subd. 1 (c)
- Escape from Civil Commitment — 609.485, subd. 4 (a) (5)
- Escape from Custody — 609.485, subd. 4 (a) (1)
- False Imprisonment — 609.255, subd. 2
- False Traffic Signal — 609.851, subd. 2
- Financial Transaction Card Fraud (over \$2,500) — 609.821, subd. 2(1)(2)(5)(6)(7)(8)
- Firearm Silencer (public housing, school, or park zone) — 609.66, subd. 1a (a)(1)
- Gambling Taxes — 297E.13, subd. 1-4
- Hinder Logging (great bodily harm) — 609.591, subd. 3 (1)
- Identity Theft — 609.527, subd. 3 (4)
- Insurance Tax — 297I.90, subd. 1 & 2
- Intentional Release of Harmful Substance — 624.732, subd. 2
- Methamphetamine Crimes Involving Children and Vulnerable Adults — 152.137
- Motor Vehicle Use Without Consent — 609.52, subd. 2 (17)
- III Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew — 609.50, subd. 2
- Possession of Burglary Tools — 609.59
- Possession of Code Grabbing Devices — 609.586, subd. 2
- Possession of Shoplifting Gear — 609.521

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- Possession or Sale of Stolen or Counterfeit Check — 609.528, subd. 3 (4)
- Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (\$1,000, or more) — 609.526, subd. 2(1)
- Receiving Stolen Goods (over \$5,000) — 609.53
- Rustling and Livestock Theft (over \$2,500) — 609.551
- Security Violations (\$2,500, or less) — 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
- Tampering with Fire Alarm System (results in bodily harm) — 609.686, subd. 2
- Tax Evasion Laws — 289A.63
- Tear Gas & Tear Gas Compounds; Electronic incapacitation devices — 624.731, subd. 8(a)
- Telecommunications and Information Services; Obtaining services by fraud (over \$2,500) — 609.893, subd. 1
- Theft Crimes — over \$5,000 (See Theft Offense List)
- Theft of Controlled Substances — 609.52, subd. 3 (3) (b)
- Theft of Public Records — 609.52
- Theft of Trade Secret — 609.52, subd. 2 (8)
- Unauthorized Presence at Camp Ripley — 609.396, subd. 2
- II**
- Accidents — 169.09, subd. 14 (a) (1)
- Aggravated Forgery (misc.) (non-check) — 609.625; 609.635; 609.64
- Bribery of Participant or Official in Contest — 609.825, subd. 2
- II Bringing Stolen Goods into State (\$1,001-\$5,000) — 609.525
- Bringing Stolen Goods into State (\$501-\$1,000, with previous conviction) — 609.525
- Cellular Counterfeiting 1 — 609.894, subd. 4
- Check Forgery (\$251 – \$2,500) — 609.631, subd. 4 (3) (a)
- Coercion (\$301 – \$2,499) — 609.27, subd. 1 (2), (3), (4), & (5)
- Computer Damage (\$2,500, or less) — 609.88
- Computer Theft (\$2,500, or less) — 609.89
- Controlled Substance in the Fifth Degree — 152.025
- Counterfeited Intellectual Property — 609.895, subd. 3 (a)
- Damage to Property — 609.595, subd. 1 (2), (3), & (4)
- Discharge of Firearm (intentional) — 609.66, subd. 1a (a) (2)
- Discharge of Firearm (public housing, school, or park zone) — 609.66, subd. 1a (a) (2) & (3)
- Dishonored Check (over \$500) — 609.535, subd. 2a(a)(1)
- Duty to Render Aid (death or great bodily harm) — 609.662, subd. 2 (b) (1)
- Electronic Use of False Pretense to Obtain Identity — 609.527, subd. 5a
- Embezzlement of Public Funds (\$2,500, or less) — 609.54
- Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics — 297D.09, subd. 1
- Failure to Control a Regulated Animal, resulting in great bodily harm or death — 346.155, subd. 10 (e)
- Financial Transaction Card Fraud (\$2,500, or less) — 609.821, subd. 2(1)(2)(5)(6)(7)(8)
- Firearm Silencer — 609.66, subd. 1a (a) (1)
- Furnishing a Dangerous Weapon — 609.66, subd. 1c
- Furnishing Firearm to Minor — 609.66, subd. 1b
- Gambling Regulations — 349.2127, subd. 1-6; 349.22, subd. 4
- Identity Theft — 609.527, subd. 3 (3)
- Mail Theft — 609.529
- Negligent Fires (damage \$2,500, or more) — 609.576, subd. 1 (3) (iii)
- Possession or Sale of Stolen or Counterfeit Check — 609.528, subd. 3 (3)
- Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (less than \$1,000) — 609.526, subd. 2(2)
- Precious Metal Dealers, Regulatory Provisions — 325F.743
- Receiving Stolen Goods (\$5,000, or less) — 609.53
- Residential Mortgage Fraud — 609.822
- Riot 2 — 609.71, subd. 2
- Rustling and Livestock Theft (\$2,500, or less) — 609.551
- Telecommunications and Information Services; Obtaining services by fraud (\$2,500, or less) — 609.893, subd. 1
- Telecommunications and Information Services; Facilitation of telecommunications fraud — 609.893, subd. 2
- Terroristic Threats — 609.713, subd. 2
- Theft Crimes — \$5,000, or less (See Theft Offense List)

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Theft (Looting) — 609.52

Theft (\$1,000, or less; risk of bodily harm) —
609.52, subd. 3a(1)

Transfer Pistol to Ineligible Person — 624.7141, subd. 2

Transfer Pistol to Minor — 624.7132, subd. 15(b)

Wildfire Arson — 609.5641, subd. 1

I

Accidents — 169.09, subd. 14 (a) (2)

Assault 4 — 609.2231, subd. 1, 2, 3, & 3a

Assault Weapon in Public if Under 21 — 624.7181, subd. 2

Assaulting or Harming a Police Horse — 609.597, subd. 3 (3)

Assaults Motivated by Bias — 609.2231, subd. 4 (b)

Aiding Offender to Avoid Arrest — 609.495, subd. 1

Bullet-Resistant Vest During Commission of Crime — 609.486

Cable Communication Systems Interference — 609.80, subd. 2

Cellular Counterfeiting 2 — 609.894, subd. 3

Certification for Title on Watercraft — 86B.865, subd. 1

Check Forgery (\$250, or less) — 609.631, subd. 4 (3) (b)

Child Neglect/Endangerment — 609.378

Counterfeited Intellectual Property — 609.895, subd. 3 (b)

Crime Committed for Benefit of Gang — 609.229, subd. 3 (c)

Criminal Damage to Property Motivated by Bias —
609.595, subd. 1a, (a)

Criminal Use of Real Property (Movie Pirating) — 609.896

Dangerous Weapons on School Property — 609.66, 1d(a)

Depriving Another of Custodial or Parental Rights —
609.26, subd. 6 (a) (1)

Discharge of Firearm (reckless) — 609.66, subd. 1a (a) (3)

Discharge of Firearm at Unoccupied Transit Vehicle/Facility —
609.855, subd. 5

Duty to Render Aid (substantial bodily harm) —
609.662, subd. 2 (b) (2)

Escape from Civil Commitment — 609.485, subd. 4 (a) (4)

Escape from Custody — 609.485, subd. 4 (a) (2)

Failure to Affix Stamp on Marijuana/Hashish/Tetrahydro-
cannabinols — 297D.09, subd. 1

Failure to Affix Stamp on Schedule IV Substances —
297D.09, subd. 1

Failure to Appear in Court — 609.49; 588.20, subd. 1

False Declaration — 256.984

False Information — Certificate of Title Application — 168A.30

Financial Transaction Card Fraud — 609.821, subd. 2 (3) & (4)

Fleeing A Peace Officer — 609.487, subd. 3

Forgery — 609.63; and Forgery Related Crimes (See Forgery
Related Offense List)

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Insurance Regulations — 62A.41

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609.746, subd. 1 (e)

Interference with Transit Operator — 609.855, subd. 2 (c) (1)

Leaving State to Evade Establishment of Paternity — 609.31

Liquor Taxation (Criminal Penalties) —
297G.19, subd. 3, 4(c), 5(c)

Lottery Fraud — 609.651, subd. 1 with subd. 4(a)

Nonsupport of Spouse or Child — 609.375, subd. 2a

Pistol without a Permit (subsequent violations) —
624.714, subd. 1a

Prize Notices and Solicitations — 325E.755, subd. 7

Prostitution Crimes (gross misdemeanor level) Committed in
School or Park Zones — 609.3242, subd. 2 (2)

Remove or Alter Serial Number on Firearm — 609.667

Sale of Simulated Controlled Substance — 152.097

Tampering with a Fire Alarm (potential for bodily harm) —
609.686, subd. 2

Tax on Petroleum and Other Fuels (Willful Evasion) —
296A.23, subd. 2

Terroristic Threats — 609.713, subd. 3 (a)

Theft from Abandoned or Vacant Building (\$1,000, or less) —
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- Abortion — 617.20; 617.22; 145.412
- Accomplice After the Fact — 609.495, subd. 3
- Adulteration — 609.687, subd. 3 (3)
- Aiding Suicide — 609.215
- Altering Engrossed Bill — 3.191
- Animal Fighting — 343.31 (a)(b)
- Assaulting or Harming a Police Horse — 609.597, subd. 3 (1) & (2)
- Bigamy — 609.355
- Cigarette Tax and Regulation Violations — 297F.20
- Collusive Bidding/Price Fixing — 325D.53, subds. 1 (3), 2 & 3
- Computer Encryption — 609.8912
- Concealing Criminal Proceeds; Engaging in Business — 609.496; 609.497
- Corrupting Legislator — 609.425
- Counterfeiting of Currency — 609.632
- Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines — 609.594
- Escape with Violence from Gross Misdemeanor or Misdemeanor Offense — 609.485, subd. 4 (a) (3)
- Failure to Report — 626.556, subd. 6
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- Female Genital Mutilation — 609.2245
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- Fraudulent or Improper Financing Statements — 609.7475
- Gambling Acts (Cheating, Certain Devices Prohibited; Counterfeit Chips; Manufacture, Sale, Modification of Devices; Instruction) — 609.76, subd. 3, 4, 5, 6, & 7
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- Horse Racing — Prohibited Act — 240.25
- Incest — 609.365
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- Interstate Compact Violation — 243.161
- Issuing a Receipt for Goods One Does Not Have — 227.50
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- Killing or Harming a Public Safety Dog — 609.596, subd. 1
- Labor Trafficking — 609.282
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- Midwest Interstate Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws — 116C.835
- Misprision of Treason — 609.39
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- Real and Simulated Weapons of Mass Destruction — 609.712
- Refusal to Assist — 6.53
- Sale of Membership Camping Contracts — 82A.03; 82A.13; 82A.25
- Service Animal Providing Service — 343.21, subd. 9 (e) (g)
- State Lottery Fraud — 609.651, subd. 1 with 4 (b) and subd. 2 & 3
- Subdivided Land Fraud — 83.43
- Torture or Cruelty to Pet or Companion Animal — 343.21, subd. 9 (c) (d) (f) (h)
- Treason — 609.385
- Unauthorized Computer Access — 609.891
- Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking — 609.283
- Unlawful Transfer of Sounds; Sales — 325E.201
- Warning Subject of Investigation — 609.4971
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20. Minnesota Sentencing Guidelines

A

Criminal Sexual Conduct 1 — 609.342

B

Criminal Sexual Conduct 2 — 609.343 subd. 1 (c) (d) (e) (f) (h)

C

Criminal Sexual Conduct 3 — 609.344 subd. 1 (c) (d) (g) (h)
(i) (j) (k) (l) (m) (n) (o)

D

Criminal Sexual Conduct 2 — 609.343 subd. 1 (a) (b) (g)

Criminal Sexual Conduct 3 — 609.344 subd. 1 (a) (b) (e) (f)

Dissemination of Child Pornography (subsequent or by
predatory offender) — 617.247 subd. 3

E

Criminal Sexual Conduct 4 — 609.345 subd. 1 (c) (d) (g) (h)
(i) (j) (k) (l) (m) (n) (o)

Use Minors in Sexual Performance — 617.246 subd. 2, 3, 4

Dissemination of Child Pornography — 617.247 subd. 3

F

Criminal Sexual Conduct 4 — 609.345 subd. 1 (a) (b) (e) (f)

Possession of Child Pornography (subsequent or by
predatory offender) — 617.247 subd. 4

G

Criminal Sexual Conduct 5 — 609.3451 subd. 3

Solicitation of Children to Engage in Sexual Conduct —
609.352, subd. 2

Solicitation of Children to Engage in Sexual Conduct
(Electronic) — 609.352, subd. 2a

Indecent Exposure — 617.23 subd. 3

Possession of Child Pornography — 617.247 subd. 4

H

Failure to Register as a Predatory Offender —
243.166 subd. 5(b) (c)

PART I – TOPIC SUMMARIES

21. Access to Court Proceedings

An individual's ability to attend a court proceeding differs by type of proceeding and the status of the person who is attempting to attend the proceeding. The following is a summary of the Minnesota laws and rules related to ability to attend various court proceedings.

Criminal Matters

In general, criminal court hearings are open to the public, a principle made clear by the U.S. Supreme Court. See **Richmond Newspapers, Inc. v. Virginia**, 488 U.S. 555, 580 (1980); **Press-Enterprise v. Superior Court**, 464 U.S. 501 (1984).

Excluding Persons from the Courtroom:

Even with the presumption of openness in our courts, a judge has the ability to close a court proceeding. To deny access to criminal trial proceedings, the U.S. Supreme Court has ruled that states must show that the denial is necessitated by a "compelling state interest" and that the denial is narrowly tailored to serve that interest. **Globe Newspaper Co. v. Superior Court**, 457 U.S. 596 (1982).

Minnesota's Rules of Criminal Procedure state that the court can exclude the public from portions of a criminal trial held outside the presence of an unsequestered jury when there is a substantial likelihood the matters discussed, if disseminated, may interfere with a fair trial by an impartial jury. Minn. Rules of Criminal Procedure 26.03, subd. 6.

In addition, Minnesota identifies some situations where persons may be excluded from a criminal proceeding. For example, minors who are not witnesses or who do not have an interest in the criminal proceeding may not be present at trial. Minn. Stat. 631.04. A judge also has the ability to exclude spectators from the courtroom in child pornography cases and criminal sexual conduct cases involving a minor victim. Minn. Stat. 631.045.

Family Court Cases

In general, family court proceedings, including order for protection (OFP) hearings, are open to the public. Minnesota Rules of Family Court Procedure 364.07 states: "All hearings are open to the public, except as otherwise provided in these rules or by statute. For good cause shown, a child support magistrate may exclude members of the public from attending a hearing." Examples of good cause might include if a child is testifying, if there are safety concerns, or if the observer causes a disruption or interferes with the proceeding.

Chips Cases In Juvenile Court

In July 2002, following a three-year open-court pilot project, the Minnesota Supreme Court opened all child in need of protection (CHIPS) proceedings to the public. The court still has the discretion to close a proceeding for good cause.

Delinquency Cases In Juvenile Court

In general, the public cannot attend juvenile delinquency proceedings unless they have a direct interest in the case or in the work of the court. Minn. Stat. 260B.163, subd. 1(c); Minn. R. Juv. Del. Proc. 18.05(1)(A).

Hearings are open to the public in delinquency or extended jurisdiction juvenile proceedings where the child was at least 16 years of age at the time of the offense and is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult. Minn. Stat. 260B.163, subd. 1(c); Minn. Rules Juv. Del. Proc. 18.05(1)(A).

In a delinquency proceeding, the court may temporarily exclude any person except counsel and the guardian ad litem appointed in the delinquency proceeding when it is in the best interests of the child to do so. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. Minn. Rules Juv. Del. Proc. 2.02.

Civil Commitment Cases

The public may attend civil commitment hearings; however, the court has the ability to exclude individuals from the hearing who are not necessary for the conduct of the proceedings. The court cannot exclude those requested to be present by the proposed patient. Minn. Stat. 253B.08, subs. 2 and 3.

Special Considerations For Victims And Witnesses

In general, victims and witnesses are members of the public and therefore have the right to attend court proceedings as described above, with certain exceptions. For example, witnesses may be sequestered or excluded from the proceedings in which they will be called to testify. See Minnesota Rules of Court 11.11 and 26.03, subd. 7; Minnesota Rules of Evidence 615.

Although victims, as members of the public, may attend criminal proceedings, Minnesota law specifically gives victims rights to be present at the plea presentation hearing and the sentencing hearing. Minn. Stat. 611A.03, subd. 1(b).

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Victims of crimes committed by a juvenile have the same rights as those cases in which the offender is an adult. Minn. Stat. 611A.015. In addition, Minnesota law specifically provides that the victim of a child's delinquent act may attend any delinquency proceeding. Id. 260B.163, subd. 1(c). The court may exclude the victim from a proceeding if they will also be a witness, and may exclude the victim during portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public. A victim in a juvenile proceeding has a right to have a support person present during the victim's testimony. Id. 260B.163 subd. 3.

A prosecuting witness under the age of 18 has a right to a "support person" in child abuse, violent crime, fifth degree assault, and domestic assault cases during the testimony of that prosecuting witness. Minn. Stat. 631.046, subd. 1. A prosecuting witness in criminal sexual conduct cases may be accompanied by a supportive person to the omnibus hearing or other pretrial hearings. Id. subd. 2.

Family Members And Victim Advocates

Family members of a minor, incapacitated, incompetent, or deceased victim are considered "victims" and in that role have the same rights of access to the courts as described in the previous sections. Minn. Stat. 611A.01, subd. 1(b). Although "family member" is not defined, this section indicates that if it would be impracticable to have all family members accorded all of the rights under chapter 611A (including attending a hearing), a prosecutor can establish a reasonable procedure to give effect to the rights under chapter 611A, however, it cannot limit the number of victim impact statements submitted to the court. Id.

Community-based victim advocates are members of the public. The rules and laws related to access to court proceedings described above apply to them in that status, unless specifically provided for otherwise. Victim advocates who are part of a prosecutor's office are able to attend both open and closed proceedings as a member of that office.

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22. Access To Law Enforcement Data

A common step for many victims following a crime is to try to obtain a copy of the law enforcement report related to the incident. Often, victims face difficulties in this effort, such as being told the report cannot be released, getting only a brief report, or getting a report with information blocked out.

The laws related to access to government data are complicated. The following is some basic information for crime victims about obtaining a copy of an incident report from a law enforcement agency. This section was derived from the handout [How Do I Get a Copy of My Police Report?](#), which is available on the OJP Website.

How does a victim get a copy of a law enforcement report?

In most instances, any member of the public can go to the main office of the county sheriff or city police department to make a request for an incident report. Many agencies have information about this process posted within their office or on their Website, or have a brochure available. For larger departments, the **records department** handles such requests.

In any case, processing requests for incident reports is a **routine activity** for all law enforcement agencies, and a standard procedure should be in place.

It is a good idea to call the records department or the agency's non-emergency number with any questions about the process before going to the agency.

The person making the request should ask (1) when the report will be ready, (2) how much it will cost, and (3) what method of payment is acceptable. If no exact figure can be determined, the requester should ask for an approximate amount.

If it is unclear whether or not the report can be released, the requester should ask when and who to call to verify its status before making a trip to the agency. If the report will not be released, the agency should be asked to explain the reasons. Agencies are required to provide the statutory authority that gives them the legal basis to refuse the request. Minn. Stat. 13.03, subd. 3(f).

Is the law enforcement agency required to give a victim a copy of the report?

It depends.

When individuals request a copy of a “police report” or “incident report” or “investigative report” from a law enforcement agency, they are asking for law enforcement data. An individual's ability to request and obtain law enforcement data is governed by the **Minnesota Government Data Practices Act**. The portion of the Minnesota Government Data Practices Act governing comprehensive law enforcement data is Minnesota Statutes section 13.82.

In general, if the data are **public**, the law enforcement agency is required to provide a copy or allow inspection. If the data are **not public** (including *confidential* data), the law enforcement agency cannot, by law, provide a copy.

What law enforcement data are public and what are confidential?

Law enforcement data that are always **public** include: arrest data, request for service data, transcripts of 911 recordings, and basic information about the law enforcement agency's response to an incident. Minn. Stat. 13.82, subds. 2, 3, 4 and 6.

Law enforcement data that are considered **confidential** are criminal investigative data on an active investigation—that is, the data collected by the law enforcement agency in order to prepare a case against a suspect. Thus, the investigative report is confidential while the investigation is active. Once an investigation is inactive, the investigative report is public. Minn. Stat. 13.82, subd. 7.

When can a victim get a copy of the investigative report?

Investigation ongoing

If the law enforcement agency is still investigating the crime, members of the public will not be able to get a copy of the report. They can, however, get what is often referred to as the public portion of the report containing data about the case that are classified as public.

Investigation complete and case closed

If the case is closed and no charges will be filed, then the case is inactive and the data are public. Members of the public should be able to get a copy of the report. The law enforcement agency, however, may still restrict access to all or parts of the report in order to protect another ongoing investigation or to protect the identity of victims, witnesses, or others.

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22. Access To Law Enforcement Data

Investigation complete and matter referred to prosecutor's office

If the prosecutor's office is still reviewing the investigative file to determine if charges will be filed, the case is still active. The report is confidential, and members of the public are not able to get a copy.

If the prosecutor's office has decided not to pursue the case, the investigation is considered inactive, and the data in the report are public. Members of the public should be able to get a copy of the report (subject to the restrictions noted above).

If the prosecutor's office has filed charges, any investigative data contained in charging documents presented to the court are public.

Can a victim get a copy even if the law enforcement data is confidential?

A victim or victim's legal representative (such as a parent) can make a written request to the prosecutor's office to release investigative data collected by the law enforcement agency that is confidential. The prosecutor's office may refuse the request if it believes that it will interfere with the investigation or that the request is prompted by a desire on the part of the requester to engage in unlawful activities. Minn. Stat. 13.82, subd. 13.

Are there specific provisions that apply to different incidents or crimes?

Yes.

Domestic abuse: A victim of domestic abuse can request a copy of a domestic abuse report from a law enforcement agency at no cost. Minn. Stat. 13.82, subd. 5.

Juveniles: If the offender is a juvenile, the investigative report is not public, even if the investigation is inactive. A victim or victim's legal representative (such as a parent) in a juvenile case can make a written request to the prosecutor's office to release investigative data collected by the law enforcement agency. Again, the prosecutor's office may refuse the request if it believes that it will interfere with the investigation or that the request is prompted by a desire on the part of the requester to engage in unlawful activities. Minn. Stat. 260B.171, subd. 5(h).

Traffic reports: Some information related to a traffic accident is regarded as public and some is not. Response and incident data related to a traffic accident are public data (including infor-

mation about arrests made, driver information, pursuits, resistance encountered, and the alcohol concentration of each driver). Minn. Stat. 13.82, subd. 6.

In cases of accidents resulting in bodily injury, death, or property damage of \$1,000 or more, law enforcement agencies prepare and submit a written traffic accident report to the Commissioner of Public Safety. This report is not public; however, a person involved in the accident can request a copy of the report. Minn. Stat. 169.09, subd. 13(a)(1). See also the [Traffic Accident Data](#) handout available on the Information and Policy Analysis Division Web site: www.ipad.state.mn.us.

How much will a copy of the report cost?

A law enforcement agency may charge fees for copies of an incident report; however, state law restricts what those fees can be. If the person requesting the report is not the *subject of the data* (like the victim), the request is for public data, and the report is for 100 or fewer black-and-white pages, the law enforcement agency can only charge up to **25 cents for each page copied** (50 cents for a two-sided copy). See Minn. Stat. 13.03, subd. 3(c).

In situations where the report is public and greater than 100 pages or involves color copies, photographs, electronic media, etc., the agency may require the person requesting the report to pay the *actual* costs. This may, but does not necessarily, include staff time to process the request as well as the cost of materials and mailing.

No fee can be charged if the requester only asks to *inspect* the report. Minn. Stat. 13.03, subd. 3(a). An individual can take handwritten notes or photographs of the data during this inspection.

For more information about the amount a government entity can charge for copy costs of requested data, please see the [copy cost information](#) posted the Information Policy Analysis Division (IPAD) Website: www.ipad.state.mn.us.

Crime victim requesting the report: A victim, as the *subject of the data*, can only be charged the actual cost to copy the requested data and not any search and retrieval costs. (In most situations, this should be less than the \$.25/page charged to the public.) Minn. Stat. 13.04, subd. 3.

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22. Access To Law Enforcement Data

What if information is blocked out on the report?

A law enforcement agency can block out information on a report to protect the identity of individuals, such as undercover law enforcement officers, informants, witnesses, and mandated child abuse reporters. Also, the information about victims in criminal sexual conduct cases is not public and will be blocked out.

Minn. Stat. 13.82, subd. 17(b).

Can victims ask that their names be blocked out on a report given to the public?

Yes. Victims and witnesses can request that they not be identified publicly by the law enforcement agency. However, the agency can deny the request if it reasonably determines that revealing the identity would not threaten the personal safety or property of the individual. Minn. Stat. 13.82, subd. 17(d), and 611A.02, subd. 2(b)(2).

A law enforcement agency automatically withholds public access to data that would reveal the identity of a victim of criminal sexual conduct. Minn. Stat. 13.82, subd. 17(b).

What if victims continue to have problems getting a copy of the report to which they feel entitled?

The requester should consider going through the “chain of command.” He or she should ask to speak to the head of the unit in charge of records. In smaller jurisdictions, the requester should ask to speak to the police chief or sheriff.

Each city and county will have a person specifically designated to handle issues related to requests for information. Victims and other members of the public who have problems obtaining law enforcement data can ask for the name of the *data practices compliance official* and speak to that person directly. This most likely will be someone in the city or county attorney’s office or the city or county administration office.

Individuals who feel that the agency’s response to their request for data is in violation of the Minnesota Government Data Practices Act can ask for guidance or request a formal advisory opinion from the **Information Policy Analysis Division**, Minnesota Department of Administration: 651-296-6733, 800-657-3721, www.ipad.state.mn.us. Advisory opinions are nonbinding on the agency, but are given deference in court.

In addition, an individual who feels that a government entity has violated the provisions of the Act may seek an order to compel compliance from the Office of Administrative Hearings. Minn. Stat. 13.08, subd. 4.

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23. Crime Victim Justice Unit

Corresponding Statutes: Minn. Stat. §§ 611A.72; 611A.73; and 611A.74.

Office of Justice Programs, Suite 2300
445 Minnesota Street
St. Paul, MN 55101-1515
Metro: 651-201-7310
Toll free: 1-800-247-0390, ext. 3
Fax: 651-296-5787
TTY: 651-205-4827
www.ojp.state.mn.us

The legislature created the Office of Crime Victim Ombudsman (OCVO) in 1985 with the mission to investigate complaints of statutory victim rights violations and victim mistreatment. In 2003, the OCVO's responsibilities were assumed by the Crime Victim Justice Unit (CVJU), a unit of the Office of Justice Programs in the Minnesota Department of Public Safety. Since that time, the CVJU has sought to uphold the rights of crime victims and ensure the fair treatment of victims in the criminal justice process.

The Crime Victim Oversight Act, Minnesota Statutes sections 611A.72 to 611A.74, authorizes the Commissioner of Public Safety to investigate decisions, acts, and other matters of the criminal justice system so as to promote the highest attainable standards of competence, efficiency and justice for crime victims and witnesses in the criminal justice system. The commissioner delegates that responsibility to the CVJU.

As its vision, the CVJU strives to achieve just, fair, and equitable treatment of crime victims and witnesses by providing a process to question the actions of criminal justice agencies and victim assistance programs within the State of Minnesota. The actions of the CVJU are guided by impartiality, confidentiality, and respect for all parties.

The Crime Victim Justice Unit works to:

- (1) Ensure compliance with crime victim rights legislation;
- (2) Prevent mistreatment of crime victims by criminal justice agencies;
- (3) Provide information and referrals to victims and criminal justice professionals;
- (4) Amend practices that are unjust, discriminatory, oppressive or unfair;
- (5) Improve attitudes of criminal justice employees toward crime victims;
- (6) Increase public awareness regarding the rights of crime victims;

(7) Encourage crime victims to assert their rights; and

(8) Provide crime victims a forum to question the actions of criminal justice agencies and victim assistance programs.

Although the CVJU is charged with investigating governmental and crime victim program actions, it does not advocate for victims. Instead, the CVJU is an advocate for fairness within the criminal justice system. The CVJU remains neutral in relation to the involved parties. The duty of this office lies not with the crime victim or the criminal justice professional but with justice and the fair evaluation of facts. It is easy to feel that an agency has been unjust, but a thorough investigation by the CVJU may determine that the agency's decision meets every test of administrative fairness. On the other hand, once the office has determined that a criminal justice professional has been unfair or a victim's rights have been violated, the CVJU will address the issues and make recommendations to improve the criminal justice system's response to victims.

Victims or witnesses who feel that their crime victim rights have been violated or who feel that they have been mistreated should contact the CVJU. In addition, victims, witnesses, and criminal justice professionals needing information can call for clarification and referrals. Explanations of the complexities of the criminal justice system are also routinely provided.

Assisting Crime Victims

Callers may be provided information to enable them to resolve their issues independent of outside interference or they may be referred to a more appropriate resource. If more assistance is needed, callers may have their issues resolved informally with the assistance of an investigator, or if the investigator feels the issue requires a formal investigation, the caller will be provided with a complaint form that will initiate the investigative process.

Investigations

The CVJU investigates complaints of victim mistreatment and violation of statutory victim rights under Minnesota Statutes chapter 611A and other provisions. Mistreatment occurs when a public body fails to act in accordance with its mission or responsibilities. It includes situations in which there is unreasonable delay, rude or improper treatment of victims, refusal to take a report of a crime, inadequate investigation, failure to follow the law or the agency's own policies, and the abuse of discretion.

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23. Crime Victim Justice Unit

The CVJU also looks into complaints that the victim's rights have been violated. For example, the CVJU looks at violations, such as failure to provide:

- notice to victims at various stages of the process;
- opportunities for victims to participate in the prosecution process;
- notice of release of an inmate; or
- financial compensation for losses related to the crime.

The investigative process may include interviewing persons who can furnish relevant information as well as reviewing pertinent court files, records, statutes, and agency policies, procedures, standards, and practices. CVJU file data is confidential during the investigative process and becomes private data once a case has been closed or becomes inactive. If a complaint is not justified, the subject agency and all parties to the complaint will be informed. If a complaint is found to be justified, the CVJU can make recommendations to the subject agency for corrective action. Although the agency has no legal obligation to comply with the CVJU's recommendations, the agency is statutorily obligated to inform the CVJU of the action taken or the reasons for not complying with the recommendation. The CVJU findings report and the agency response are provided to the victim.

For the past quarter century, victim rights have expanded and strengthened as the Minnesota legislature continues to address the needs of victims in the criminal justice system. The CVJU is dedicated to victim needs and will continue to uphold the rights of victims and ensure they are treated in a fair manner.

PART 2

**MINNESOTA CRIME VICTIMS
REPARATIONS BOARD**

SERVICE PROVIDERS HANDBOOK

PART 2 – MINNESOTA CRIME VICTIMS REPARATIONS BOARD

SERVICE PROVIDERS HANDBOOK

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PART 2 – MINNESOTA CRIME VICTIMS REPARATIONS BOARD

Service Providers Handbook

Introduction

The Crime Victims Reparations Board was established in 1974 to assist crime victims in Minnesota with their financial losses and to restore at least a portion of the victim's economic losses resulting from the crime.

This handbook is intended to provide victim service providers with information that will help them assist victims of crime in filing a Reparations claim. The purpose is to aid in the understanding of how the program works and what type of financial assistance may be available to victims of violent crime. The handbook includes a list of eligibility criteria that need to be met by the victim, as well as what benefits are available. At any time that questions arise, please feel free to contact the Reparations staff for assistance.

Contacting the Reparations Board

Reparations staff are available to answer your questions or assist claimants during regular office hours:

8:00 a.m. – 4:30 p.m., Monday – Friday.

The Crime Victims Reparations Board office is located on the twenty-third floor of the Bremer Building.

Crime Victims Reparations Board

445 Minnesota Street, Suite 2300

St. Paul, MN 55101-1515

651-201-7300

1-888-622-8799

Fax 651-296-5787

Hearing Impaired Access TTY: 651-205-4827

Board Members

Lisa Eder — Hennepin County Attorney's Office Victim/Witness Program

Robert Goodell, Chair — Anoka County Attorney's Office

Kim Lund — Minneapolis Police Department

Vacant — Crime Victim Representative

Philip Eckman, M.D. — Physician

Staff

Alceny Ajayi, Claims Specialist 651-201-7301

Marie Bibus, Director 651-201-7304

Gert Borowski, Administrative Specialist 651-201-7306

Jeanne Brann, Administrative Specialist 651-201-7308

Gloria Passer, Administrative Specialist 651-201-7337

Danielle Kitto, Claims Manager 651-201-7321

Barbara McCarty, Restitution Manager 651-201-7326

Liza Abraham, Claims Specialist 651-201-7331

Cathy O'Bryan, Receptionist 651-201-7300

Amy Studtmann, Claims Specialist 651-201-7344

L.V., Administrative Specialist

The Crime Victims Reparations Board is a program of the Minnesota Office of Justice Programs.

Jeri Boisvert, Division Director

What are the Eligibility Requirements?

- (1) The claimant must be a victim, a family member of a victim, dependent, estate of a deceased victim, a person purchasing products or services for a victim, or the victim's guardian, guardian ad litem, conservator, or authorized agent. A service provider cannot file a claim.
- (2) The victim must be a person who suffered injury or death as a direct result of a crime, a good faith effort to prevent a crime or to apprehend a person suspected of engaging in a crime.
- (3) The applicant must have been the victim of a crime that occurred in Minnesota or a Minnesota resident victimized while in another country.
- (4) The claim must be filed within 3 years (See Exceptions to the Filing Deadline.)
- (5) The crime must be reported to the police within 30 days (See Police Reporting Exceptions.)
- (6) Victim must cooperate fully with both the police and prosecutor, and must agree to pursue charges.
- (7) There must be no contributory misconduct by the victim (See Contributory Misconduct for further explanation.)
- (8) There must be evidence that a crime was committed. It's not necessary that the offender be prosecuted or convicted to show that a crime occurred. Whether the case was charged or not is, however, a factor in the board's decision in determining if a crime occurred. The Board relies heavily on police reports and conclusions of the prosecuting attorney's office.

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Exceptions to the Filing Deadline

The following are the only allowable exceptions to the filing deadline.

Unable to File. If the victim was unable to file due to physical or mental disability, the claim must be filed within three years of the time when the victim was reasonably able to file.

Injury Not Reasonably Discoverable. If the victim's injury or death was not reasonably discoverable within three years of the injury, the claim can be made within three years of the time when the injury or death is reasonably discoverable.

Child Abuse. The time limit begins when the crime was reported to the police.

Kidnapping. The three-year period begins on the date the child was located rather than the date the child was taken.

Harassment/Stalking. The three-year period begins on the date of the most recent reported incident of harassment or stalking.

Parole/Pardon/ECRC Hearing. The "reasonable discovery" exception may be applied in cases where the victim needs counseling due to a parole or pardon board or end-of-confinement review hearing, as the trauma is not discoverable until that event takes place.

There are no exceptions for circumstances where:

- (1) the victim/claimant did not know reparations existed,
- (2) victim was incompetent, but his or her affairs were being managed by a guardian or parent,
- (3) victim was a minor at the time, or
- (4) the police or county attorney failed to inform the victim/claimant of reparations, even though they are required by law to do so.

Police Reporting Exceptions

The following are the only allowable exceptions to the 30-day reporting deadline:

Unable to Report. If the crime could not reasonably have been reported within the required time period, it must have been reported within 30 days of when a report could have been made.

Sexual Assault*. There is no time period requirement for reporting the incident to the police. However, the victim must make a report to the police in order to be eligible for reparations. The claim must be filed within three years of the incident.

Child Abuse*. There is no time period requirement for reporting the incident to the police. The claimant must, however, make a report to the police in order to be eligible for reparations.

* These are the most current rules. The date of the incident can affect the reporting requirements. So check with the reparations staff if you are unsure.

What Specific Types of Crimes are Covered?

The types of crimes listed below are the most common crimes for which we receive claims. This list is not exclusive.

- Homicide
- Assault
- Domestic Abuse
- Sexual Assault
- Child Abuse (Physical and Sexual)
- Kidnapping
- Arson
- Robbery
- Stalking
- Harassment
- Hit and Run Motor Vehicle Accidents
- Drunk Driving
- Criminal Vehicular Operation

What Types of Crimes are Not Covered?

Crime, for the purpose of Reparations compensation, must include conduct prohibited by statute, which also poses a substantial threat of personal injury or death. Property crimes, such as burglary or theft, are not covered by the Reparations program unless injuries were involved. The Reparations program does not compensate for injuries sustained in accidents involving motor vehicles, bicycles, airplanes, or boats unless:

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- (1) the injury or death was intentionally inflicted;
- (2) the driver was using the vehicle while fleeing the scene of a crime he/she committed;
- (3) or the driver was committing one of the following crimes: Criminal Vehicular Homicide and Injury, Felony Hit-and-Run, or Driving Under the Influence.

Car accidents involving failure to yield, careless driving, and lack of insurance are not covered.

In cases of harassment/stalking, arson, or other serious property crimes, the property damage is not covered. However, the Board will consider payment for counseling and lost wages incurred by the victim as long as there is a substantial threat of personal injury or death. The Reparations Board will also pay for medical care for any injuries (such as smoke inhalation in an arson.)

Family members of people who commit suicide, or people who witness someone committing suicide, are not eligible for reparations.

What is Contributory Misconduct?

By law, the Reparations Board must reduce claims where the victim contributed to the incident through misconduct or negligence. Under the rules, contributory misconduct includes the following **acts that contributed to the injury** for which the claim was filed:

- (1) using fighting words, obscene or threatening gestures, or other provocation, including use of gang or hate group hand signs, colors, symbols, or statements;
- (2) knowingly and willingly riding in a vehicle operated by a person under the influence of alcohol or a controlled substance;
- (3) consuming alcohol or a controlled substance or other mood altering substances;
- (4) failing to retreat or withdraw from a situation where an option to do so was readily available;
- (5) planning, conspiring or attempting to unlawfully use, procure, distribute or sell controlled substances;
- (6) unlawfully possessing controlled substances;
- (7) being a confirmed member or associate of a gang or hate group.

These acts constitute contributory misconduct only where they directly contributed to the claimant's victimization. The Board may reduce the claim by 25%, 50%, or 75%, or they may deny the claim completely. This provision may be waived for sexual assault and domestic abuse victims. If you have any questions regarding specific cases of contributory misconduct, please contact the Reparations staff.

No reparations will be awarded if the victim or claimant was in the act of committing a crime at the time the injury occurred. This is similar to contributory misconduct except that the Board must deny the award completely if the victim was committing a crime. This is required by statute and there is no discretion by the Board to reduce the claim.

What is Full Cooperation?

The Board's rules state that victims must make a reasonable effort to comply with any specific and direct requests that law enforcement personnel made to them. The victim must cooperate during the entire time the investigation remains active, and through all prosecution proceedings. The victim must cooperate by giving a statement to the police, submitting evidence if requested, looking at mug shots, and agreeing to pursue charges. The victim must also cooperate with the county or city attorney by agreeing to give a statement or testify as requested. Failure to cooperate because of fear of retaliation is not an exception to the Board's rule. In determining whether a victim cooperated, the Board takes into consideration physical or mental impairments or disabilities, which might have affected the victim's ability to respond to such requests.

When Should a Claim be Filed?

Individuals who have suffered injury as a result of a violent crime should file a reparations claim immediately. Victims have three years from the date of injury to file a claim, however the claim should be filed as soon after the incident as possible. All expenses directly related to the crime should be included on the claim form. Medical treatment or court proceedings do not need to be completed prior to filing a reparations claim. If there is a question regarding eligibility, contact the staff of the Reparations Board for further assistance.

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What is the Maximum Award?

The maximum amount of reparations allowed as a result of one crime is \$50,000. * However, there are caps for specific services. Very few claimants reach the maximum amount.

* If multiple claimants file on behalf of one victim, the maximum for all claimants **combined** is \$50,000.

What Types of Expenses are Covered?

- Hospital and Physician
- Prescriptions
- Physical Therapy
- Chiropractic Care (up to one year from injury date)
- Mental Health Care (\$7,500 maximum)
- Lost Wages (see who is eligible for lost wages)
- Funeral (\$6,500 maximum)
- Household Services
- Substitute Child Care
- Ambulance
- Prosthesis/Wheelchair
- Dental Care
- Return of an Abducted Child
- Crime Scene Clean-up
- Remodeling of Household for Accessibility
- Eyeglasses (if broken during the assault)
- Abortions or Prenatal Care and Delivery if Pregnancy is a Result of Sexual Assault

What Types of Expenses are not Covered?

- Damaged or stolen property
- Stolen cash or checks
- New locks, security devices, or alarm systems
- School tuition
- Foster care and shelter fees
- Long distance phone calls
- Attorney / Private Investigator fees
- Trial related expenses (lost wages, mileage)
- Hotel costs

- Memberships to a health club
- Mileage/parking
- Moving expenses

What is the Minimum Award?

A claimant must have more than \$50 of out-of-pocket losses as a result of the crime.

What if Losses are Less Than \$50?

To be eligible for reparations, the claimant must have more than \$50 of out-of-pocket losses due to the crime. If losses are less than \$50, the claimant will receive a letter saying that the claim has been placed on inactive status. If the claimant incurs further losses, the Reparations office should be contacted to reactivate the file. This is one reason why claimants should be encouraged to apply for Reparations even though they may not have sufficient losses at the time of filing.

Are Sexual Assault Exams Covered?

Claimants must first submit the bill for a sexual assault exam to the county for payment. Usually the County Attorney's office or the County Sheriff administers a sexual assault fund to pay for exams. If the cost of the exam exceeds any payment by the county, the Board will cover the additional costs.

Is Mental Health Counseling Covered?

The Reparations Board will pay for counseling sessions for:

- Victims
- Family members (spouse or domestic partner, parents, children, siblings, and grandparents) of injured or deceased victims
- Witnesses to a violent crime
- Persons who discover the body of a homicide victim

Procedure for Approval of Sessions.

If an eligible victim or claimant needs pre-approval for counseling, a claims specialist will notify the counselor that the Board is approving payment for a certain time period.

Pre-existing or Unrelated Conditions.

If a counselor indicates that only a portion of the counseling addresses the crime, or the victim or claimant had a pre-existing condition, the award may be reduced.

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Maximum for Outpatient Mental Health Counseling.

The total accumulated expenses for outpatient counseling must not exceed \$7,500. This cap does not include in-patient hospitalization, diagnostic evaluation or testing, or medication management.

The Board only pays a percentage of the expenses, and providers are required to write-off the remaining amount.

Is It Possible to Get an Extension for Additional Counseling?

If more sessions are needed beyond the time period initially approved by the Board, the therapist must submit a request for extension form with a detailed treatment plan. The therapist may obtain a form from the Reparations office. The Reparations staff determines whether an extension is necessary and reasonable.

Extensions are not guaranteed and may be denied.

How Long Does It Take to Process a Claim?

It takes about four months for a claim to be processed and paid. Please feel free to have victims contact the Reparations office to check the status of a claim if payment has not been received within four to five months. Also, please remind claimants to notify the office if they have moved or changed phone numbers.

How is a Claim Processed?

After a claim form has been received, a claim file number and a claims specialist are assigned. A form is sent to the investigating law enforcement agency to verify that:

- (1) a crime was committed,
- (2) the crime was reported within 30 days of occurrence,
- (3) that the victim has cooperated fully and
- (4) whether there was any contributory misconduct on the part of the victim.

After a completed form and the corresponding police reports are received, the claims specialist reviews the claim for eligibility. If any of the eligibility requirements are not met, the claim is forwarded to the Board for review. If all eligibility requirements are met, the claim is approved. Billing forms are then sent to all service providers (e.g., hospitals) listed on the claim form. If lost wages are requested, a form is sent to the victim's employer to verify the amount of lost wages. Be sure to have victims provide a complete list of expenses and complete addresses of service providers and their employer.

When all requested information is received, the assigned claims specialist reviews all expenses to assure they are reasonable and necessary, and related to the crime, and that any collateral sources, such as insurance and Medical Assistance are billed first. The claims specialist then calculates the amount of the award.

How Does the Board Make Decisions?

The Board is composed of five members appointed by the Commissioner of the Department of Public Safety. Members and staff meet once a month to discuss claims where the claimant may not meet all eligibility criteria or where services may be questionable. The Board votes to either pay, reduce or deny the claim. Board decisions are based on information submitted by the claimant, police reports and records from medical and mental health providers.

How Can Reductions in Claims or Denials Be Appealed?

A decision made by the staff or Board may be appealed by sending a letter to the Reparations office within 30 days. The letter should state that the claimant is requesting a reconsideration and include why the Board's decision is incorrect. The Board discusses all requests for reconsideration at their monthly meeting. Claimants are welcome to attend the meeting to discuss their claim with the Board. **If a claimant wishes to attend a Board meeting, he/she must call 651-201-7300 to make an appointment.**

All denial or reduction letters include a brochure explaining appeal rights in detail.

If, after reconsideration, a claimant is still unhappy with the Board's decision, they may send a letter requesting a hearing before a state administrative law judge. The Board's attorney and the Director will attend the hearing. The claimant must attend the hearing and may bring an advocate. Telephone hearings are possible if the claimant lives outside of the metro area. **The administrative law judge can only make a recommendation to the Board.** The Board then discusses whether to accept the recommendation and issues a final decision.

When Will the Victim Receive a Check?

After an award is calculated and approved by the claims specialist, an award notice is sent to the claimant in the mail. If there is a mistake on the award notice, the victim should contact the claims specialist immediately.

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Payments are made from the Department of Finance directly to the victim or to the service provider if there is an outstanding bill. Checks are mailed within two to three weeks after the award notice has been received by the claimant. In many cases funds are paid through an electronic fund transfer. Providers and claimants must complete a W9 form to receive payment.

Where Does Reparations Funding Come From?

The greatest portion of funding comes from the State of Minnesota General Fund appropriation. Additional funds are received from the federal Victims of Crime Act program from fines levied on federal prisoners, the Minnesota Department of Corrections inmate wages, and reimbursements to the Board in the form of restitution, refunds, or subrogation of civil awards.

The Board Only Covers a Percentage of Medical, Dental and Mental Health Expenses. Is the Victim Responsible for Any Remaining Costs?

The Board pays only a percentage of medical, dental and mental health expenses and the provider is required to write-off the remaining amount. Please contact the office for current rates.

Providers are required by MN Rule 3050.3700 to accept the Board's reduced payment as payment-in-full and should not charge the patient for the remaining balance. If the provider bills the victim for the amount that should be written off, the victim should notify the Board immediately. **However, if the bill has already been paid by the victim, he/she will be reimbursed for 100% of the payment.**

If the claim has been reduced for contributory misconduct, then the victim is responsible for that percentage of the expenses. The provider may bill the claimant and does not have to write off the balance.

What if the Victim Has Additional Expenses After the Award is Made?

Claims are kept on file with the Reparations Board permanently and may be reopened at any time. If the claimant has additional expenses related to the crime, which were not paid in the first award, they may be submitted to the Board for a supplementary award. The claimant should send in the additional bills or send a letter explaining the additional expense(s). Ongoing expenses such as mental health counseling, chiropractic care and lost wages are paid on a quarterly basis. Loss of support is paid annually.

How Does Insurance or Medical Assistance Affect Reparations Claims?

Insurance

All other sources of payment available, including health insurance or Medical Assistance, must be used before receiving a Reparations award for the same services. If the victim's health plan only covers certain doctors or clinics, those providers must be used. **If the claimant has been using a medical or mental health provider not covered by their health insurance, the claimant is required to switch to the provider covered under their insurance.** The Board will pay bills accumulated prior to the claimant being informed of this policy by receipt of the Claimant Handbook.

Medical Assistance

Claimants who have Medical Assistance may not receive payment for medical expenses because Medical Assistance normally covers those expenses. Claimants who might be eligible for Medical Assistance must apply for it and follow through with the application process.

If Medical Assistance is discontinued or did not become effective immediately following the crime, and the claimant is being held personally responsible for the medical bills, the Board will pay those bills.

Are Any Expenses Covered for the Relatives of the Victim?

Some family members are eligible for compensation as secondary victims. Secondary victims include the parents, children, siblings, grandparents and spouse or domestic partner of a deceased victim or injured victim. Parents and spouses or domestic partners of homicide victims are eligible for full benefits from the Reparations Board. Siblings, children and grandparents of homicide victims are eligible for counseling and one week of lost wages.

The Board will pay for counseling sessions for parents, spouse or domestic partner, children, grandparents and siblings of deceased or injured victims where the treatment plan indicates that such sessions are directly related to the crime. In addition, the Board will pay for medication management during the time period corresponding to the counseling. (See *Is Mental Health Counseling Covered?* for more information.)

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Who is Eligible for Lost Wages?

The Board will reimburse the victim for a limited amount of lost income due to the crime. The rate of payment will be approximately the same rate as their net income. For requests that exceed a two week period (six weeks for sexual assault victims), a physician or mental health professional must provide verification of the victim's inability to work. The Board compensates victims for a maximum of 40 hours per week for up to 52 weeks. Victims must use any sick or vacation leave that they have available to them. Any long-term disability, short-term disability, worker's compensation, county assistance or SSI, will also be subtracted off the total lost wages.

If a victim is unemployed or self-employed, they must submit a copy of the previous year's federal tax return. The Board uses the reported adjusted gross income to calculate lost wages. There can be no compensation for unreported or anticipated income. A request for lost wages must be made within two years.

Family Members of Homicide Victims

The spouse or domestic partner and parents of deceased victims are eligible for up to 52 weeks of lost wages. For requests that exceed a 6-week time period, a physician or mental health professional must provide verification of the claimant's inability to work.

Children, grandparents and siblings of a deceased victim are eligible for one week of lost wages. No extension is allowed, unless there are extraordinary circumstances where the limit imposes undue hardship on the family member. Extensions must be approved by the Board.

Family Members of Injured Victims

The spouse or domestic partner, parents, children, grandparents and siblings of an injured victim may be reimbursed for lost wages and reasonable expenses for transportation and lodging, up to \$2,000 **combined**.

What is Loss of Support?

In homicide cases and drunk driving, hit and run, and criminal vehicular operation crashes resulting in death, the victim's dependents are eligible for loss of support payments. Dependents usually include the spouse or domestic partner and children under the age of 18. The person who has custody of the children should file the claim for loss of support.

The amount of the loss of support is based on a monthly rate determined by the Board each fiscal year. It is paid once a year for 3 years, or until the child reaches 18. After 3 years, a needs test will be done to determine further eligibility.

Are Witnesses to a Crime Eligible?

Witnesses to a violent crime and persons who discover the body in a homicide case are entitled to counseling sessions if they have suffered psychological harm as a result of the crime or by discovery of the body. Witnesses are not eligible for any other benefits.

Are Emergency Awards Available?

Yes, an emergency award may be granted for lost wages in **extreme cases**. The claimant must be eligible for lost wages to qualify for emergency assistance. Emergency awards will only be granted if the individual has received an eviction or foreclosure notice, the power or water is being shut off in their place of residence, or they have no money for food. Claimants may only receive one emergency award.

Emergency awards are not separate cash grants. They are payment of lost wages, except that they are awarded as an emergency, which means they are processed as quickly as possible. Call our office at 651-201-7300 and ask to speak to the assigned claims specialist to request emergency assistance. While some emergency awards can be issued within 48 hours, please note it can take up to two weeks to process an emergency award.

What is Pre-Authorization of Expenses and How is It Obtained?

Upon request, staff may pre-authorize payment for medical procedures, dental care, mental health counseling or funeral expenses if necessary. **Pre-authorization is necessary for certain expenses such as dental work, reconstructive surgery, chiropractic care and mental health care to assure payment.** If the claim meets all of the Board's eligibility requirements, a letter guaranteeing payment of an approved amount can be faxed to the provider. Call our office at 651-201-7300 and ask to speak to the assigned claims specialist to request pre-authorization.

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What If Money Is Received from Another Source, such as the Offender, an Insurance Settlement, or a Lawsuit?

A victim must notify the Reparations office if he/she pursues any type of lawsuit related to the crime, or receives an insurance settlement or restitution from the offender.

The Board has the right to recover money paid to the victim from other sources, such as a civil lawsuit, insurance settlement or restitution. If a civil case is won and a settlement received, the Board is entitled to reimbursement of the total amount of awards paid minus one-third for the attorney's fees. The claimant may also be asked to sign an agreement not to submit any further expenses to the Board.

Restitution

The Board may request restitution from the offender. If the Board has paid reparations, the court should order restitution payments to be made directly to the Board. Please contact our office at 651-201-7300 if restitution has been ordered and/or if the victim is receiving payments from the offender.

PART 3

FULL TEXT OF CHAPTER 611A

PART 3 – FULL TEXT OF CHAPTER 611A

Definitions and General Provisions

611A.01 Definitions

For the purposes of sections 611A.01 to 611A.06:

- (a) “Crime” means conduct that is prohibited by local ordinance and results in bodily harm to an individual; or conduct that is included within the definition of “crime” in section 609.02, subdivision 1, or would be included within that definition but for the fact that (i) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (ii) the act was alleged or found to have been committed by a juvenile.
- (b) “Victim” means a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime, and for purposes of sections 611A.04 and 611A.045, also includes (i) a corporation that incurs loss or harm as a result of a crime, (ii) a government entity that incurs loss or harm as a result of a crime, and (iii) any other entity authorized to receive restitution under section 609.10 or 609.125. The term “victim” includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person. In a case where the prosecutor finds that the number of family members makes it impracticable to accord all of the family members the rights described in sections 611A.02 to 611A.0395, the prosecutor shall establish a reasonable procedure to give effect to those rights. The procedure may not limit the number of victim impact statements submitted to the court under section 611A.038. The term “victim” does not include the person charged with or alleged to have committed the crime.
- (c) “Juvenile” has the same meaning as given to the term “child” in section 260B.007, subdivision 3.

611A.015 Scope of Victims’ Rights

The rights afforded to crime victims in sections 611A.01 to 611A.06 are applicable to adult criminal cases, juvenile delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs, and proceedings involving any other act committed by a juvenile that would be a crime as defined in section 609.02, if committed by an adult.

611A.02 Notification of Victim Services and Victims’ Rights

Subdivision 1. Victim services.

The commissioner of corrections, in cooperation with the executive director of the Crime Victims Reparations Board, shall develop a plan to provide victims with information concerning victim services in the geographic area where the crime occurred. This information shall include, but need not be limited to, information about available victim crisis centers, programs for victims of sexual assault, victim witness programs, elderly victims projects, victim assistance hotlines, incest abuse programs, and domestic violence shelters and programs. The plan shall take into account the fact that some counties currently have informational service systems and victim or witness services or programs. This plan shall be presented to the appropriate standing committees of the legislature no later than February 1, 1984.

Subdivision 2. Victims’ rights.

- (a) The Crime Victim and Witness Advisory Council shall develop two model notices of the rights of crime victims.
- (b) The initial notice of the rights of crime victims must be distributed by a peace officer to each victim, as defined in section 611A.01, at the time of initial contact with the victim. The notice must inform a victim of:
 - (1) the victim’s right to apply for reparations to cover losses, not including property losses, resulting from a violent crime and the telephone number to call to request an application;
 - (2) the victim’s right to request that the law enforcement agency withhold public access to data revealing the victim’s identity under section 13.82, subdivision 17, paragraph (d);
 - (3) the additional rights of domestic abuse victims as described in section 629.341;
 - (4) information on the nearest crime victim assistance program or resource; and
 - (5) the victim’s rights, if an offender is charged, to be informed of and participate in the prosecution process, including the right to request restitution.
- (c) A supplemental notice of the rights of crime victims must be distributed by the city or county attorney’s office to each victim, within a reasonable time after the offender is charged or petitioned. This notice must inform a victim of all the rights of crime victims under this chapter.

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Subdivision 3. Notice of rights of victims in juvenile court.

(a) The Crime Victim and Witness Advisory Council shall develop a notice of the rights of victims in juvenile court that explains:

- (1) the rights of victims in the juvenile court;
- (2) when a juvenile matter is public;
- (3) the procedures to be followed in juvenile court proceedings; and
- (4) other relevant matters.

(b) The juvenile court shall distribute a copy of the notice to each victim of juvenile crime who attends a juvenile court proceeding, along with a notice of services for victims available in that judicial district.

611A.021 Notice of Right to Request Withholding of Certain Public Data

A victim has a right under section 13.82, subdivision 17, clause (d), to request a law enforcement agency to withhold public access to data revealing the victim's identity.

611A.03 Plea Agreements; Notification

Subdivision 1. Plea agreements; notification of victim.

Prior to the entry of the factual basis for a plea pursuant to a plea agreement recommendation, a prosecuting attorney shall make a reasonable and good faith effort to inform the victim of:

- (1) the contents of the plea agreement recommendation, including the amount of time recommended for the defendant to serve in jail or prison if the court accepts the agreement; and
- (2) the right to be present at the sentencing hearing and at the hearing during which the plea is presented to the court and to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.

Subdivision 2. Notification duties.

A prosecuting attorney satisfies the requirements of subdivision 1 by notifying:

- (1) the victim's legal guardian or guardian ad litem; or

- (2) the three victims the prosecuting attorney believes to have suffered the most, if there are more than three victims of the offense.

Subdivision 3. [Repealed, 1988 c 649 s 5]

611A.0301 Right to Submit Statement at Plea Presentation Hearing

A victim has the rights described in section 611A.03, subdivision 1, clause 2, at a plea presentation hearing.

611A.031 Victim Input Regarding Pretrial Diversion

A prosecutor shall make every reasonable effort to notify and seek input from the victim prior to referring a person into a pretrial diversion program in lieu of prosecution for a violation of sections 609.185, 609.19, 609.195, 609.20, 609.205, 609.221, 609.222, 609.223, 609.224, 609.2242, 609.24, 609.245, 609.25, 609.255, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.561, 609.582, subdivision 1, 609.687, 609.713, and 609.749.

611A.0311 Domestic Abuse Prosecutions Plan and Procedures; Pilot Program

Subdivision 1. Definitions.

- (a) "Domestic abuse" has the meaning given in section 518B.01, subdivision 2.
- (b) "Domestic abuse case" means a prosecution for:
 - (1) a crime that involves domestic abuse;
 - (2) violation of a condition of release following an arrest for a crime that involves domestic abuse; or
 - (3) violation of a domestic abuse order for protection.

Subdivision 2. Contents of plan.

Each county and city attorney shall develop and implement a written plan to expedite and improve the efficiency and just disposition of domestic abuse cases brought to the prosecuting authority. Domestic abuse advocates, law enforcement officials, and other interested members of the public must have an opportunity to assist in the development or adaptation of the plans in each jurisdiction. The commissioner shall make the model and related training and technical assistance available to all city and county attorneys. All plans must state goals and contain policies and procedures to address the following matters:

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- (1) early assignment of a trial prosecutor who has the responsibility of handling the domestic abuse case through disposition, whenever feasible, or, where applicable, probation revocation; and early contact between the trial prosecutor and the victim;
- (2) procedures to facilitate the earliest possible contact between the prosecutor's office and the victim for the purpose of acquainting the victim with the criminal justice process, the use of subpoenas, the victim's role as a witness in the prosecution, and the domestic abuse or victim services that are available;
- (3) procedures to coordinate the trial prosecutor's efforts with those of the domestic abuse advocate or victim advocate, where available, and to facilitate the early provision of advocacy services to the victim;
- (4) procedures to encourage the prosecution of all domestic abuse cases where a crime can be proven;
- (5) methods that will be used to identify, gather, and preserve evidence in addition to the victim's in-court testimony that will enhance the ability to prosecute a case when a victim is reluctant to assist, including but not limited to physical evidence of the victim's injury, evidence relating to the scene of the crime, eyewitness testimony, and statements of the victim made at or near the time of the injury;
- (6) procedures for educating local law enforcement agencies about the contents of the plan and their role in assisting with its implementation;
- (7) the use for subpoenas to victims and witnesses, where appropriate;
- (8) procedures for annual review of the plan to evaluate whether it is meeting its goals effectively and whether improvements are needed; and
- (9) a timetable for implementation.

Subdivision 3. Notice filed with Department of Public Safety.

Each city and county attorney shall file a notice that a prosecution plan has been adopted with the commissioner of public safety by June 1, 1994.

611A.0315 Victim Notification; Domestic Assault; Harassment

Subdivision 1. Notice of decision not to prosecute.

- (a) A prosecutor shall make every reasonable effort to notify a victim of domestic assault, a criminal sexual conduct offense, or harassment that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority:
 - (1) contacting the victim or a person designated by the victim by telephone; and
 - (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.
- (b) Whenever a prosecutor dismisses criminal charges against a person accused of domestic assault, a criminal sexual conduct offense, or harassment, a record shall be made of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor shall indicate the specific reason that the witness is unavailable.
- (c) Whenever a prosecutor notifies a victim of domestic assault or harassment under this section, the prosecutor shall also inform the victim of the method and benefits of seeking an order for protection under section 518B.01 or a restraining order under section 609.748 and that the victim may seek an order without paying a fee.

Subdivision 2. Definitions.

For the purposes of this section, the following terms have the meanings given them.

- (a) "Assault" has the meaning given it in section 609.02, subdivision 10.
- (b) "Domestic assault" means an assault committed by the actor against a family or household member.
- (c) "Family or household member" has the meaning given it in section 518B.01, subdivision 2.
- (d) "Harassment" means a violation of section 609.749.
- (e) "Criminal sexual conduct offense" means a violation of sections 609.342 to 609.3453.

611A.032 [Repealed, 1995 c 186 s 102]

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611A.033 Speedy Trial; Notice of Schedule Change

- (a) A victim has the right to request that the prosecutor make a demand under rule 11.10 of the Rules of Criminal Procedure that the trial be commenced within 60 days of the demand. The prosecutor shall make reasonable efforts to comply with the victim's request.
- (b) A prosecutor shall make reasonable efforts to provide advance notice of any change in the schedule of the court proceedings to a victim who has been subpoenaed or requested to testify.

611A.034 Separate Waiting Areas in Courthouse

The court shall provide a waiting area for victims during court proceedings which is separate from the waiting area used by the defendant, the defendant's relatives, and defense witnesses, if such a waiting area is available and its use is practical. If a separate waiting area for victims is not available or practical, the court shall provide other safeguards to minimize the victim's contact with the defendant, the defendant's relatives, and defense witnesses during court proceedings, such as increased bailiff surveillance and victim escorts.

611A.035 Confidentiality of Victim's Address

Subdivision 1. Discretion of prosecutor not to disclose.

- (a) A prosecutor may elect not to disclose a victim's or witness's home or employment address, telephone number, or date of birth if the prosecutor certifies to the trial court that:
 - (1) the defendant or respondent has been charged with or alleged to have committed a crime;
 - (2) the nondisclosure is needed to address the victim's or witness's concerns about safety or security; and
 - (3) the victim's or witness's home or employment address, telephone number, or date of birth is not relevant to the prosecution's case.
- (b) If such a certification is made, the prosecutor must make a motion with proper notice for the court's permission to continue to withhold this information. The court shall either:
 - (1) order the information disclosed to defense counsel, but order it not disclosed to the defendant; or
 - (2) order the prosecutor to contact the victim or witness to arrange a confidential meeting between defense counsel, or defense counsel's agent, and the victim

or witness, at a neutral location, if the victim or witness consents to a meeting. This subdivision shall not be construed to compel a victim or witness to give any statement to or attend any meeting with defense counsel or defense counsel's agent.

Subdivision 2. Witness testimony in court.

No victim or witness providing testimony in court proceedings may be compelled to state a home or employment address, telephone number, or the date of birth of the victim or witness on the record in open court unless the court finds that the testimony would be relevant evidence.

611A.036 Prohibition Against Employer Retaliation

Subdivision 1. Victim or witness.

An employer must allow a victim or witness, who is subpoenaed or requested by the prosecutor to attend court for the purpose of giving testimony, reasonable time off from work to attend criminal proceedings related to the victim's case.

Subdivision 2. Victim's spouse or next of kin.

An employer must allow a victim of a heinous crime, as well as the victim's spouse or next of kin, reasonable time off from work to attend criminal proceedings related to the victim's case.

Subdivision 3. Prohibited acts.

An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to attend a criminal proceeding pursuant to this section.

Subdivision 4. Verification; confidentiality.

An employee who is absent from the workplace shall give 48 hours' advance notice to the employer, unless impracticable or an emergency prevents the employee from doing so. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

Subdivision 5. Penalty.

An employer who violates this section is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to offer job reinstatement to any employee discharged from employment in violation of this section, and to pay the employee back wages as appropriate.

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Subdivision 6. Civil action.

In addition to any remedies otherwise provided by law, an employee injured by a violation of this section may bring a civil action for recovery for damages, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

Subdivision 7. Definition.

As used in this section, "heinous crime" means:

- (1) a violation or attempted violation of section 609.185 or 609.19;
- (2) a violation of section 609.195 or 609.221; or
- (3) a violation of section 609.342, 609.343, or 609.344, if the offense was committed with force or violence or if the complainant was a minor at the time of the offense.

611A.037 Presentence Investigation; Victim Impact; Notice

Subdivision 1. Victim impact statement.

A presentence investigation report prepared under section 609.115 shall include the following information relating to victims:

- (1) a summary of the damages or harm and any other problems generated by the criminal occurrence;
- (2) a concise statement of what disposition the victim deems appropriate for the defendant or juvenile court respondent, including reasons given, if any, by the victim in support of the victim's opinion; and
- (3) an attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

Subdivision 2. Notice to victim.

The officer conducting a presentence or predispositional investigation shall make reasonable and good faith efforts to assure that the victim of that crime is provided with the following information by contacting the victim or assuring that another public or private agency has contacted the victim:

- (1) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel;

- (2) the victim's right to request restitution pursuant to section 611A.04;
- (3) the time and place of the sentencing or juvenile court disposition and the victim's right to be present; and
- (4) the victim's right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement. To assist the victim in making a recommendation under clause
- (5) the officer shall provide the victim with information about the court's options for sentencing and other dispositions. Failure of the officer to comply with this subdivision does not give any rights or grounds for postconviction or post-juvenile disposition relief to the defendant or juvenile court respondent, nor does it entitle a defendant or a juvenile court respondent to withdraw a plea of guilty.

611A.038 Right to Submit Statement at Sentencing

- (a) A victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing. The impact statement may be presented to the court orally or in writing, at the victim's option. If the victim requests, the prosecutor must orally present the statement to the court. Statements may include the following, subject to reasonable limitations as to time and length:
 - (1) a summary of the harm or trauma suffered by the victim as a result of the crime;
 - (2) a summary of the economic loss or damage suffered by the victim as a result of the crime; and
 - (3) a victim's reaction to the proposed sentence or disposition.
- (b) A representative of the community affected by the crime may submit an impact statement in the same manner that a victim may as provided in paragraph (a). This impact statement shall describe the adverse social or economic effects the offense has had on persons residing and businesses operating in the community where the offense occurred.
- (c) If the court permits the defendant or anyone speaking on the defendant's behalf to present a statement to the court, the court shall limit the response to factual issues which are relevant to sentencing.
- (d) Nothing in this section shall be construed to extend the defendant's right to address the court under section 631.20.

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611A.0385 Sentencing; Implementation of Right to Notice of Offender Release and Expungement

At the time of sentencing or the disposition hearing in a case in which there is an identifiable victim, the court or its designee shall make reasonable good faith efforts to inform each affected victim of the offender notice of release and notice of expungement provisions of section 611A.06. If the victim is a minor, the court or its designee shall, if appropriate, also make reasonable good faith efforts to inform the victim's parent or guardian of the right to notice of release and notice of expungement. The state court administrator, in consultation with the commissioner of corrections and the prosecuting authorities, shall prepare a form that outlines the notice of release and notice of expungement provisions under section 611A.06 and describes how a victim should complete and submit a request to the commissioner of corrections or other custodial authority to be informed of an offender's release or submit a request to the prosecuting authorities to be informed of an offender's petition for expungement. The state court administrator shall make these forms available to court administrators who shall assist the court in disseminating right to notice of offender release and notice of expungement information to victims.

611A.039 Right to Notice of Final Disposition of Criminal Case

Subdivision 1. Notice required.

Except as otherwise provided in subdivision 2, within 15 working days after a conviction, acquittal, or dismissal in a criminal case in which there is an identifiable crime victim, the prosecutor shall make reasonable good faith efforts to provide to each affected crime victim oral or written notice of the final disposition of the case. When the court is considering modifying the sentence for a felony or a crime of violence or an attempted crime of violence, the court or its designee shall make a reasonable and good faith effort to notify the victim of the crime. If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent or guardian. The notice must include:

- (1) the date and approximate time of the review;
- (2) the location where the review will occur;
- (3) the name and telephone number of a person to contact for additional information; and

- (4) a statement that the victim and victim's family may provide input to the court concerning the sentence modification. As used in this section, "crime of violence" has the meaning given in section 624.712, subdivision 5, and also includes gross misdemeanor violations of section 609.224, and nonfelony violations of sections 518B.01, 609.2231, 609.3451, 609.748, and 609.749.

Subdivision 2. Exception.

If a prosecutor contacts an identifiable crime victim in advance of the final case disposition, either orally or in writing, and notifies the victim of the victim's right to request information on the final disposition of the case, the prosecutor shall only be required to provide the notice described in subdivision 1 to those victims who have indicated in advance their desire to be notified of the final case disposition.

611A.0392 Notice to Community Crime Prevention Group

Subdivision 1. Definitions.

- (a) As used in this section, the following terms have the meanings given them.
- (b) "Cities of the first class" has the meaning given in section 410.01.
- (c) "Community crime prevention group" means a community group focused on community safety and crime prevention that:
 - (1) meets regularly for the purpose of discussing community safety and patrolling community neighborhoods for criminal activity;
 - (2) is previously designated by the local law enforcement agency as a community crime prevention group; and
 - (3) interacts regularly with the police regarding community safety issues.

Subdivision 2. Notice.

- (a) A law enforcement agency that is responsible for arresting individuals who commit crimes within cities of the first class shall make reasonable efforts to disclose certain information in a timely manner to the designated leader of a community crime prevention group that has reported criminal activity, excluding petty misdemeanors, to law enforcement. The law enforcement agency shall make reasonable efforts to disclose information on the final outcome of the investigation into the criminal activity

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including, but not limited to, where appropriate, the decision to arrest or not arrest the person and whether the matter was referred to a prosecuting authority. If the matter is referred to a prosecuting authority, the law enforcement agency must notify the prosecuting authority of the community crime prevention group's request for notice under this subdivision.

- (b) A prosecuting authority who is responsible for filing charges against or prosecuting a person arrested for a criminal offense in cities of the first class shall make reasonable efforts to disclose certain information in a timely manner to the designated leader of a community crime prevention group that has reported specific criminal activity to law enforcement. The prosecuting authority shall make reasonable efforts to disclose information on the final outcome of the criminal proceeding that resulted from the arrest including, but not limited to, where appropriate, the decision to dismiss or not file charges against the arrested person.
- (c) A community crime prevention group that would like to receive written or Internet notice under this subdivision must request the law enforcement agency and the prosecuting authority where the specific alleged criminal conduct occurred to provide notice to the community crime prevention group leader. The community crime prevention group must provide the law enforcement agency with the name, address, and telephone number of the community crime prevention group leader and the preferred method of communication.

611A.0395 Right to Information Regarding Defendant's Appeal

Subdivision 1. Prosecuting attorney to notify victims.

- (a) The prosecuting attorney shall make a reasonable and good faith effort to provide to each affected victim oral or written notice of a pending appeal. This notice must be provided within 30 days of filing of the respondent's brief. The notice must contain a brief explanation of the contested issues or a copy of the brief, an explanation of the applicable process, information about scheduled oral arguments or hearings, a statement that the victim and the victim's family may attend the argument or hearing, and the name and telephone number of a person that may be contacted for additional information.
- (b) In a criminal case in which there is an identifiable crime victim, within 15 working days of a final decision on an appeal, the prosecuting attorney shall make a reasonable and good faith effort to provide to each affected victim oral or written notice of the decision. This notice must include a brief explanation of what effect, if any, the decision has upon the judgment of the trial court and the name and telephone number of a person that may be contacted for additional information.

Subdivision 2. Exception.

The notices described in subdivision 1 do not have to be given to victims who have previously indicated a desire not to be notified.

611A.04 Order of Restitution

Subdivision 1. Request; decision.

- (a) A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence. Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of this request to the prosecutor and the offender or the offender's attorney at least 24 hours before the sentencing or dispositional hearing. The issue of restitution is reserved

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or the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim's affidavit or other competent evidence submitted by the victim is not received in time. At the sentencing or dispositional hearing, the court shall give the offender an opportunity to respond to specific items of restitution and their dollar amounts in accordance with the procedures established in section 611A.045, subdivision 3.

- (b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:
- (1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;
 - (2) sufficient evidence of a right to restitution has been submitted; and
 - (3) the true extent of the victim's loss or the loss of the Crime Victims Reparations Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request. If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, the prosecutor, and the Crime Victims Reparations Board at least five business days before the hearing. The court's restitution decision is governed by this section and section 611A.045.
- (c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented. If the court grants partial restitution it shall also specify the full amount of restitution that may be docketed as a civil judgment under subdivision 3. The court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. In the case of a defendant who is on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment.

Subdivision 1a. Crime board request.

The Crime Victims Reparations Board may request restitution on behalf of a victim by filing a copy of orders of the board, if any, which detail any amounts paid by the board to the victim. The board may file the payment order with the court administrator or with the person or agency the court has designated to obtain information relating to restitution. The board shall submit the payment order not less than three business days after it is issued by the board. The court administrator shall provide copies of

the payment order to the prosecutor and the offender or the offender's attorney within 48 hours of receiving it from the board or at least 24 hours before the sentencing or dispositional hearing, whichever is earlier. By operation of law, the issue of restitution is reserved if the payment order is not received at least three days before the sentencing or dispositional hearing. The filing of a payment order for reparations with the court administrator shall also serve as a request for restitution by the victim. The restitution requested by the board may be considered to be both on its own behalf and on behalf of the victim. If the board has not paid reparations to the victim or on the victim's behalf, restitution may be made directly to the victim. If the board has paid reparations to the victim or on the victim's behalf, the court shall order restitution payments to be made directly to the board.

Subdivision 1b. Affidavit of disclosure.

An offender who has been ordered by the court to make restitution in an amount of \$500 or more shall file an affidavit of financial disclosure with the correctional agency responsible for investigating the financial resources of the offender on request of the agency. The commissioner of corrections shall prescribe what financial information the affidavit must contain.

Subdivision 2. Procedures.

The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the restitution is to be paid. The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days; except that the court administrator is not required to disburse a restitution payment that is under \$10 unless the payment would fulfill the offender's restitution obligation. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the amount of restitution actually paid by the offender. The court administrator shall forward the data collected to the state court administrator who shall compile the data and make it available to the Supreme Court and the legislature upon request.

Subdivision 3. Effect of order for restitution.

An order of restitution may be enforced by any person named in the order to receive the restitution, or by the Crime Victims Reparations Board in the same manner as a judgment in a civil action. Any order for restitution in favor of a victim shall also operate as an order for restitution in favor of the Crime Victims Reparations Board, if the board has paid reparations to the victim or on the victim's behalf. Filing fees for docketing an order of restitution as a civil judgment are waived for any victim

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named in the restitution order. An order of restitution shall be docketed as a civil judgment, in the name of any person named in the order and in the name of the crime victims reparations board, by the court administrator of the district court in the county in which the order of restitution was entered. The court administrator also shall notify the commissioner of revenue of the restitution debt in the manner provided in chapter 270A, the Revenue Recapture Act. A juvenile court is not required to appoint a guardian ad litem for a juvenile offender before docketing a restitution order. Interest shall accrue on the unpaid balance of the judgment as provided in section 549.09. Whether the order of restitution has been docketed or not, it is a debt that is not dischargeable in bankruptcy. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Subdivision 4. Payment of restitution.

When the court orders both the payment of restitution and the payment of a fine and the defendant does not pay the entire amount of court-ordered restitution and the fine at the same time, the court may order that all restitution shall be paid before the fine is paid.

Subdivision 5. Unclaimed restitution payments.

Restitution payments held by the court for a victim that remain unclaimed by the victim for more than three years shall be deposited in the crime victims account created in section 611A.612. At the time the deposit is made, the court shall record the name and last known address of the victim and the amount being deposited, and shall forward the data to the Crime Victims Reparations Board.

611A.045 Procedure for Issuing Order of Restitution

Subdivision 1. Criteria.

- (a) The court, in determining whether to order restitution and the amount of the restitution, shall consider the following factors:
 - (1) the amount of economic loss sustained by the victim as a result of the offense; and
 - (2) the income, resources, and obligations of the defendant.
- (b) If there is more than one victim of a crime, the court shall give priority to victims who are not governmental entities when ordering restitution.

Subdivision 2. Presentence investigation.

The presentence investigation report made pursuant to section 609.115, subdivision 1, must contain information pertaining to the factors set forth in subdivision 1.

Subdivision 2a. Payment structure.

The court shall include in every restitution order a provision requiring a payment schedule or structure. The court may assign the responsibility for developing the schedule or structure to the court administrator, a probation officer, or another designated person. The person who develops the payment schedule or structure shall consider relevant information supplied by the defendant. If the defendant is placed on supervised probation, the payment schedule or structure must be incorporated into the probation agreement and must provide that the obligation to pay restitution continues throughout the term of probation. If the defendant is not placed on probation, the structure or schedule must provide that the obligation to pay restitution begins no later than 60 days after the restitution order is issued.

Subdivision 3. Dispute; evidentiary burden; procedures.

- (a) At the sentencing, dispositional hearing, or hearing on the restitution request, the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts. This burden of production must include a detailed sworn affidavit of the offender setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims. The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing. A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.
- (b) An offender may challenge restitution, but must do so by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later. Notice to the offender's attorney is deemed notice to the offender. The hearing request must be made in writing and filed with the court administrator. A defendant may not challenge restitution after the 30-day time period has passed.

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611A.046 Victim's Right to Request Probation Review Hearing

A victim has the right to ask the offender's probation officer to request a probation review hearing if the offender fails to pay restitution as required in a restitution order.

611A.05 Penalties No Bar to Civil Remedies

The provision in any law for a penalty or forfeiture for its violation shall not be construed to deprive an injured person of the right to recover from the offender damages sustained by reason of the violation of such law.

611A.06 Right to Notice of Release

Subdivision 1. Notice of release required.

The commissioner of corrections or other custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, including release on extended furlough and for work release; released from a juvenile correctional facility; released from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency, or commitment under section 253B.18 or 253B.185; or if the offender's custody status is reduced, if the victim has mailed to the commissioner of corrections or to the head of the facility in which the offender is confined a written request for this notice. The good faith effort to notify the victim must occur prior to the offender's release or when the offender's custody status is reduced. For a victim of a felony crime against the person for which the offender was sentenced to imprisonment for more than 18 months, the good faith effort to notify the victim must occur 60 days before the offender's release.

Subdivision 1a. Notice of expungement required.

The prosecuting authority with jurisdiction over an offense for which expungement is being sought shall make a good faith effort to notify a victim that the expungement is being sought if:

- (1) the victim has mailed to the prosecuting authority with jurisdiction over an offense for which expungement is being sought a written request for this notice, or
- (2) the victim has indicated on a request for notice of expungement submitted under subdivision 1 a desire to be notified in the event the offender seeks an expungement for the offense. A copy of any written request for a notice of expungement request received by the commissioner of corrections or other custodial authority shall be forwarded

to the prosecutorial authority with jurisdiction over the offense to which the notice relates. The prosecutorial authority complies with this section upon mailing a copy of an expungement petition relating to the notice to the address which the victim has most recently provided in writing.

Subdivision 2. Contents of notice.

The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release. The commissioner or other custodial authority complies with this section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the commissioner or authority in writing.

Subdivision 3. Notice of escape.

If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, or from any facility described in subdivision 1, the commissioner or other custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the offender's release under subdivision 1 within six hours after discovering the escape and shall also make reasonable efforts to notify the victim within 24 hours after the offender is apprehended.

Subdivision 4. Private data.

All identifying information regarding the victim, including the victim's request and the notice provided by the commissioner or custodial authority, is classified as private data on individuals as defined in section 13.02, subdivision 12, and is accessible only to the victim.

Subdivision 5. Definition.

As used in this section, "crime against the person" means a crime listed in section 611A.031.

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Electronic Monitoring

611A.07 Electronic Monitoring to Protect Domestic Abuse Victims; Standards

Subdivision 1. Generally.

The commissioner of corrections, after considering the recommendations of the Advisory Council on Battered Women and Domestic Abuse and the Sexual Assault Advisory Council, and in collaboration with the commissioner of public safety, shall adopt standards governing electronic monitoring devices used to protect victims of domestic abuse. In developing proposed standards, the commissioner shall consider the experience of the courts in the Tenth Judicial District in the use of the devices to protect victims of domestic abuse. These standards shall promote the safety of the victim and shall include measures to avoid the disparate use of the device with communities of color, product standards, monitoring agency standards, and victim disclosure standards.

Subdivision 2. [Repealed, 1996 c 310 s 1]

Barring Perpetrator Recovery

611A.08 Barring Perpetrators of Crimes from Recovering for Injuries Sustained During Criminal Conduct

Subdivision 1. Definitions.

As used in this section:

- (1) “perpetrator” means a person who has engaged in criminal conduct and includes a person convicted of a crime;
- (2) “victim” means a person who was the object of another’s criminal conduct and includes a person at the scene of an emergency who gives reasonable assistance to another person who is exposed to or has suffered grave physical harm;
- (3) “course of criminal conduct” includes the acts or omissions of a victim in resisting criminal conduct; and
- (4) “convicted” includes a finding of guilt, whether or not the adjudication of guilt is stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no contest plea, a judgment of conviction, an adjudication as a delinquent child, an admission to a juvenile delinquency petition, or a disposition as an extended jurisdiction juvenile.

Subdivision 2. Perpetrator’s assumption of the risk.

A perpetrator assumes the risk of loss, injury, or death resulting from or arising out of a course of criminal conduct involving a violent crime, as defined in this section, engaged in by the perpetrator or an accomplice, as defined in section 609.05, and the crime victim is immune from and not liable for any civil damages as a result of acts or omissions of the victim if the victim used reasonable force as authorized in section 609.06 or 609.065.

Subdivision 3. Evidence.

Notwithstanding other evidence which the victim may adduce relating to the perpetrator’s conviction of the violent crime involving the parties to the civil action, a certified copy of: a guilty plea; a court judgment of guilt; a court record of conviction as specified in section 599.24, 599.25, or 609.041; an adjudication as a delinquent child; or a disposition as an extended jurisdiction juvenile pursuant to section 260B.130 is conclusive proof of the perpetrator’s assumption of the risk.

Subdivision 4. Attorney’s fees to victim.

If the perpetrator does not prevail in a civil action that is subject to this section, the court may award reasonable expenses, including attorney’s fees and disbursements, to the victim.

Subdivision 5. Stay of civil action.

Except to the extent needed to preserve evidence, any civil action in which the defense set forth in subdivision 1 or 2 is raised shall be stayed by the court on the motion of the defendant during the pendency of any criminal action against the plaintiff based on the alleged violent crime.

Subdivision 6. Violent crime; definition.

For purposes of this section, “violent crime” means an offense named in sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.342; 609.343; 609.344; 609.345; 609.561; 609.562; 609.563; and 609.582, or an attempt to commit any of these offenses. “Violent crime” includes crimes in other states or jurisdictions which would have been within the definition set forth in this subdivision if they had been committed in this state.

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Sex Offender HIV Testing

611A.19 Testing of Sex Offender for Human Immunodeficiency Virus

Subdivision 1. Testing on request of victim.

- (a) Upon the request or with the consent of the victim, the prosecutor shall make a motion in camera and the sentencing court shall issue an order requiring an adult convicted of or a juvenile adjudicated delinquent for violating section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or any other violent crime, as defined in section 609.1095, to submit to testing to determine the presence of human immunodeficiency virus (HIV) antibody if:
- (1) the crime involved sexual penetration, however slight, as defined in section 609.341, subdivision 12 ; or
 - (2) evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit the human immunodeficiency virus (HIV).
- (b) When the court orders an offender to submit to testing under paragraph (a), the court shall order that the test be performed by an appropriate health professional who is trained to provide the counseling described in section 144.7414, and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services, except in the medical record maintained by the Department of Corrections.
- (c) The order shall include the name and contact information of the victim's choice of health care provider.

Subdivision 2. Disclosure of test results.

The date and results of a test performed under subdivision 1 are private data as defined in section 13.02, subdivision 12, when maintained by a person subject to chapter 13, or may be released only with the subject's consent, if maintained by a person not subject to chapter 13. The results are available, on request, to the victim or, if the victim is a minor, to the victim's parent or guardian and positive test results shall be reported to the commissioner of health. Unless the subject of the test is an inmate at a state correctional facility, any test results given to a

victim or victim's parent or guardian shall be provided by a health professional who is trained to provide the counseling described in section 144.7414. If the subject of the test is an inmate at a state correctional facility, test results shall be given by the Department of Corrections' medical director to the victim's health care provider who shall give the results to the victim or victim's parent or guardian. Data regarding administration and results of the test are not accessible to any other person for any purpose and shall not be maintained in any record of the court or court services or any other record. After the test results are given to the victim or the victim's parent or guardian, data on the test must be removed from any medical data or health records maintained under section 13.384 or 144.335 and destroyed, except for those medical records maintained by the Department of Corrections.

Notice of Risk of Sexually Transmitted Disease

611A.20 Notice of Risk of Sexually Transmitted Disease

Subdivision 1. Notice required.

A hospital shall give a written notice about sexually transmitted diseases to a person receiving medical services in the hospital who reports or evidences a sexual assault or other unwanted sexual contact or sexual penetration. When appropriate, the notice must be given to the parent or guardian of the victim.

Subdivision 2. Contents of notice.

The commissioners of public safety and corrections, in consultation with sexual assault victim advocates and health care professionals, shall develop the notice required by subdivision 1. The notice must inform the victim of:

- (1) the risk of contracting sexually transmitted diseases as a result of a sexual assault;
- (2) the symptoms of sexually transmitted diseases;
- (3) recommendations for periodic testing for the diseases, where appropriate;
- (4) locations where confidential testing is done and the extent of the confidentiality provided;
- (5) information necessary to make an informed decision whether to request a test of the offender under section 611A.19; and
- (6) other medically relevant information.

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Domestic Violence and Sexual Assault Prevention

611A.201 Director of Prevention of Domestic Violence and Sexual Assault

Subdivision 1. Appointment of director.

The executive director of the center for crime victim services shall appoint a person to serve as director of domestic violence and sexual assault prevention in the center. The director must have experience in domestic violence and sexual assault prevention issues. The director serves at the executive director's pleasure in the unclassified service. The executive director may appoint, supervise, discipline, and discharge employees to assist the director in carrying out the director's responsibilities under this section.

Subdivision 2. Director's responsibilities.

The director shall have the following duties:

- (1) advocate for the rights of victims of domestic violence and sexual assault;
- (2) increase public education and visibility about the prevention of domestic violence and sexual assault;
- (3) encourage accountability regarding domestic violence and sexual assault at all levels of the system, and develop recommendations to improve accountability when the system fails;
- (4) support prosecution and civil litigation efforts regarding domestic violence and sexual assault at the federal and state levels;
- (5) study issues involving domestic violence and sexual assault as they pertain to both men and women and present findings and recommendations resulting from these studies to all branches of government;
- (6) initiate policy changes regarding domestic violence and sexual assault at all levels of government;
- (7) coordinate existing resources and promote coordinated and immediate community responses to better serve victims of domestic violence and sexual assault;
- (8) build partnerships among law enforcement, prosecutors, defenders, advocates, and courts to reduce the occurrence of domestic violence and sexual assault;

- (9) encourage and support the efforts of health care providers, mental health experts, employers, educators, clergy members, and others, in raising awareness of and addressing how to prevent domestic violence and sexual assault;
- (10) coordinate and maximize the use of federal, state, and local resources available to prevent domestic violence and sexual assault and leverage more resources through grants and private funding; and
- (11) serve as a liaison between the executive director of the center for crime victim services and the commissioner of health with regard to the Department of Health's sexual violence prevention program funded by federal block grants, and oversee how this money is spent.

Subdivision 3. Service as chair of interagency task force.

The director shall serve as the chair of the interagency task force described in section 611A.202.

Subdivision 4. Annual report.

By January 15 of each year, the director shall report to the governor and the legislature on matters within the director's jurisdiction. In addition to other issues deemed relevant by the director, the report may include recommendations for changes in policies and laws relating to domestic violence and sexual assault prevention.

Subdivision 5. Other responsibilities.

In addition to those described in this section, the executive director of the center may assign other appropriate responsibilities to the director.

611A.202 MS 2004 [Expired]

Program to Aid Victims of Sexual Attacks

611A.21 Development of Statewide Program; Definition; Services

Subdivision 1. Program.

The commissioner of corrections shall develop a community based, statewide program to aid victims of reported sexual attacks.

Subdivision 2. Sexual attack.

As used in sections 611A.21 and 611A.221, a "sexual attack" means any nonconsensual act of rape, sodomy, or indecent liberties.

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Subdivision 3. Program services.

The program developed by the commissioner of corrections may include, but not be limited to, provision of the following services:

- (1) Voluntary counseling by trained personnel to begin as soon as possible after a sexual attack is reported. The counselor shall be of the same sex as the victim and shall, if requested, accompany the victim to the hospital and to other proceedings concerning the alleged attack, including police questioning, police investigation, and court proceedings. The counselor shall also inform the victim of hospital procedures, police and court procedures, the possibility of contracting venereal disease, the possibility of pregnancy, expected emotional reactions and any other relevant information; and shall make appropriate referrals for any assistance desired by the victim.
- (2) Payment of all costs of any medical examinations and medical treatment which the victim may require as a result of the sexual attack if the victim is not otherwise reimbursed for these expenses or is ineligible to receive compensation under any other law of this state or of the United States.

611A.22 Powers of Commissioner

In addition to developing the statewide program, the commissioner of corrections may:

- (1) assist and encourage county attorneys to assign prosecuting attorneys trained in sensitivity and understanding of victims of sexual attacks;
- (2) assist the Peace Officers Training Board and municipal police forces to develop programs to provide peace officers training in sensitivity and understanding of victims of sexual attacks; and encourage the assignment of trained peace officers of the same sex as the victim to conduct all necessary questioning of the victim;
- (3) encourage hospital administrators to place a high priority on the expeditious treatment of victims of sexual attacks; and to retain personnel trained in sensitivity and understanding of victims of sexual attacks.

611A.221 Additional Power

The Department of Correction's victim service unit is authorized to accept and expend funds received from other state agencies, other units of governments and other agencies, that result from the distribution of resource materials.

611A.23 [Repealed, 1996 c 310 s 1]

611A.24 [Repealed, 1985 c 262 s 7]

611A.25 Sexual Assault Advisory Council

Subdivision 1. Creation.

The commissioner of corrections shall appoint a 12-member Advisory Council on Sexual Assault to advise the commissioner on the implementation and continued operation of sections 611A.21 and 611A.221. The Sexual Assault Advisory Council shall also serve as a liaison between the commissioner and organizations that provide services to victims of sexual assault, and as an advocate within the Department of Corrections for the rights of sexual assault victims.

Subdivision 2. Membership.

No more than six of the members of the Sexual Assault Advisory Council may be representatives of community or governmental organizations that provide services to sexual assault victims. One-half of the council's members shall reside in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver Counties, and one-half of the members shall reside in the nonmetropolitan area. To the extent possible, nonmetropolitan members must be representative of all nonmetropolitan regions of the state.

Subdivision 3. Terms; vacancies; expenses.

Section 15.059 governs the filling of vacancies and removal of members of the Sexual Assault Advisory Council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. The council expires on June 30, 2003. Council members shall receive expense reimbursement as specified in section 15.059.

Subdivision 4. [Repealed, 1991 c 272 s 20]

Subdivision 5. Duties.

In addition to other duties, the advisory council shall advise the director of domestic violence and sexual assault prevention in matters related to preventing occurrences of these types of violence.

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611A.26 Polygraph Examinations; Criminal Sexual Conduct Complaints; Limitations

Subdivision 1. Polygraph prohibition.

No law enforcement agency or prosecutor shall require that a complainant of a criminal sexual conduct offense submit to a polygraph examination as part of or a condition to proceeding with the investigation, charging, or prosecution of such offense.

Subdivision 2. Law enforcement inquiry.

A law enforcement agency or prosecutor may not ask that a complainant of a criminal sexual conduct offense submit to a polygraph examination as part of the investigation, charging, or prosecution of such offense unless the complainant has been referred to and had the opportunity to exercise the option of consulting with a sexual assault counselor as defined in section 595.02, subdivision 1, paragraph (k).

Subdivision 3. Informed consent requirement.

At the request of the complainant, a law enforcement agency may conduct a polygraph examination of the complainant only with the complainant's written, informed consent as provided in this subdivision.

Subdivision 4. Informed consent.

To consent to a polygraph, a complainant must be informed in writing that:

- (1) the taking of the polygraph examination is voluntary and solely at the victim's request;
- (2) a law enforcement agency or prosecutor may not ask or require that the complainant submit to a polygraph examination;
- (3) the results of the examination are not admissible in court; and
- (4) the complainant's refusal to take a polygraph examination may not be used as a basis by the law enforcement agency or prosecutor not to investigate, charge, or prosecute the offender.

Subdivision 5. Polygraph refusal.

A complainant's refusal to submit to a polygraph examination shall not prevent the investigation, charging, or prosecution of the offense.

Subdivision 6. Definitions.

For the purposes of this section, the following terms have the meanings given.

- (a) "Criminal sexual conduct" means a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3451.

(b) "Complainant" means a person reporting to have been subjected to criminal sexual conduct.

(c) "Polygraph examination" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness.

Note: This section, as added by Laws 2007, chapter 54, article 4, section 7, is effective July 1, 2008. Laws 2007, chapter 54, article 4, section 7, the effective date.

Battered Women

611A.31 Definitions

Subdivision 1. Scope.

For the purposes of sections 611A.31 to 611A.36, the following terms have the meanings given.

Subdivision 2. Battered woman.

"Battered woman" means a woman who is being or has been victimized by domestic abuse as defined in section 518B.01, subdivision 2.

Subdivision 3. Emergency shelter services.

"Emergency shelter services" include, but are not limited to, secure crisis shelters for battered women and housing networks for battered women.

Subdivision 4. Support services.

"Support services" include, but are not limited to, advocacy services, legal services, counseling services, transportation services, child care services, and 24 hour information and referral services.

Subdivision 5. Commissioner.

"Commissioner" means the commissioner of the Department of Corrections or a designee.

611A.32 Battered Women Programs

Subdivision 1. Grants awarded.

The commissioner shall award grants to programs which provide emergency shelter services to battered women and support services to battered women and domestic abuse victims and their children. The commissioner shall also award grants for training, technical assistance, and for the development and implementation of education programs to increase public awareness of the causes of battering, the solutions to preventing

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and ending domestic violence, and the problems faced by battered women and domestic abuse victims. Grants shall be awarded in a manner that ensures that they are equitably distributed to programs serving metropolitan and non-metropolitan populations. By July 1, 1995, community-based domestic abuse advocacy and support services programs must be established in every judicial assignment district.

Subdivision 1a. Program for American Indian women.

The commissioner shall establish at least one program under this section to provide emergency shelter services and support services to battered American Indian women. The commissioner shall grant continuing operating expenses to the program established under this subdivision in the same manner as operating expenses are granted to programs established under subdivision 1.

Subdivision 2. Applications.

Any public or private nonprofit agency may apply to the commissioner for a grant to provide emergency shelter services to battered women, support services to domestic abuse victims, or both, to battered women and their children. The application shall be submitted in a form approved by the commissioner by rule adopted under chapter 14, after consultation with the advisory council, and shall include:

- (1) a proposal for the provision of emergency shelter services for battered women, support services for domestic abuse victims, or both, for battered women and their children;
- (2) a proposed budget;
- (3) evidence of an ability to integrate into the proposed program the uniform method of data collection and program evaluation established under sections 611A.33 and 611A.34;
- (4) evidence of an ability to represent the interests of battered women and domestic abuse victims and their children to local law enforcement agencies and courts, county welfare agencies, and local boards or departments of health;
- (5) evidence of an ability to do outreach to unserved and underserved populations and to provide culturally and linguistically appropriate services; and
- (6) any other content the commissioner may require by rule adopted under chapter 14, after considering the recommendations of the advisory council. Programs which have been approved for grants in prior years may submit materials which indicate changes in items listed in clauses (1) to (6), in order to qualify for renewal funding.

Nothing in this subdivision may be construed to require programs to submit complete applications for each year of renewal funding.

Subdivision 3. Duties of grantees.

Every public or private nonprofit agency which receives a grant to provide emergency shelter services to battered women and support services to battered women and domestic abuse victims shall comply with all rules of the commissioner related to the administration of the pilot programs.

Subdivision 4. [Repealed, 1991 c 272 s 20]

Subdivision 5. Classification of data collected by grantees.

Personal history information and other information collected, used or maintained by a grantee from which the identity or location of any victim of domestic abuse may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the grantee shall maintain the data in accordance with the provisions of chapter 13.

611A.33 Duties of Commissioner

The commissioner shall:

- (1) review applications for and award grants to a program pursuant to section 611A.32, subdivision 1, after considering the recommendation of the advisory council;
- (2) appoint the members of the advisory council created under section 611A.34, and provide consultative staff and other administrative services to the advisory council;
- (3) after considering the recommendation of the advisory council, appoint a program director to perform the duties set forth in section 611A.35;
- (4) design and implement a uniform method of collecting data on domestic abuse victims to be used to evaluate the programs funded under section 611A.32;
- (5) provide technical aid to applicants in the development of grant requests and provide technical aid to programs in meeting the data collection requirements established by the commissioner; and
- (6) adopt, under chapter 14, all rules necessary to implement the provisions of sections 611A.31 to 611A.36.

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611A.34 Advisory Council on Battered Women

Subdivision 1. Generally.

The commissioner shall appoint a 12-member advisory council to advise the commissioner on the implementation and continued operation of sections 611A.31 to 611A.36. The Advisory Council on Battered Women and Domestic Abuse shall also serve as a liaison between the commissioner and organizations that provide services to battered women and domestic abuse victims. Section 15.059 governs the filling of vacancies and removal of members of the advisory council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. Notwithstanding section 15.059, the council shall not expire. Council members shall not receive per diem, but shall receive expenses in the same manner and amount as state employees.

Subdivision 2. Membership.

Persons appointed shall be knowledgeable about and have experience or interest in issues concerning battered women and domestic abuse victims, including the need for effective advocacy services. The membership of the council shall broadly represent the interests of battered women and domestic abuse victims in Minnesota. No more than six of the members of the Advisory Council on Battered Women and Domestic Abuse may be representatives of community or governmental organizations that provide services to battered women and domestic abuse victims. One-half of the council's members shall reside in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver Counties, and one-half of the members shall reside in the non-metropolitan area. To the extent possible, non-metropolitan members must be representative of all non-metropolitan regions of the state.

Subdivision 3. Duties.

The advisory council shall:

- (1) advise the commissioner on all planning, development, data collection, rulemaking, funding, and evaluation of programs and services for battered women and domestic abuse victims that are funded under section 611A.32, other than matters of a purely administrative nature;
- (2) advise the commissioner on the adoption of rules under chapter 14 governing the award of grants to ensure that funded programs are consistent with section 611A.32, subdivision 1;
- (3) recommend to the commissioner the names of five applicants for the position of domestic abuse program director;
- (4) advise the commissioner on the rules adopted under chapter 14 pursuant to section 611A.33;
- (5) review applications received by the commissioner for grants under section 611A.32 and make recommendations on the awarding of grants;
- (6) advise the program director in the performance of duties in the administration and coordination of the programs funded under section 611A.32; and
- (7) advise the director of domestic violence and sexual assault prevention in matters related to preventing these occurrences of these types of violence.

Subdivision 4. Conflicts of interest.

A member of the advisory council shall be excluded from participating in review and recommendations concerning a grant application if the member:

- (1) serves or has served at any time during the past three years as an employee, volunteer, or governing board member of an organization whose application is being reviewed; or
- (2) has a financial interest in the funding of the applicant organization.

611A.345 Advisory Council Recommendations

The commissioner shall consider the advisory council's recommendations before awarding grants or adopting policies regarding the planning, development, data collection, rule-making, funding or evaluation of programs and services for battered women and domestic abuse victims funded under section 611A.32. Before taking action on matters related to programs and services for battered women and domestic abuse victims and their children, except day-to-day administrative operations, the commissioner shall notify the advisory council of the intended action. Notification of grant award decisions shall be given to the advisory council in time to allow the council to request reconsideration.

611A.35 Advisory Council on Battered Women and Domestic Abuse Program Director

The commissioner shall appoint a program director. In appointing the program director the commissioner shall give due consideration to the list of applicants submitted to the commissioner pursuant to section 611A.34, subdivision 3, clause (3). The program director shall administer the funds appropriated for sections 611A.31 to 611A.36, consult with

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and provide staff to the advisory council, and perform other duties related to battered women's and domestic abuse programs as the commissioner may assign. The program director shall serve at the pleasure of the commissioner in the unclassified service.

611A.36 Data Collection

Subdivision 1. Form prescribed.

The commissioner shall, by rule adopted under chapter 14, after considering the recommendations of the advisory council, prescribe a uniform form and method for the collection of data on domestic abuse victims. The method and form of data collection shall be designed to document the incidence of assault on domestic abuse victims as defined in section 611A.31, subdivision 2. All data collected by the commissioner pursuant to this section shall be summary data within the meaning of section 13.02, subdivision 19.

Subdivision 2. Mandatory data collection.

Every local law enforcement agency shall collect data related to domestic abuse victims in the form required by the commissioner. The data shall be collected and transmitted to the commissioner at such times as the commissioner shall, by rule, require.

Subdivision 3. Immunity from liability.

Any person participating in good faith and exercising due care in the collection and transmission of data pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of the person's action.

611A.361 General Crime Victims Advisory Council

Subdivision 1. Creation.

The commissioner of corrections shall appoint a 12-member Advisory Council on General Crime Victims to advise the commissioner on the implementation and continued operation of chapter 611A with respect to victims of crimes other than sexual assault and domestic abuse. The General Crime Victims Advisory Council shall also serve as a liaison between the commissioner and organizations that provide services to victims of crime, and as an advocate within the Department of Corrections for the rights of general crime victims.

Subdivision 2. Membership.

No more than six of the members of the General Crime Victims Advisory Council may be representatives of community or governmental organizations that provide services to crime victims. One-half of the council's members shall reside in

the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver Counties, and one-half of the members shall reside in the non-metropolitan area. To the extent possible, non-metropolitan members must be representative of all non-metropolitan regions of the state.

Subdivision 3. Terms; vacancies; expenses.

Section 15.059 governs the filling of vacancies and removal of members of the General Crime Victims Advisory Council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. The council expires on June 30, 2003. Council members shall receive expense reimbursement as specified in section 15.059.

Subdivision 4. [Repealed, 1991 c 272 s 20]

611A.362 [Renumbered 119A.20]

611A.363 [Renumbered 119A.21]

611A.364 [Renumbered 119A.22]

611A.365 [Renumbered 119A.23]

Shelter Facility Per Diem Payments

611A.37 Definitions

Subdivision 1. Scope.

For purposes of sections 611A.371 to 611A.375, the terms defined have the meanings given them unless otherwise provided or indicated by the context.

Subdivision 2. Director.

"Director" means the director of the Minnesota Center for Crime Victim Services or a designee.

Subdivision 3. Center.

"Center" means the Minnesota Center for Crime Victim Services.

Subdivision 4. Shelter facility.

"Shelter facility" means a secure crisis shelter, housing network, safe home, or other facility operated by a nonprofit organization and designated by the center for the purpose of providing food, lodging, safety, and 24-hour coverage for battered women and their children.

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Subdivision 5. Designated shelter facility.

“Designated shelter facility” means a facility that has applied to, and been approved by, the center to provide shelter and services to battered women and their children.

Subdivision 6. MS 2002 [Repealed, 2002 c 220 art 7 s 33]

Subdivision 7. MS 2002 [Repealed, 2002 c 220 art 7 s 33]

Subdivision 8. Battered woman.

“Battered woman” has the meaning given in section 611A.31, subdivision 2.

611A.371 Program Operation

Subdivision 1. Purpose.

The purpose of the grant program is to provide reimbursement in a timely, efficient manner to local programs for the reasonable and necessary costs of providing battered women and their children with food, lodging, and safety. Grant funding may not be used for other purposes.

Subdivision 2. Nondiscrimination.

Designated shelter facilities are prohibited from discriminating against a battered woman or her children on the basis of race, color, creed, religion, national origin, marital status, status with regard to public assistance, disability, or sexual orientation.

Subdivision 3. Data.

Personal history information collected, used, or maintained by a designated shelter facility from which the identity or location of any battered woman may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the facility shall maintain the data in accordance with the provisions of chapter 13.

611A.372 Duties of Director

In addition to any other duties imposed by law, the director, with the approval of the commissioner of public safety, shall:

- (1) supervise the administration of grant payments to designated shelter facilities;
- (2) collect data on shelter facilities;
- (3) conduct an annual evaluation of the grant program;
- (4) report to the governor and the legislature on the need for emergency secure shelter;
- (5) develop an application process for shelter facilities to follow in seeking reimbursement under the grant program; and

- (6) adopt rules to implement and administer sections 611A.37 to 611A.375.

611A.373 Payments

Subdivision 1. Payment.

Payments to designated shelter facilities must be in the form of a grant. Designated shelter facilities may submit requests for payment monthly based on their expenses. The process for the submission of payments and for the submission of requests may be established by the director. Upon approval of the request for payment by the center, payments shall be made directly to designated shelter facilities from grant funds on behalf of women and their children who reside in the shelter facility. Payments made to a designated shelter facility must not exceed the grant amount for that facility unless approved by the director. These payments must not affect the eligibility of individuals who reside in shelter facilities for public assistance benefits, except when required by federal law or regulation.

Subdivision 2. Reserve grant amount.

The center shall calculate the grant amount for each designated shelter facility. This calculation may be based upon program type, average occupancy rates, and licensed capacity limits. The total of all grant amounts shall not exceed the legislative appropriation.

Subdivision 3. Accountability.

Shelter facilities must comply with reporting requirements and any other measures imposed by the Minnesota Center for Crime Victim Services to improve accountability and program outcomes including, but not limited to, information on all restricted or unrestricted fund balances.

611A.375 MS 2002 [Repealed, 2002 c 220 art 7 s 33]

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Crime Victim Crisis Center

611A.41 Crime Victim Crisis Center

Subdivision 1. Center.

For the purposes of sections 611A.41 to 611A.44, “center” means a crime victim crisis center providing services to victims of crime.

Subdivision 2. Operational centers.

The commissioner of corrections, not later than January 1, 1978, shall establish at least two operational centers. The commissioner of corrections may contract with a public or private agency for the purposes of planning, implementing and evaluating the centers established herein.

611A.42 [Repealed, 1996 c 310 s 1]

611A.43 Functions

The centers shall:

- (1) provide direct crisis intervention to crime victims;
- (2) provide transportation for crime victims to assist them in obtaining necessary emergency services;
- (3) investigate the availability of insurance or other financial resources available to the crime victims;
- (4) refer crime victims to public or private agencies providing existing needed services;
- (5) encourage the development of services which are not already being provided by existing agencies;
- (6) coordinate the services which are already being provided by various agencies;
- (7) facilitate the general education of crime victims about the criminal justice process;
- (8) educate the public as to program availability;
- (9) encourage educational programs which will serve to reduce victimization and which will diminish the extent of trauma where victimization occurs; and
- (10) provide other appropriate services.

611A.44 [Repealed, 1996 c 310 s 1]

611A.46 Classification of Data

- (a) Personal history information and other information collected, used, and maintained by a Minnesota Center for Crime Victim Services grantee from which the identity and location of any crime victim may be determined are private data on individuals as defined in section 13.02, subdivision 12, and the grantee shall maintain the data in accordance with the provisions of chapter 13.
- (b) Personal history data and other information collected, used, and maintained by the Minnesota Center for Crime Victim Services from which the identity and location of any victim may be determined are private data on individuals as defined in section 13.02, subdivision 12.
- (c) Internal auditing data shall be classified as provided by section 13.392.

Crime Victims Reparations

611A.51 Title

Sections 611A.51 to 611A.68 shall be known as the Minnesota Crime Victims Reparations Act.

611A.52 Definitions

Subdivision 1. Terms.

For the purposes of sections 611A.51 to 611A.68 the following terms shall have the meanings given them.

Subdivision 2. Accomplice.

“Accomplice” means any person who would be held criminally liable for the crime of another pursuant to section 609.05.

Subdivision 3. Board.

“Board” means the crime victims reparations board established by section 611A.55.

Subdivision 4. Claimant.

“Claimant” means a person entitled to apply for reparations pursuant to sections 611A.51 to 611A.68.

Subdivision 5. Collateral source.

“Collateral source” means a source of benefits or advantages for economic loss otherwise reparable under sections 611A.51 to 611A.68 which the victim or claimant has received, or which is readily available to the victim, from:

- (1) the offender;

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- (2) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 611A.51 to 611A.68;
- (3) Social Security, Medicare, and Medicaid;
- (4) state required temporary nonoccupational disability insurance;
- (5) workers' compensation;
- (6) wage continuation programs of any employer;
- (7) proceeds of a contract of insurance payable to the victim for economic loss sustained because of the crime;
- (8) a contract providing prepaid hospital and other health care services, or benefits for disability;
- (9) any private source as a voluntary donation or gift; or
- (10) proceeds of a lawsuit brought as a result of the crime. The term does not include a life insurance contract.

Subdivision 6. Crime.

- (a) "Crime" means conduct that:
 - (1) occurs or is attempted anywhere within the geographical boundaries of this state, including Indian reservations and other trust lands;
 - (2) poses a substantial threat of personal injury or death; and
 - (3) is included within the definition of "crime" in section 609.02, subdivision 1, or would be included within that definition but for the fact that (i) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or (ii) the act was alleged or found to have been committed by a juvenile.
- (b) A crime occurs whether or not any person is prosecuted or convicted but the conviction of a person whose acts give rise to the claim is conclusive evidence that a crime was committed unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or rehearing has been ordered.
- (c) "Crime" does not include an act involving the operation of a motor vehicle, aircraft, or watercraft that results in injury or death, except that a crime includes any of the following:
 - (1) injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or watercraft;

- (2) injury or death caused by a driver in violation of section 169.09, subdivision 1; 169A.20; or 609.21; and
 - (3) injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which the driver knowingly and willingly participated.
- (d) Notwithstanding paragraph (a), "crime" includes an act of international terrorism as defined in United States Code, title 18, section 2331, committed outside of the United States against a resident of this state.

Subdivision 7. Dependent.

"Dependent" means any person who was dependent upon a deceased victim for support at the time of the crime.

Subdivision 8. Economic loss.

- (a) "Economic loss" means actual economic detriment incurred as a direct result of injury or death.
- (b) In the case of injury the term is limited to:
 - (1) reasonable expenses incurred for necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations, including ambulance services, drugs, appliances, and prosthetic devices;
 - (2) reasonable expenses associated with recreational therapy where a claimant has suffered amputation of a limb;
 - (3) reasonable expenses incurred for psychological or psychiatric products, services, or accommodations, not to exceed an amount to be set by the board, where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim;
 - (4) loss of income that the victim would have earned had the victim not been injured;
 - (5) reasonable expenses incurred for substitute child care or household services to replace those the victim or claimant would have performed had the victim or the claimant's child not been injured. As used in this clause, "child care services" means services provided by facilities licensed under and in compliance with either Minnesota Rules, parts 9502.0315 to 9502.0445, or 9545.0510 to 9545.0670, or exempted from licensing requirements pursuant to section 245A.03. Licensed facilities must be paid at a rate not to exceed their standard rate of payment. Facilities exempted

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- from licensing requirements must be paid at a rate not to exceed \$3 an hour per child for daytime child care or \$4 an hour per child for evening child care;
- (6) reasonable expenses actually incurred to return a child who was a victim of a crime under section 609.25 or 609.26 to the child's parents or lawful custodian. These expenses are limited to transportation costs, meals, and lodging from the time the child was located until the child was returned home; and
- (7) the claimant's moving expenses, storage fees, and phone and utility installation fees, up to a maximum of \$1,000 per claim, if the move is necessary due to a reasonable fear of danger related to the crime for which the claim was filed.
- (c) In the case of death the term is limited to:
- (1) reasonable expenses actually incurred for funeral, burial, or cremation, not to exceed an amount to be determined by the board on the first day of each fiscal year;
 - (2) reasonable expenses for medical, chiropractic, hospital, rehabilitative, psychological and psychiatric services, products or accommodations which were incurred prior to the victim's death and for which the victim's survivors or estate are liable;
 - (3) loss of support, including contributions of money, products or goods, but excluding services which the victim would have supplied to dependents if the victim had lived; and
 - (4) reasonable expenses incurred for substitute child care and household services to replace those which the victim or claimant would have performed for the benefit of dependents if the victim or the claimant's child had lived. Claims for loss of support for minor children made under clause (3) must be paid for three years or until the child reaches 18 years old, whichever is the shorter period. After three years, if the child is younger than 18 years old a claim for loss of support may be resubmitted to the board, and the board staff shall evaluate the claim giving consideration to the child's financial need and to the availability of funds to the board. Claims for loss of support for a spouse made under clause
 - (5) shall also be reviewed at least once every three years. The board staff shall evaluate the claim giving consideration to the spouse's financial need and to the availability of funds to the board. Claims for substitute child care services made under clause (4) must be limited to the actual care that the deceased victim would have provided to enable surviving family members to pursue economic, educational, and other activities other than recreational activities.
- Subdivision 9. Injury.**
"Injury" means actual bodily harm including pregnancy and emotional trauma.
- Subdivision 10. Victim.**
"Victim" means a person who suffers personal injury or death as a direct result of:
- (1) a crime;
 - (2) the good faith effort of any person to prevent a crime; or
 - (3) the good faith effort of any person to apprehend a person suspected of engaging in a crime.
- 611A.53 Reparations Awards Prohibited**
- Subdivision 1. Generally.**
Except as provided in subdivisions 1a and 2, the following persons shall be entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met:
- (1) a victim who has incurred economic loss;
 - (2) a dependent who has incurred economic loss;
 - (3) the estate of a deceased victim if the estate has incurred economic loss;
 - (4) any other person who has incurred economic loss by purchasing any of the products, services, and accommodations described in section 611A.52, subdivision 8, for a victim;
 - (5) the guardian, guardian ad litem, conservator or authorized agent of any of these persons.
- Subdivision 1a. Providers; limitations.**
No hospital, medical organization, health care provider, or other entity that is not an individual may qualify for reparations under subdivision 1, clause (4). If a hospital, medical organization, health care provider, or other entity that is not an individual qualifies for reparations under subdivision 1, clause (5) because it is a guardian, guardian ad litem, conservator, or authorized agent, any reparations to which it is entitled must be made payable solely or jointly to the victim, if alive, or to the victim's estate or successors, if the victim is deceased.

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Subdivision 1b. Minnesota residents injured elsewhere.

- (a) A Minnesota resident who is the victim of a crime committed outside the geographical boundaries of this state but who otherwise meets the requirements of this section shall have the same rights under this chapter as if the crime had occurred within this state upon a showing that the state, territory, United States possession, country, or political subdivision of a country in which the crime occurred does not have a crime victim reparations law covering the resident's injury or death.
- (b) Notwithstanding paragraph (a), a Minnesota resident who is the victim of a crime involving international terrorism who otherwise meets the requirements of this section has the same rights under this chapter as if the crime had occurred within this state regardless of where the crime occurred or whether the jurisdiction has a crime victims' reparations law.

Subdivision 2. Limitations on awards.

No reparations shall be awarded to a claimant otherwise eligible if:

- (1) the crime was not reported to the police within 30 days of its occurrence or, if it could not reasonably have been reported within that period, within 30 days of the time when a report could reasonably have been made. A victim of criminal sexual conduct in the first, second, third, or fourth degree who does not report the crime within 30 days of its occurrence is deemed to have been unable to have reported it within that period;
- (2) the victim or claimant failed or refused to cooperate fully with the police and other law enforcement officials;
- (3) the victim or claimant was the offender or an accomplice of the offender or an award to the claimant would unjustly benefit the offender or an accomplice;
- (4) the victim or claimant was in the act of committing a crime at the time the injury occurred;
- (5) no claim was filed with the board within three years of victim's injury or death; except that
 - (i) if the claimant was unable to file a claim within that period, then the claim can be made within three years of the time when a claim could have been filed; and
 - (ii) if the victim's injury or death was not reasonably discoverable within three years of the injury or death, then the claim can be made within three years of the time when the injury or death is reasonably discoverable.

The following circumstances do not render a claimant unable to file a claim for the purposes of this clause:

- (A) lack of knowledge of the existence of the Minnesota Crime Victims Reparations Act,
 - (B) the failure of a law enforcement agency to provide information or assistance to a potential claimant under section 611A.66,
 - (C) the incompetency of the claimant if the claimant's affairs were being managed during that period by a guardian, guardian ad litem, conservator, authorized agent, or parent, or
 - (D) the fact that the claimant is not of the age of majority; or
- (6) the claim is less than \$50.

The limitations contained in clauses (1) and (6) do not apply to victims of child abuse. In those cases the three-year limitation period commences running with the report of the crime to the police.

611A.54 Amount of Reparations

Reparations shall equal economic loss except that:

- (1) reparations shall be reduced to the extent that economic loss is recouped from a collateral source or collateral sources. Where compensation is readily available to a claimant from a collateral source, the claimant must take reasonable steps to recoup from the collateral source before claiming reparations;
- (2) reparations shall be denied or reduced to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims; and
- (3) reparations paid to all claimants suffering economic loss as the result of the injury or death of any one victim shall not exceed \$50,000. No employer may deny an employee an award of benefits based on the employee's eligibility or potential eligibility for reparations.

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611A.55 Crime Victims Reparations Board

Subdivision 1. Creation of board.

There is created in the Department of Public Safety, for budgetary and administrative purposes, the Crime Victims Reparations Board, which shall consist of five members appointed by the commissioner of public safety and selected from among the membership of the Crime Victim and Witness Advisory Council created in section 611A.71. One of the members shall be designated as chair by the commissioner of public safety and serve as such at the commissioner's pleasure. At least one member shall be a medical or osteopathic physician licensed to practice in this state, and at least one member shall be a victim, as defined in section 611A.01.

Subdivision 2. Membership, terms and compensation.

The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575. Members of the board who are also members of the Crime Victim and Witness Advisory Council created in section 611A.71 shall not be compensated while performing duties for the advisory council.

Subdivision 3. Part-time service.

Members of the board shall serve part time.

611A.56 Powers and Duties of The Board

Subdivision 1. Duties.

In addition to carrying out any duties specified elsewhere in sections 611A.51 to 611A.68 or in other law, the board shall:

- (1) provide all claimants with an opportunity for hearing pursuant to chapter 14;
- (2) adopt rules to implement and administer sections 611A.51 to 611A.68, including rules governing the method of practice and procedure before the board, prescribing the manner in which applications for reparations shall be made, and providing for discovery proceedings;
- (3) publicize widely the availability of reparations and the method of making claims; and
- (4) prepare and transmit annually to the governor and the commissioner of public safety a report of its activities including the number of claims awarded, a brief description of the facts in each case, the amount of reparation awarded, and a statistical summary of claims and awards made and denied.

Subdivision 2. Powers.

In addition to exercising any powers specified elsewhere in sections 611A.51 to 611A.68 or other law, the board upon its own motion or the motion of a claimant or the attorney general may:

- (1) issue subpoenas for the appearance of witnesses and the production of books, records, and other documents;
- (2) administer oaths and affirmations and cause to be taken affidavits and depositions within and without this state;
- (3) take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge;
- (4) order a mental or physical examination of a victim or an autopsy of a deceased victim provided that notice is given to the person to be examined and that the claimant and the attorney general receive copies of any resulting report;
- (5) suspend or postpone the proceedings on a claim if a criminal prosecution arising out of the incident which is the basis of the claim has been commenced or is imminent;
- (6) request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to perform its duties under sections 611A.51 to 611A.68;
- (7) grant emergency reparations pending the final determination of a claim if it is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made; and
- (8) reconsider any decision granting or denying reparations or determining their amount.

611A.57 Determination of Claims

Subdivision 1. [Repealed, 1993 c 326 art 6 s 26]

Subdivision 2. Investigation.

The board staff shall examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of a claim to the extent that an investigation is necessary.

Subdivision 3. Claim decision.

The board executive director may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support of it and the report of the investigation of such claim. If unable to decide the claim upon the basis of the papers and any report of investigation, the board executive director shall discuss the matter with other members of the board present at a board meeting. After discussion the board shall vote on whether

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to grant or deny the claim or whether further investigation is necessary. A decision granting or denying the claim shall then be issued by the executive director.

Subdivision 4. Written decision.

The written decision granting or denying a claim shall be filed with the board, and a copy shall be provided to the claimant.

Subdivision 5. Reconsideration.

The claimant may, within 30 days after receiving the decision of the board, apply for reconsideration before the entire board. Upon request for reconsideration, the board shall reexamine all information filed by the claimant, including any new information the claimant provides, and all information obtained by investigation. The board may also conduct additional examination into the validity of the claim. Upon reconsideration, the board may affirm, modify, or reverse the prior ruling. A claimant denied reparations upon reconsideration is entitled to a contested case hearing within the meaning of chapter 14.

Subdivision 6. Data.

Claims for reparations and supporting documents and reports are investigative data and subject to the provisions of section 13.39 until the claim is paid, denied, withdrawn, or abandoned. Following the payment, denial, withdrawal, or abandonment of a claim, the claim and supporting documents and reports are private data on individuals as defined in section 13.02, subdivision 12 ; provided that the board may forward any reparations claim forms, supporting documents, and reports to local law enforcement authorities for purposes of implementing section 1A.67.

611A.58 Attorney's Fees; Limitation for Representation Before Board

The board may limit the fee charged by any attorney for representing a claimant before the board.

611A.59 [Repealed, 1987 c 244 s 8]

611A.60 Reparations; How Paid

Reparations may be awarded in a lump sum or in installments in the discretion of the board. The amount of any emergency award shall be deducted from the final award, if a lump sum, or prorated over a period of time if the final award is made in installments. Reparations are exempt from execution or attachment except by persons who have supplied services, products

or accommodations to the victim as a result of the injury or death which is the basis of the claim. The board, in its discretion may order that all or part of the reparations awarded be paid directly to these suppliers.

611A.61 Subrogation

Subdivision 1. Subrogation rights of state.

The state shall be subrogated, to the extent of reparations awarded, to all the claimant's rights to recover benefits or advantages for economic loss from a source which is or, if readily available to the victim or claimant would be, a collateral source. Nothing in this section shall limit the claimant's right to bring a cause of action to recover for other damages.

Subdivision 2. Duty of claimant to assist.

A claimant who receives reparations must agree to assist the state in pursuing any subrogation rights arising out of the claim. The board may require a claimant to agree to represent the state's subrogation interests if the claimant brings a cause of action for damages arising out of the crime or occurrence for which the board has awarded reparations. An attorney who represents the state's subrogation interests pursuant to the client's agreement with the board is entitled to reasonable attorney's fees not to exceed one-third of the amount recovered on behalf of the state.

Subdivision 3. [Repealed, 1995 c 226 art 7 s 26]

611A.612 Crime Victims Account

A crime victim account is established as a special account in the state treasury. Amounts collected by the state under section 611A.61, paid to the Crime Victims Reparations Board under section 611A.04, subdivision 1a, or amounts deposited by the court under section 611A.04, subdivision 5 , shall be credited to this account. Money credited to this account is annually appropriated to the Department of Public Safety for use for crime victim reparations under sections 611A.51 to 611A.67.

611A.62 Medical Privilege

There is no privilege as to communication or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under sections 611A.51 to 611A.56 in which that condition is an issue. Nothing contained in this section shall be interpreted to abridge the attorney-client privilege.

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611A.63 Enforcement of Board's Orders

If a person refuses to comply with an order of the board or asserts a privilege to withhold or suppress evidence relevant to a claim, the board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the board may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a mental or physical examination.

611A.64 Department of Corrections; Restitution

The Department of Corrections may, as a means of assisting in the rehabilitation of persons committed to their care, establish programs and procedures whereby such persons may contribute toward restitution of those persons injured as a consequence of their criminal acts.

611A.65 Use of Record of Claim; Evidence

Neither a record of the proceedings on a claim, a decision of the board, nor the fact that an award has been made or denied shall be admissible as evidence in any criminal or civil action against the alleged offender, except an action by the state on its subrogation claim.

611A.66 Law Enforcement Agencies; Duty to Inform Victims of Right to File Claim

All law enforcement agencies investigating crimes shall provide victims with notice of their right to apply for reparations with the telephone number to call to request an application form. Law enforcement agencies shall assist the board in performing its duties under sections 611A.51 to 611A.68. Law enforcement agencies within ten days after receiving a request from the board shall supply the board with requested reports, notwithstanding any provisions to the contrary in chapter 13, and including reports otherwise maintained as confidential or not open to inspection under section 260B.171 or 260C.171. All data released to the board retains the data classification that it had in the possession of the law enforcement agency.

611A.67 Fraudulent Claims; Penalty

Any person who knowingly makes a false claim under sections 611A.51 to 611A.68 is guilty of a gross misdemeanor.

611A.675 Fund For Emergency Needs of Crime Victims

Subdivision 1. Grants authorized.

The Crime Victim and Witness Advisory Council shall make grants to prosecutors and victim assistance programs for the purpose of providing emergency assistance to victims. As used in this section, "emergency assistance" includes but is not limited to:

- (1) replacement of necessary property that was lost, damaged, or stolen as a result of the crime;
- (2) purchase and installation of necessary home security devices;
- (3) transportation to locations related to the victim's needs as a victim, such as medical facilities and facilities of the criminal justice system;
- (4) cleanup of the crime scene; and
- (5) reimbursement for reasonable travel and living expenses the victim incurred to attend court proceedings that were held at a location other than the place where the crime occurred due to a change of venue.

Subdivision 2. Application for grants.

A city or county attorney's office or victim assistance program may apply to the council for a grant for any of the purposes described in subdivision 1 or for any other emergency assistance purpose approved by the council. The application must be on forms and pursuant to procedures developed by the council. The application must describe the type or types of intended emergency assistance, estimate the amount of money required, and include any other information deemed necessary by the council.

Subdivision 3. Reporting by local agencies required.

A city or county attorney's office or victim assistance program that receives a grant under this section shall file an annual report with the council itemizing the expenditures made during the preceding year, the purpose of those expenditures, and the ultimate disposition, if any, of each assisted victim's criminal case.

Subdivision 4. Report to legislature.

On or before February 1, 1999, the council shall report to the chairs of the Senate crime prevention and House of Representatives judiciary committees on the implementation, use, and administration of the grant program created under this section.

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611A.68 Limiting Commercial Exploitation of Crimes; Payment of Victims

Subdivision 1. Definition.

For purposes of this section, the following terms have the meanings given them in this subdivision.

- (a) “Contract” means an agreement regarding, in whole or in part,
 - (1) the reenactment of an offender’s crime by way of a movie, book, newspaper or magazine article, radio or television presentation, or live or recorded entertainment of any kind, or
 - (2) the expression of the offender’s thoughts, feelings, opinions, or tions about the crime.
- (b) “Crime” means an offense which is a felony under the laws of Minnesota or that would have been a felony if committed in Minnesota, and includes an offense committed or attempted on an Indian reservation or other trust land.
- (c) “Offender” means a person convicted of a crime or found not guilty of a crime by reason of insanity.
- (d) “Person” includes persons, corporations, partnerships, and other legal entities.

Subdivision 2. [Repealed, 1988 c 638 s 17]

Subdivision 2a. Notice and payment of proceeds to board required.

A person that enters into a contract with an offender convicted in this state, and a person that enters into a contract in this state with an offender convicted in this state or elsewhere within the United States, must comply with this section if the person enters into the contract during the ten years after the offender is convicted of a crime or found not guilty by reason of insanity. If an offender is imprisoned or committed to an institution following the conviction or finding of not guilty by reason of insanity, the ten-year period begins on the date of the offender’s release. A person subject to this section must notify the Crime Victims Reparations Board of the existence of the contract immediately upon its formation, and pay over to the board money owed to the offender or the offender’s representatives by virtue of the contract according to the following proportions:

- (1) if the crime occurred in this state, the person shall pay to the board 100 percent of the money owed under the contract;
- (2) if the crime occurred in another jurisdiction having a law applicable to the contract which is substantially similar to this section, this section does not apply, and the person

must not pay to the board any of the money owed under the contract; and

- (3) in all other cases, the person shall pay to the board that percentage of money owed under the contract which can fairly be attributed to commerce in this state with respect to the subject matter of the contract.

Subdivision 3. Victim notification.

When the board receives a payment pursuant to this section, it shall attempt to notify any known victims of the crime and shall publish a notice of that fact in a newspaper having general circulation in the county where the crime was committed. The expenses of notification shall be paid from the amount received for that case.

Subdivision 4. Deductions.

When the board has made reparations payments to or on behalf of a victim of the offender’s crime pursuant to sections 611A.51 to 611A.68, it shall deduct the amount of the reparations award from any payment received under this section by virtue of the offender’s contract unless the board has already been reimbursed for the reparations award from another collateral source.

Subdivision 4a. Offender’s minor dependent claims.

Immediately after money is deposited with the board under this section, the board may allocate up to ten percent of any money remaining after a deduction is made under subdivision 4 for the benefit of the offender’s dependent minor children. The board shall then retain the funds allocated until a claim is made by the dependent minor children or their representative. Upon receiving a claim, the board shall disburse the allocated funds to the dependent minor children if it is shown by clear and convincing evidence that the funds will not be used in a way that benefits the offender.

Subdivision 4b. Claims by victims of offender’s crime.

A victim of a crime committed by the offender and the estate of a deceased victim of a crime committed by the offender may submit the following claims for reparations and damages to the board to be paid from money received by virtue of the offender’s contract:

- (1) claims for reparations to which the victim is entitled under sections 611A.51 to 611A.68 and for which the victim has not yet received an award from the board;
- (2) claims for reparations to which the victim would have been entitled under sections 611A.51 to 611A.68, but for the \$50,000 maximum limit contained in section 611A.54, clause (3); and

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- (3) claims for other uncompensated damages suffered by the victim as a result of the offender's crime including, but not limited to, damages for pain and suffering. The victim must file the claim within five years of the date on which the board received payment under this section. The board shall determine the victim's claim in accordance with the procedures contained in sections 611A.57 to 611A.63. An award made by the board under this subdivision must be paid from the money received by virtue of the offender's contract that remains after a deduction or allocation, if any, has been made under subdivision 4 or 4a.

Subdivision 4c. Claims by other crime victims.

The board may use money received by virtue of an offender's contract for the purpose of paying reparations awarded to victims of other crimes pursuant to sections 611A.51 to 611A.68 under the following circumstances:

- (1) money remain after deductions and allocations have been made under subdivisions 4 and 4a, and claims have been paid under subdivision 4b; or
- (2) no claim is filed under subdivision 4b within five years of the date on which the board received payment under this section. None of this money may be used for purposes other than the payment of reparations.

Subdivision 5. [Repealed, 1988 c 638 s 17]

Subdivision 6. Payments for costs of defense.

Notwithstanding any other provision of this section, the board shall make payments to an offender from the account of amounts received with reference to that offender upon the order of a court of competent jurisdiction after a showing by that offender that the money shall be used for the reasonable costs of defense in the appeal of a criminal conviction or in proceedings pursuant to this section.

Subdivision 7. Deposit of money in state treasury.

All money received by the board pursuant to this section shall be deposited in the state treasury, credited to a special account, and are appropriated to the board for the purposes of this section. Money in the special account may be invested pursuant to section 11A.25. When so invested, any interest or profit shall accrue to, and any loss be borne by, the special account. The board shall allocate money in the special account to each case pursuant to this section.

Subdivision 8. Penalty.

- (a) A person who willfully fails to notify the board of the existence of a contract as required by this section is guilty of a gross misdemeanor.

- (b) Except as otherwise provided in paragraph (a), any person or offender who takes any action, whether by way of execution of a power of attorney, creation of corporate or trust entities or otherwise, to defeat the purpose of this section is guilty of a misdemeanor.

Minnesota Crime Victim and Witness Advisory Council Act

611A.70 MS 2004 [Expired]

611A.71 MS 2004 [Expired]

Crime Victim Ombudsman Act

611A.72 Citation

Sections 611A.72 to 611A.74 may be cited as the "Crime Victim Oversight Act."

611A.73 Definitions

Subdivision 1. Definitions.

The definitions in this section apply to this section and section 611A.74.

Subdivision 2. Appropriate authority.

"Appropriate authority" includes anyone who is the subject of a complaint under sections 611A.72 to 611A.74 to the commissioner or anyone within the agency who is in a supervisory position with regard to one who is the subject of a complaint under sections 611A.72 to 611A.74.

Subdivision 3. Elements of the criminal justice system.

"Elements of the criminal justice system" refers to prosecuting attorneys and members of their staff; peace officers; probation and corrections officers; city, state, and county officials involved in the criminal justice system; and does not include the judiciary.

Subdivision 4. Victim.

"Victim" refers to anyone or the next of kin of anyone who has been or purports to have been subjected to a criminal act, whether a felony, a gross misdemeanor, or misdemeanor.

Subdivision 5. Victim assistance program.

"Victim assistance program" refers to any entity which provides or claims to provide services and assistance to victims on a regular, ongoing basis.

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Subdivision 6. Commissioner.

“Commissioner” means the commissioner of public safety.

611A.74 Crime Victim Ombudsman; Creation

Subdivision 1. Authority under this act.

The commissioner shall have the authority under sections 611A.72 to 611A.74 to investigate decisions, acts, and other matters of the criminal justice system so as to promote the highest attainable standards of competence, efficiency, and justice for crime victims in the criminal justice system.

Subdivision 1a. [Repealed, 2002 c 220 art 7 s 33]

Subdivision 2. Duties.

The commissioner may investigate complaints concerning possible violation of the rights of crime victims or witnesses provided under this chapter, the delivery of victim services by victim assistance programs, the administration of the crime victims’ reparations act, and other complaints of mistreatment by elements of the criminal justice system or victim assistance programs. The commissioner shall act as a liaison, when the commissioner deems necessary, between agencies, either in the criminal justice system or in victim assistance programs, and victims and witnesses. The commissioner may be concerned with activities that strengthen procedures and practices which lessen the risk that objectionable administrative acts will occur. The commissioner must answer questions concerning the criminal justice system and victim services put to the commissioner by victims and witnesses in accordance with the commissioner’s knowledge of the facts or law, unless the information is otherwise restricted. The commissioner shall establish a procedure for referral to the crime victim crisis centers, the crime victims reparations board, and other victim assistance programs when services are requested by crime victims or deemed necessary by the commissioner. The commissioner’s files are confidential data as defined in section 13.02, subdivision 3, during the course of an investigation or while the files are active. Upon completion of the investigation or when the files are placed on inactive status, they are private data on individuals as defined in section 13.02, subdivision 12.

Subdivision 3. Powers.

The commissioner has those powers necessary to carry out the duties set out in subdivision 2, including:

- (a) The commissioner may investigate, with or without a complaint, any action of an element of the criminal justice system or a victim assistance program included in subdivision 2.

- (b) The commissioner may request and shall be given access to information and assistance the commissioner considers necessary for the discharge of responsibilities. The commissioner may inspect, examine, and be provided copies of records and documents of all elements of the criminal justice system and victim assistance programs. The commissioner may request and shall be given access to police reports pertaining to juveniles and juvenile delinquency petitions, notwithstanding section 260B.171 or 260C.171. Any information received by the commissioner retains its data classification under chapter 13 while in the commissioner’s possession. Juvenile records obtained under this subdivision may not be released to any person.
- (c) The commissioner may prescribe the methods by which complaints are to be made, received, and acted upon; may determine the scope and manner of investigations to be made; and subject to the requirements of sections 611A.72 to 611A.74, may determine the form, frequency, and distribution of commissioner conclusions, recommendations, and proposals.
- (d) After completing investigation of a complaint, the commissioner shall inform in writing the complainant, the investigated person or entity, and other appropriate authorities of the action taken. If the complaint involved the conduct of an element of the criminal justice system in relation to a criminal or civil proceeding, the commissioner’s findings shall be forwarded to the court in which the proceeding occurred.
- (e) Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the commissioner shall consult with that agency or person.

Subdivision 4. No compelled testimony.

Neither the commissioner nor any member of the commissioner’s staff may be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to matters involving the exercise of official duties under sections 611A.72 to 611A.74 except as may be necessary to enforce the provisions of this section.

Subdivision 5. Recommendations.

- (a) On finding a complaint valid after duly considering the complaint and whatever material the commissioner deems pertinent, the commissioner may recommend action to the appropriate authority.

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- (b) If the commissioner makes a recommendation to an appropriate authority for action, the authority shall, within a reasonable time period, but not more than 30 days, inform the commissioner about the action taken or the reasons for not complying with the recommendation.
- (c) The commissioner may publish conclusions and suggestions by transmitting them to the governor, the legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency, the commissioner shall include any statement the administrative agency may have made to the commissioner by way of explaining its past difficulties or its present rejection of the commissioner's proposals.

Subdivision 6. Reports.

In addition to whatever reports the commissioner may make from time to time, the commissioner shall biennially report to the legislature and to the governor concerning the exercise of the commissioner's functions under sections 611A.72 to 611A.74 during the preceding biennium. The biennial report is due on or before the beginning of the legislative session following the end of the biennium.

611A.75 [Repealed, 1997 c 7 art 2 s 67]

Victim Services Telephone Line

611A.76 Crime Victim Services Telephone Line

The commissioner of public safety shall operate at least one statewide toll-free 24-hour telephone line for the purpose of providing crime victims with referrals for victim services and resources.

Mediation Programs

611A.77 Mediation Programs for Crime Victims and Offenders

Subdivision 1. Grants.

The executive director of the center for crime victim services shall award grants to nonprofit organizations to create or expand mediation programs for crime victims and offenders. For purposes of this section, "offender" means an adult charged with a nonviolent crime or a juvenile who has been referred to

a mediation program before or after a petition for delinquency has been filed in connection with a nonviolent offense, and "nonviolent crime" and "nonviolent offense" exclude any offense in which the victim is a family or household member, as defined in section 518B.01, subdivision 2.

Subdivision 2. Programs.

The executive director of the center for crime victim services shall award grants to further the following goals:

- (1) to expand existing mediation programs for crime victims and juvenile offenders to also include adult offenders;
- (2) to initiate victim-offender mediation programs in areas that have no victim-offender mediation programs;
- (3) to expand the opportunities for crime victims to be involved in the criminal justice process;
- (4) to evaluate the effectiveness of victim-offender mediation programs in reducing recidivism and encouraging the payment of court-ordered restitution; and
- (5) to evaluate the satisfaction of victims who participate in the mediation programs.

Subdivision 3. Mediator qualifications.

The executive director of the center for crime victim services shall establish criteria to ensure that mediators participating in the program are qualified.

Subdivision 4. Match required.

A nonprofit organization may not receive a grant under this section unless the group has raised a matching amount from other sources.

Restorative Justice Programs

611A.775 Restorative Justice Programs

A community-based organization, in collaboration with a local governmental unit, may establish a restorative justice program. A restorative justice program is a program that provides forums where certain individuals charged with or petitioned for having committed an offense meet with the victim, if appropriate; the victim's family members or other supportive persons, if appropriate; the offender's family members or other supportive persons, if appropriate; a law enforcement official or prosecutor when appropriate; other criminal justice system professionals when appropriate; and members of the community, in order to:

- (1) discuss the impact of the offense on the victim and the community;

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- (2) provide support to the victim and methods for reintegrating the victim into community life;
 - (3) assign an appropriate sanction to the offender; and
 - (4) provide methods for reintegrating the offender into community life.
- (1) \$500; or
 - (2) actual general and special damages, including damages for emotional distress. A plaintiff also may obtain punitive damages as provided in sections 549.191 and 549.20 or an injunction or other appropriate relief.

Crime Victim Services Roundtable

611A.78 Crime Victim Services Roundtable

Subdivision 1. Membership.

A crime victim services roundtable is created and shall be convened by the commissioner of administration or a designee. The roundtable membership shall include representatives from the following: the departments of Health; Human Services; Corrections; and Public Safety; the Supreme Court; the Minnesota Planning Agency; the Office of the Attorney General; the Office of Crime Victim Ombudsman; the County Attorneys Association; and the Office of Dispute Resolution. The roundtable membership shall also include one person representing the four councils designated in sections 3.922, 3.9223, 3.9225, and 3.9226.

Subdivision 2. Duties.

The crime victim services roundtable shall meet at least four times each year to discuss issues concerning victim services, including, but not limited to, methods for improving the delivery of and securing increased funding for victim services. The roundtable shall present to the legislature any initiatives, including those for increasing efficiency in the administration of services, which require legislative action.

Civil Damages for Bias Offenses

611A.79 Civil Damages for Bias Offenses

Subdivision 1. Definition.

For purposes of this section, “bias offense” means conduct that would constitute a crime and was committed because of the victim’s or another’s actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin.

Subdivision 2. Cause of action; damages and fees injunction.

A person who is damaged by a bias offense has a civil cause of action against the person who committed the offense. The plaintiff is entitled to recover the greater of:

Subdivision 3. Relation to criminal proceeding; burden of proof.

A person may bring an action under this section regardless of the existence or outcome of criminal proceedings involving the bias offense that is the basis for the action. The burden of proof in an action under this section is preponderance of the evidence.

Subdivision 4. Parental liability.

Section 540.18 applies to actions under this section, except that:

- (1) the parent or guardian is liable for all types of damages awarded under this section in an amount not exceeding \$5,000; and
- (2) the parent or guardian is not liable if the parent or guardian made reasonable efforts to exercise control over the minor’s behavior.

Subdivision 5. Trial; limitation period.

- (a) The right to trial by jury is preserved in an action brought under this section.
- (b) An action under this section must be commenced not later than six years after the cause of action arises.

Subdivision 6. Other rights preserved.

The remedies under this section do not affect any rights or remedies of the plaintiff under other law.

Actions Involving Coercion into Prostitution

611A.80 Definitions

Subdivision 1. General.

The definitions in this section apply to sections 611A.80 to 611A.88.

Subdivision 2. Coerce.

“Coerce” means to use or threaten to use any form of domination, restraint, or control for the purpose of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution. Coercion exists if the totality of the circumstances establish the existence of domination,

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restraint, or control that would have the reasonably foreseeable effect of causing an individual to engage in or remain in prostitution or to relinquish earnings from prostitution. Evidence of coercion may include, but is not limited to:

- (1) physical force or actual or implied threats of physical force;
- (2) physical or mental torture;
- (3) implicitly or explicitly leading an individual to believe that the individual will be protected from violence or arrest;
- (4) kidnapping;
- (5) defining the terms of an individual's employment or working conditions in a manner that can foreseeably lead to the individual's use in prostitution;
- (6) blackmail;
- (7) extortion or claims of indebtedness;
- (8) threat of legal complaint or report of delinquency;
- (9) threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise;
- (10) promise of legal benefit, such as posting bail, procuring an attorney, protecting from arrest, or promising unionization;
- (11) promise of financial rewards;
- (12) promise of marriage;
- (13) restraining speech or communication with others, such as exploiting a language difference, or interfering with the use of mail, telephone, or money;
- (14) isolating an individual from others;
- (15) exploiting a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency;
- (16) taking advantage of lack of intervention by child protection;
- (17) exploiting victimization by previous sexual abuse or battering;
- (18) exploiting pornographic performance;
- (19) interfering with opportunities for education or skills training;
- (20) destroying property;
- (21) restraining movement;
- (22) exploiting HIV status, particularly where the defendant's previous coercion led to the HIV exposure; or
- (23) exploiting needs for food, shelter, safety, affection, or intimate or marital relationships.

Subdivision 3. Promotes the prostitution of an individual.

"Promotes the prostitution of an individual" has the meaning given in section 609.321, subdivision 7.

Subdivision 4. Prostitution.

"Prostitution" has the meaning given in section 609.321, subdivision 9.

611A.81 Cause of Action for Coercion for Use in Prostitution

Subdivision 1. Cause of action created.

- (a) An individual has a cause of action against a person who:
 - (1) coerced the individual into prostitution;
 - (2) coerced the individual to remain in prostitution;
 - (3) used coercion to collect or receive any of the individual's earnings derived from prostitution; or
 - (4) hired, offered to hire, or agreed to hire the individual to engage in prostitution, knowing or having reason to believe that the individual was coerced into or coerced to remain in prostitution by another person. For purposes of clauses (1) and (2), money payment by a patron, as defined in section 609.321, subdivision 4, is not coercion under section 611A.80, subdivision 2, clause (5) or (11), or exploiting needs for food or shelter under section 611A.80, subdivision 2, clause (23). Clause (3) does not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual's earnings derived from prostitution.
- (b) An individual has a cause of action against a person who did the following while the individual was a minor:
 - (1) solicited or induced the individual to practice prostitution;
 - (2) promoted the prostitution of the individual;
 - (3) collected or received the individual's earnings derived from prostitution; or
 - (4) hired, offered to hire, or agreed to hire the individual to engage in prostitution. Mistake as to age is not a defense to an action under this paragraph.

Subdivision 2. Damages.

A person against whom a cause of action may be maintained under subdivision 1 is liable for the following damages that resulted from the plaintiff's being used in prostitution or to which the plaintiff's use in prostitution proximately contributed:

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- (1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and
- (2) damages for death as may be allowed under section 573.02, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

611A.82 Acts Not Defenses

None of the following shall alone or jointly be a sufficient defense to an action under section 611A.81:

- (1) the plaintiff consented to engage in acts of prostitution;
- (2) the plaintiff was paid or otherwise compensated for acts of prostitution;
- (3) the plaintiff engaged in acts of prostitution prior to any involvement with the defendant;
- (4) the plaintiff apparently initiated involvement with the defendant;
- (5) the plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant;
- (6) the defendant had not engaged in prior acts of prostitution with the plaintiff;
- (7) as a condition of employment, the defendant required the plaintiff to agree not to engage in prostitution; or
- (8) the defendant's place of business was posted with signs prohibiting prostitution or prostitution-related activities.

611A.83 Evidence

Subdivision 1. Use in other proceedings.

In the course of litigation under section 611A.81, any transaction about which a plaintiff testifies or produces evidence does not subject the plaintiff to criminal prosecution or any penalty or forfeiture. Any testimony or evidence, documentary or otherwise, or information directly or indirectly derived from that testimony or evidence that is given or produced by a plaintiff or a witness for a plaintiff may not be used against that person in any other investigation or proceeding, other than a criminal investigation or proceeding for perjury committed while giving the testimony or producing the evidence.

Subdivision 2. Convictions.

Evidence of convictions for prostitution or prostitution-related offenses is inadmissible in a proceeding brought under section 611A.81 for purposes of attacking the plaintiff's credibility. If the court admits evidence of prior convictions for purposes permitted under Minnesota Rules of Evidence, rule 404(b) with respect to motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, the fact finder may consider the evidence solely for those purposes and shall disregard details offered to prove any fact that is not relevant.

611A.84 Statute of Limitations

An action for damages under section 611A.81 must be commenced not later than six years after the cause of action arises, except that the running of the limitation period is suspended during the time that coercion as defined in section 611A.80 continues, or as otherwise provided by section 541.13 or 541.15.

611A.85 Other Remedies Preserved

Sections 611A.80 to 611A.88 do not affect the right of any person to bring an action or use any remedy available under other law, including common law, to recover damages arising out of the use of the individual in prostitution or the coercion incident to the individual being used in prostitution; nor do sections 611A.80 to 611A.88 limit or restrict the liability of any person under other law.

611A.86 Double Recovery Prohibited

A person who recovers damages under sections 611A.80 to 611A.88 may not recover the same costs or damages under any other law. A person who recovers damages under any other law may not recover for the same costs or damages under sections 611A.80 to 611A.88.

611A.87 Award of Costs

Upon motion of a prevailing party in an action under sections 611A.80 to 611A.88, the court may award costs, disbursements, and reasonable attorney fees and witness fees to the party.

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611A.88 No Avoidance of Liability

No person may avoid liability under sections 611A.80 to 611A.88 by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the plaintiff.

611A.90 Release of Videotapes of Child Abuse Victims

Subdivision 1. Definition.

For purposes of this section, “physical abuse” and “sexual abuse” have the meanings given in section 626.556, subdivision 2, except that abuse is not limited to acts by a person responsible for the child’s care or in a significant relationship with the child or position of authority.

Subdivision 2. Court order required.

- (a) A custodian of a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse may not release a copy of the videotape without a court order, notwithstanding that the subject has consented to the release of the videotape or that the release is authorized under law.
- (b) The court order may govern the purposes for which the videotape may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interests of the child.

Subdivision 3. Petition.

An individual subject of data, as defined in section 13.02, or a patient, as defined in section 144.296, who is seeking a copy of a videotape governed by this section may petition the district court in the county where the alleged abuse took place or where the custodian of the videotape resides for an order releasing a copy of the videotape under subdivision 2. Nothing in this section establishes a right to obtain access to a videotape by any other person nor limits a right of a person to obtain access if access is otherwise authorized by law or pursuant to discovery in a court proceeding.