

# MINNESOTA RESTITUTION WORKING GROUP

## REPORT TO THE LEGISLATURE

Office of Justice Programs  
Minnesota Department of Public Safety  
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## EXECUTIVE SUMMARY

In 2013, the Minnesota Legislature directed the Department of Public Safety (DPS) to convene a working group to study how restitution for victims in criminal cases is requested, ordered, and collected in Minnesota. The legislation creating the Restitution Working Group (RWG) arose from informal discussions among stakeholders with concerns about the current restitution process and the lack of information about the extent to which restitution is paid. Under the direction of the DPS Office of Justice Programs, representatives from all parts of the criminal justice system and victim support community engaged in an intensive examination of the restitution statutory framework, the practices of local and state agencies, and the experiences and perspectives of victims and practitioners. In addition, the State Court Administrator's Office (SCAO) conducted a comprehensive analysis of court data, providing much needed clarity on the payment of restitution in Minnesota.

The RWG's examination revealed that a patchwork of approaches to restitution exists across the state, with inconsistencies spanning all parts of the process, including steps to request restitution, types of restitution that might be ordered, the process and impact of "reserving" restitution, the establishment of payment plans, and the effort devoted to restitution collection. In addition, the statutory framework was uniformly regarded as cumbersome and confusing at best, and underutilized and disregarded at worst, prompting considerable discussion on ways to clarify and improve it. These inconsistencies in ordering, collecting, and enforcing restitution pose challenges for victims, offenders, and criminal justice system professionals.

The RWG legislation directed the SCAO to provide the RWG with summary data on restitution. Using a cohort model, the SCAO conducted a comprehensive analysis of court data, examining restitution amounts ordered and paid by case type and offense level, identifying the extent to which payment plans are established, and summarizing restitution data by county and judicial district. The SCAO analysis identifies factors that affect the likelihood of an offender paying restitution. Most importantly, the analysis reveals that for many victims, restitution is not just an empty promise.

While this result is encouraging, the SCAO's efforts also point to the usefulness of ongoing data review to uncover areas that require further attention, direct efforts for improvement, and prompt further analysis. The results demonstrate positive payment patterns in some types of cases, but they also reveal the need to find ways to improve payment rates in all cases. This corresponds with the predominant theme emerging from the RWG process of the importance of assessing whether nonpaying offenders truly lack the ability to pay and ensure that all offenders are paying restitution according to their ability.

In this nearly year-long process, the RWG crafted more than 40 recommendations aimed at (1) improving the clarity, consistency, and efficiency of the process, (2) ensuring that all victims are well informed and have the opportunity to make appropriate restitution requests, and (3) improving the likelihood of payment by offenders. These recommendations, outlined in Part 4 of the report, call for changes and refinements to all parts of the restitution process, improved information to both victims and offenders, and comprehensive training of criminal justice professionals and partners.

Most importantly, these overarching goals emerged as the group set out to identify ways to improve the restitution process:

- **Make restitution a priority:** Restitution should be regarded as a right of victims who have been harmed by a criminal offense, and the justice system should take steps to ensure that offenders pay restitution to the greatest extent possible.
- **Establish a clear, consistent process:** Strive for a measure of consistency and uniformity in restitution process and procedures across the state, with the end result that all victims have the same opportunity to be made whole.
- **Rely on data:** Continue the comprehensive examination of restitution data, and determine ways to make relevant information readily available to stakeholders in the system.
- **Devote resources:** Devote resources to the restitution process to make it more efficient and effective. Invest in technological strategies that can improve restitution processing and collection, track restitution payments, aid in ensuring that victims are a part of this process, and facilitate the evaluation of restitution collection efforts.
- **System oversight:** Establish an ongoing, collaborative group of stakeholders responsible for overseeing restitution on a statewide level, including review of new statutory provisions to ensure they have the desired effect, monitoring the restitution collection data, and promoting adoption of recommendations from the RWG.

The end result of the RWG process was a set of statutory and practice recommendations put forward by the RWG to stakeholder constituencies and the legislature for future implementation. To ensure that these recommendations are implemented, the RWG proposes the following:

- **Form a drafting committee:** An ad hoc drafting committee should be convened in 2015 to undertake the task of revising Minnesota Statutes section 611A.04 to incorporate statutory changes recommended by the RWG and improve the overall organization and clarity of the statute.
- **Distribute findings:** Publicize the findings of the RWG, and encourage the adoption of improved restitution practices by those involved in the process. Present the findings from the RWG to all key stakeholder groups.
- **Request legislative action:** The RWG requests that the Minnesota Legislature consider the comprehensive legislative proposal to be submitted in the 2016 session. Further, the RWG requests continued support from the Legislature for all efforts aimed at increasing the efficiency of the process, improving the likelihood of collecting restitution, and focusing efforts on those offenders with the ability to pay restitution.

## ACKNOWLEDGMENTS

The Restitution Working Group (RWG), convened by the Minnesota Department of Public Safety Office of Justice Programs, was made up of criminal justice professionals from all parts of the system who touch restitution in some way. They contributed considerable time over 10 months to review Minnesota's restitution process and explore ways to improve it. Their efforts were guided by steering committee members Shane Baker, Deb Dailey, Suzanne Elwell, Lesa Kramer, Kelly Moller, and Evonn Westcott.

Special thanks go to the Minnesota Judicial Branch State Court Administrator's Office for its extensive research on restitution (the results of which are presented in this report), its key participation on the RWG, and advice and guidance provided on the steering committee. Thanks also go to the RWG members who reviewed and provided essential feedback to this report.

The catalyst for a working group was the Minnesota Alliance on Crime and its initial efforts to start a constructive, statewide dialogue on restitution practices in Minnesota. Former executive director Kelly Moller was instrumental in the formation of the RWG and provided guidance and support throughout the RWG process. Considerable support throughout the process also came from Office of Justice Programs staff member Rebecca Kutty.

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## TABLE OF CONTENTS

<b>4</b>	<b>Part 1: BACKGROUND</b>	An overview of restitution and the statutory scheme, an explanation of the impetus for the formation of the RWG, and an overview of the RWG process
<b>11</b>	<b>Part 2: WHAT WE LEARNED</b>	A summary of the major issues and themes that emerged from the examination of restitution
<b>15</b>	<b>Part 3: DATA</b>	Results of an analysis of court restitution data by the State Court Administrator's Office
<b>37</b>	<b>Part 4: RECOMMENDATIONS</b>	A list of goals and recommendations spanning all parts and players in the restitution process
<b>51</b>	<b>Part 5: APPENDICES</b>	Statutory Authority Restitution Working Group members Steering Committee

## INTRODUCTION

Crime victims have the right to request that as part of a criminal sentence, the court order the offender to pay restitution to them for losses resulting from the crime. Restitution is the criminal justice system's key mechanism to compel offenders to repair the harm done to victims by their criminal acts.

Given the critical importance of restitution to victims, many states and systems have sought to improve their restitution process.<sup>1</sup> Minnesota has looked at restitution several times since the first comprehensive law was enacted in 1983. However, in recent years, interest in the issue has been renewed as the advocacy community heard the voices of frustrated victims who did not see their restitution realized. That situation led to the question of whether restitution represents an unfulfilled promise to victims.

A 2009 change in Minnesota law related to collection of court-ordered obligations altered the restitution landscape. As stakeholders began informal discussions across the state, it became clear that there were significant differences in how jurisdictions handled restitution, along with a significant absence of information about the extent to which restitution is collected.

Recognizing the central role restitution plays for victims and the concerns with the current process, legislation was passed to create a working group in 2013. The Restitution Working Group (RWG), comprised of stakeholders from all corners of the system, carefully studied and discussed the process of restitution at each phase, collected and reviewed information about restitution, and formulated a set of recommendations. This process identified both the challenges with the current system and encouraging indications about restitution payments.

This report describes the purpose and process of restitution, the major themes that emerged from the lengthy RWG review process, the comprehensive data analysis completed by the State Court Administrator's Office, and the recommendations the RWG is presenting to the Minnesota legislature aimed at making the process more efficient, consistent, and effective.

## PART 1 – BACKGROUND

### THE ROLE OF RESTITUTION

Restitution can begin to repair the harm to crime victims, compensating them for financial losses resulting from a crime.<sup>2</sup> Minnesota courts have recognized that the primary purpose of restitution is to restore crime victims to the same financial position they were in prior to the crime.<sup>3</sup> While restitution cannot solve all the problems a victim encounters, it does underscore the criminal justice system’s concern for victims responsiveness to their needs. In addition, restitution holds the offender accountable for damage done to the victim, placing the responsibility for harm correctly on the offender.<sup>4</sup>

Restitution is not intended to be punitive.<sup>5</sup> It requires an offender to face the consequences of criminal behavior, and the “offender who makes restitution takes concrete steps towards greater personal responsibility by engaging in prosocial, remedial activity.”<sup>6</sup> The United States Supreme Court has recognized the importance of restitution to the process of rehabilitating the defendant and deterring future criminal conduct, saying:

Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine.<sup>7</sup>

The Minnesota Supreme Court has likewise recognized “while restitution may have the dual purpose of rehabilitating the defendant and compensating the victim, the primary purpose is to compensate victims.”<sup>8</sup>

The possibility of receiving restitution may encourage more victims to report a crime<sup>9</sup> and potentially reduce the financial burden on the state. A victim who receives restitution is less likely to need government assistance (such as publicly funded medical assistance and social service programs or assistance through the Minnesota Crime Victim Reparations Board<sup>10</sup>) to pay for the financial impact caused by the crime.

Exposure to the criminal justice system in and of itself can increase victims’ psychological trauma in the aftermath of a crime,<sup>11</sup> and their perception that the system is minimizing their need for restitution while the defendant disregards a court order only adds to a victim’s feelings of helplessness. Both the victim and the greater public lose faith in the criminal justice system in these circumstances.

The benefits of restitution are lost if appropriate measures are not taken to collect from offenders and if offenders are not held accountable when they fail to make the ordered payments. The restorative, rehabilitative, deterrent, and other benefits of restitution make sound restitution practices essential in Minnesota.

### STATUTORY SCHEME IN MINNESOTA

The core restitution provisions can be found in Minnesota Statutes section 611A.04. A variety of other provisions related to sentencing and juvenile delinquency are included in other laws.<sup>12</sup> Numerous appellate

court decisions have interpreted these statutes.<sup>13</sup> The following serves as a general overview of the most relevant statutes related to requesting, ordering, and collecting restitution in Minnesota.

### ***Requesting Restitution:***

A victim of a crime has the right to receive restitution once an offender has been convicted of a crime or found delinquent.<sup>14</sup> A “victim” is defined as a natural person who incurs loss or harm as a result of a crime, and includes corporations and government entities. In addition, a “victim” for purposes of chapter 611A includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person.<sup>15</sup>

The court or its designee—usually the prosecutor’s office, but sometimes the probation office—obtains from the victim information determining the amount of restitution owed.<sup>16</sup> The restitution request 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, and funeral expenses.<sup>17</sup> Section 611A.04 describes the timeframe and manner for the victim’s request and distribution of that request to the prosecutor and offender.<sup>18</sup>

An offender has the right to challenge the restitution requested by the victim within a specific time frame after receiving a written request or after the sentencing or disposition in which the restitution is ordered.<sup>19</sup> The prosecutor has the burden of establishing the loss sustained by the victim and the appropriateness of a particular type of restitution.<sup>20</sup> If a restitution request is denied, the judge must state the reasons for the denial on the record.<sup>21</sup>

### ***Ordering Restitution:***

A court may impose restitution as part of the sentence for a felony, gross misdemeanor, or misdemeanor offense.<sup>22</sup> Restitution may be ordered in addition to imprisonment and/or a fine.<sup>23</sup> A court may also order restitution as part of the disposition in juvenile cases.<sup>24</sup> In addition to the primary restitution statute, section 611A.04, there are several other statutory provisions that specify restitution is to be ordered in cases involving specific crimes, such as identity theft and harm to a public safety dog.<sup>25</sup>

Section 611A.04 specifies that in deciding whether to order restitution, the court shall consider the victim’s economic loss and the income, resources, and obligations of the offender.<sup>26</sup> The court may not use an actual or prospective civil action involving the crime as a basis to deny a victim’s right to restitution.<sup>27</sup> The court shall grant or deny restitution or partial restitution and shall state its reasons for its decision.<sup>28</sup> The court or its designee shall also include in its restitution order a provision requiring a payment schedule or structure.<sup>29</sup> Payment is due on the date imposed unless the court otherwise establishes a due date or a payment plan.<sup>30</sup>

In some situations, the restitution order may be delayed. For example, the court may issue the order after the sentencing hearing if the full extent of the victim’s loss is unknown and the offender is on probation, is incarcerated, or is on supervised release.<sup>31</sup>

### ***Collecting Restitution:***

The offender makes restitution payments to the court administrator, who then disburses restitution to the victims.<sup>32</sup> If an offender fails to pay restitution or misses an installment when a payment plan for restitution

has been ordered, the restitution amount may be referred to “collections,”<sup>33</sup> which is handled by the Minnesota Department of Revenue (DOR).<sup>34</sup> An offender can contest such a referral.<sup>35</sup> The referral to collections does not prohibit the court from imposing other sanctions on an offender who violates probation by not paying restitution.<sup>36</sup>

If the payment of restitution is a condition of probation and the offender fails to pay the restitution, the prosecutor or the offender’s probation officer may ask the court to hold a hearing to determine whether the conditions of probation should be changed or probation revoked.<sup>37</sup> A victim also has the right to ask the offender’s probation officer to request a probation review hearing if the offender fails to pay restitution.<sup>38</sup> In determining whether or not failure to abide by the terms of probation constitutes a probation violation, courts must determine if the failure is willful and inexcusable.<sup>39</sup>

The Department of Corrections (DOC) has established procedures for inmates in DOC facilities to make payments toward their restitution owed, including mandatory deduction from prison wages and surcharges on canteen purchases.<sup>40</sup>

The victim has the right to pursue recovery of restitution through a civil judgment,<sup>41</sup> a right that applies even if restitution has been referred to collections.<sup>42</sup> A restitution order from the criminal court is docketed as a civil judgment, typically on submission of an affidavit from the victim. The docketing of a civil judgment does not prevent the criminal court from enforcing a restitution order,<sup>43</sup> and an offender is given credit in a civil action for any restitution paid to the victim for the same injuries.<sup>44</sup>

## THE IMPETUS FOR THE RESTITUTION WORKING GROUP

Minnesota’s first comprehensive restitution law came with the enactment of the Crime Victim Bill of Rights in 1983.<sup>45</sup> Minnesota subsequently examined the issue of restitution several times through various working groups and taskforces, with legislative and policy refinements emerging as a result, most recently in 1998.<sup>46</sup>

In the past several years, there has been increasing interest in examining the restitution process. The process has been impacted by several significant changes over the past decade, including the move to a unified court system, new court procedures for collecting fines and restitution, and the reduction or elimination of probation-run restitution collection units. Those working with victims are acutely aware of the frustrations faced by some victims in getting restitution ordered and, later, in getting the offender to pay. Civil judgment, the only avenue for a victim to collect restitution on their own, can be confusing, cumbersome and costly, often leading victims to abandon any hope of collecting. While concerns about restitution are not new, there has been a renewed resolve to try to improve the way restitution is handled in Minnesota.

Informal discussions among stakeholders began in 2012, led by the Minnesota Alliance on Crime (MAC), a nonprofit organization that seeks to improve the criminal justice system’s response to crime victims in Minnesota. At that time, MAC launched the Restitution Resource Group with criminal justice and advocacy partners from each judicial district, communicating about restitution issues through a listserv and creating an online resource library, termed “The Cloud”<sup>47</sup> to share information. MAC convened periodic conference calls with the resource group partners to discuss concerns regarding restitution practices, and with the aim of supporting further research on this process, also partnered with students in the University of Minnesota’s Humphrey School of Public Affairs to examine restitution collection practices in Minnesota.<sup>48</sup>



Through these efforts, key concerns were identified—including the inconsistency in restitution practices across the state for all parts of the process, the lack of consequences for offenders who do not pay, and victims’ feeling that restitution is an empty promise.

It became clear that the restitution process in Minnesota could be improved, and a more formalized effort was necessary to examine the restitution process, make recommendations, and implement changes. Given the number of systems affected, the wide array of stakeholders, and the widespread impact on crime victims, a legislatively mandated working group was proposed.

## OVERVIEW OF THE RESTITUTION WORKING GROUP PROCESS

### *Formation of Restitution Working Group*

In 2013 the Minnesota Legislature required the Department of Public Safety (DPS) to convene a working group to study how restitution is requested, ordered, and collected in Minnesota.<sup>49</sup> Under the legislation, the Department of Public Safety was directed to invite key stakeholders to review, assess, and make specific recommendations in the following areas:

- (1) the process by which restitution is requested by victims and ordered by the court, including procedures used by prosecutors' offices, probation and court services, and court administration;
- (2) the statutory mechanisms for collecting restitution, including the establishment of payment plans, revenue recapture, and entry of civil judgments;
- (3) state and local policies, procedures, and strategies for collecting restitution, including restitution collection units, designated restitution probation officers, and department of corrections administrative policies; and
- (4) the extent to which data on restitution is collected.<sup>50</sup>

The Office of Justice Programs (OJP), a division within DPS, was given the responsibility of convening the meetings of the Restitution Working Group (RWG) and preparing the report to the legislature, due January 15, 2015.

The working group included representatives from a wide range of disciplines, including state court administration, the judiciary, city and county prosecution, the defense bar, victim advocacy, supervision, corrections, and law enforcement. Members came from community based organizations, county government agencies, and state agencies. On the working group roster were 73 individuals, with 56 identified as official members and 17 identified as alternates or interested parties. The work of the RWG was guided by a steering committee with representatives from the Judicial Branch, probation, prosecution, and advocacy. The full RWG roster and steering committee roster can be found in Appendix 2.

### *Meeting strategy*

The work plan for the group called for a series of meetings, presentations, and data collection designed to:

1. **Educate:** Educate members about the restitution process, both in general and beyond their own areas of expertise and county practice.

2. **Identify problems:** Identify major challenges and concerns related to restitution that affect court processing, victim experience, and collection.
3. **Formulate recommendations:** Formulate recommendations for a more efficient and effective process and for greater collection success.

To make discussions manageable and relevant to participants, the meetings came in three waves:

1. **Committees:** Three committees were formed to cover (1) the requesting and ordering process, (2) the post-conviction process, and (3) juvenile issues. During these committee meetings, RWG members shared their experiences and the processes in their jurisdictions. Through this process, broad themes were identified.
2. **Affinity groups:** The members were broken up into their respective constituent groups—prosecutors, defense attorneys, supervising agents,<sup>51</sup> victim advocates, and court administration/judiciary—for focused discussions on restitution issues from their various perspectives. During this process, the affinity groups generated an initial set of recommendations, with some gaining approval by the group and some that required further discussion and refinement.
3. **“Drill Down” Meetings:** The proposed recommendations that emerged from the affinity groups were then organized and synthesized into a set of recommendations for focused discussions in “drill down” meetings. Recommendations were grouped into seven categories: Process, ordering, forms, supervision, collections, creative strategies, and other. Most of the drill-down groups met more than once. The recommendations approved during these meetings were referred to the entire RWG for approval. Nearly all of the proposed recommendations emerged with broad consensus from the RWG members participating in the process, with only two recommendations evoking dissenting voices.

Critical to this 11-month process was information gathering on how restitution is requested, ordered, and collected across the state, as well as the challenges faced by criminal justice practitioners, advocates, and victims. This information emerged through the extensive discussions that took place during the meetings, as well as through surveying of RWG members, court administrators, and supervising agents. In addition, there were two webinars—from the Department of Revenue (DOR) and the Department of Corrections (DOC)—discussing the restitution process in their respective agencies.<sup>52</sup>

Throughout the small-group meeting process, the larger RWG met four times. At the first meeting, there were presentations on the restitution process from various perspectives, and members were provided extensive background information.<sup>53</sup> At subsequent meetings there were reports from the small-group work, presentations on research efforts, and an overall check-in on the process.

In all, the RWG met as a whole four times over the course of a year; the three large committees met for a total of seven meetings, the five affinity groups had nine meetings, and there were 11 “drill down” meetings.

The process resulted in a set of recommendations that were presented to the large RWG on Aug. 4, 2014. Members had the opportunity to ask questions, seek clarification, and present arguments in opposition, with the end result that all the submitted recommendations were approved. Those few recommendations with dissenting positions are identified in this report, with explanations for opposition noted. In addition,

there were a number of critical issues identified where no recommendation could be reached due to the complexity of the problem and the concern for potential unintended consequences. These issues are noted in the report with recommendation for further discussion.

### ***Data Collection***

A key responsibility of the RWG was to collect information about how restitution is requested, ordered, and collected in Minnesota. The Office of Justice Programs (OJP) administered two surveys to specific stakeholder groups—court administrators and supervising agents—as part of the RWG process to gather information about differences in restitution practices across the state, knowledge and attitudes about the restitution process, roadblocks to the successful collection of restitution, and challenges for victims.

Information from these two surveys helped inform the process, highlighting issues identified by stakeholders and identifying specific problems with the process in practice, while directing the group toward specific recommendations. The results of these two surveys were presented during the large RWG meetings and are available for review.<sup>54</sup> An informal survey was also distributed to the RWG members to identify goals and to assist with focusing the discussion. In addition to these surveys, information was gathered from various state agencies and counties including the Minnesota Department of Revenue (DOR), Minnesota Department of Corrections (DOC), and Ramsey County.

Most importantly, in order to determine the extent to which restitution was collected in Minnesota, the Minnesota Judicial Branch extracted and analyzed data from the Minnesota Court Information System (MNCIS), using an approach that allowed a detailed analysis of restitution amounts ordered and payment trends. This information is presented in Part 3 of this report.

## **PART 1 CONCLUSION**

The RWG consisted of a committed group of professionals who devoted an extraordinary amount of time and energy to examining the issue of restitution with a shared interest in making the process more efficient, effective, and meaningful. Because of the expertise and experience of the key stakeholders, the discussions were in-depth and productive, leading to the identification of inefficiencies in the existing process and inadequacies of the current statutory structure. Through their work a set of recommendations for improved practices and statutory changes emerged, along with a commitment among the members to continue this effort to ensure that the interest and momentum generated by the process will lead to positive changes. These recommendations are presented in Part 3 of this report.

## PART 2 – WHAT WE LEARNED

A foundational task for the RWG was educating members about the restitution process outside their own area of expertise and jurisdiction. Extensive discussions focused on the process outlined in the statutes, and RWG members shared how the process works in their jurisdictions, the challenges for victims and criminal justice personnel, and the strategies they employ to encourage payment of restitution. Key themes emerged about restitution in Minnesota from this process.

### THEMES

#### *Differences in practice*

One clear issue that surfaced was variation among jurisdiction practices. These variations include differences in who is responsible for collecting loss information and forms from the victim, the process by which restitution is requested and then ordered by the court, what occurs when restitution is not immediately ordered at the time of sentencing, and the role and responsibility of supervising agents in getting offenders to pay their restitution.<sup>55</sup>

Differences in process raised the concern that the level of recovery afforded a victim by the restitution process might depend on the county in which the crime was prosecuted. The requesting process in some counties is viewed as more difficult for victims than in others, the types of loss on which the local courts will order restitution is inconsistent, there are differing implications of “reserving restitution,” and the priority placed on restitution as well as the resources devoted to collection varies greatly. The analysis of restitution data by the Minnesota Judicial Branch (MJB), discussed in Part 3, includes county comparisons of restitution assessment and collection, and demonstrates the variability of restitution ordered and collected across the state.

The procedural differences identified posed challenges for the RWG in trying to formulate recommendations. For example, a county may have an innovative approach to restitution that works in that jurisdiction but would not translate well to a more populous county. Or one county may have a specific challenge that does not exist system-wide. The RWG did not want to make recommendations that would create unintended consequences or limit counties’ ability to strategically manage restitution.

#### *Problematic statutory scheme*

Minnesota Statutes sections 611A.04 and 611A.045 were uniformly regarded by RWG members as cumbersome and confusing. For example, the first section of 611A.04 contains a myriad of victim rights and court procedures; the process for ordering restitution is described in both sections 611A.04 and 611A.045, and the implications of an actual or prospective civil action appear in three separate sections.

One of the core recommendations by the RWG was a comprehensive overhaul of the statute that would incorporate statutory changes proposed by the RWG and improve the organization and clarity of the relevant provisions.

In addition, close examination of the statutory scheme revealed that some statutes are uniformly underused — for example, section 611A.04, subd. 1b, requiring an offender to file a financial disclosure affidavit when restitution is \$500 or more — while other statutes are not consistently followed — for example, section

609.135, subd. 1a, which requires a hearing if restitution has not been paid in full prior to 60 days before the term of probation expires.

The problematic statutory scheme was viewed as a roadblock to an understandable and consistent restitution process.

***Victims and offenders need better information.***

RWG members reported challenges because victims have unrealistic expectations about what can be ordered, and lack understanding of what happens after restitution has been ordered. Offenders often do not understand the ramifications of nonpayment including the additional costs they may face if they fail to make even small payments toward restitution.

Victims need to understand:

- Procedural timelines.
- What is needed to support a request for restitution.
- What can and cannot be ordered as restitution.
- What happens after restitution has been ordered.
- The process that may occur if the offender fails to make restitution payments.

Offenders need to understand:

- What has been ordered.
- Rules and expectations of payment.
- The right to challenge a restitution request within a specified timeframe.
- How payments can be made.
- Consequences for nonpayment.

Information at key points in the process, provided in plain language, can improve the restitution processing, reduce frustration, and, ideally, increase the likelihood of payment.

***Focus on offenders who can pay***

The well-worn phrase, “You can’t get blood from a turnip,” turns up in any discussion regarding restitution, and RWG members acknowledged that many offenders do not have the ability to pay. As a result, RWG discussion and recommendations focused on increasing payments by offenders who can pay, but do not — keeping in mind that an offender’s financial status is not static.

The RWG crafted recommendations to establish a standard, objective process to assess an offender’s ability to pay that would be used for establishing a realistic payment plan and, later, if the offender fails to pay, for a determination of the offender’s current financial position.

Many offenders pay immediately after sentencing, while others pay according to a payment plan, the establishment of which is provided for by statute and recognized as standard practice in all jurisdictions.<sup>56</sup> Ideally, these payment plans should be established based on the offender’s financial circumstances. However, as the surveys conducted as part of the RWG process reveal, payments plans are not always based on actual financial circumstances. The most common practice in establishing payment plans is to rely on unverified information provided by the offender; few jurisdictions require documentation. Many RWG

members hear from frustrated victims who complain that the offender clearly has assets, such as a home or boat or expensive car, but is required to pay only a minimal installment amount for restitution each month.

If an offender does not pay restitution, there are statutory mechanisms in place to bring the offender back before the court. The court has the authority to determine if the offender's nonpayment is "willful," meaning he or she had the ability to pay restitution but did not.<sup>57</sup> Without an objective tool, such as a financial assessment, it is difficult to determine "willful nonpayment."

RWG members recognized that in some cases, given the large amount of restitution ordered, it is unrealistic to expect the offender to ever pay the entire amount. This was confirmed by the MJB analysis of restitution data (discussed more fully in Part 3) which shows that the bulk of outstanding (unpaid) restitution involves cases with very high restitution orders.

For these offenders, the sentiment was clear that there should still be an expectation of payment, even if only in small amounts at a time, and that such an expectation from offenders with limited means is not unreasonable. While small payments may not come close to restoring victims completely, they do assure the victim that the offender is being held accountable. Further, many victims' limited means are made even more acute by the victimization, so small amounts may be significant to their welfare.

### ***Collection practices have changed***

The landscape has changed regarding the collection of restitution in Minnesota. In the past, many Minnesota counties had restitution collection units within their probation agencies, and some counties had special programs, typically involving juvenile offenders, with restitution funds from which victims could be paid. These programs and dedicated units and personnel largely disappeared over the past decade, commonly due to lack of funding.

Restitution collection practices have been affected by the new process, launched in 2009, for dealing with unpaid court fines, fees, and restitution.<sup>58</sup> Under Minnesota Statutes section 609.104, if an offender fails to pay restitution, or fails to pay the agreed-upon installment, by the due date, the amount owed is automatically referred to the Department of Revenue (DOR) for collection.<sup>59</sup> The DOR acts as a collection agency for all types of debts owed to local and state government agencies and uses a host of strategies, including revenue recapture, to collect these debts.

As a result of automatic referral to DOR, there is a perception by some within the criminal justice system that restitution collection is no longer an issue they must address. This is not the case, however, and this misperception underscores the need for training on the statutory mechanisms that remain if restitution is not paid, as well as the role of various professionals in keeping it a priority. Making it a priority starts with a clear message from the court at the time of sentencing about the expectation of timely payment, followed by ongoing attention from the offender's supervising agents. Agents work on multiple issues with the offenders they supervise, and their influence has the greatest likelihood of improving restitution payment.

### ***Lack of familiarity with statutory scheme***

The discussions revealed that there is a lack of familiarity with restitution statutes and established procedures. Some statutes are underused and most individuals do not know about the restitution process outside their own part in it. Based on these observations, the RWG members uniformly agree that stakeholder training is needed.

***Importance of data***

One of the most frequently asked questions about restitution is, “How much do offenders actually pay?” The formation of the RWG was prompted, in part, by the concern that few offenders actually pay their court-ordered restitution, making it an illusory right for crime victims. While complaints about unpaid restitution are common, data to assess the validity of this widespread perception have been scant. Consequently, the statutory mandate for the RWG included a directive to examine data related to restitution.

As part of the RWG process, the research unit of the State Court Administrator’s Office (SCAO) examined court data from the Minnesota Court Information System (MNCIS). Discussed fully in Part 3 of this report, this effort, which employed a model that analyzed individual cases over a period of years, provides a detailed picture of restitution in Minnesota.

Some results from the SCAO analysis challenge the common perception that restitution is often not paid, while other results prompt questions about the differences in payment rates based on type and location of the case, and the restitution amount originally ordered. In addition, these results reinforce the need to examine whether offenders who don’t pay their court-ordered restitution actually have some ability to pay.

The results of the SCAO data analysis are critically important to assessing the state of restitution in Minnesota and guiding further discussion and refinements. This effort forms a foundation for continuing examination of restitution, including evaluation of trends, assessment of restitution efforts in specific jurisdictions, and formulation of additional research questions. Further exploration of the Judicial Branch’s current data management system is needed to determine if the current system can support the desired analysis and access by relevant stakeholders, and, if not, what types of refinements might be needed.

**CONCLUSION – PART 2**

The broad themes identified by the RWG steered members toward the identification of reforms, some requiring statutory changes, but most calling for a change in practice. Overall, these recommendations call for good information to victims and offenders; a consistent, clear and efficient process to request and order restitution; a uniform process to objectively determine an offender’s ability to pay; training of all systems personnel on the process; and the use of data to assess the effectiveness of restitution practices.

## PART 3 – RESTITUTION DATA

### COURT DATA

As part of the directive from the Minnesota Legislature in 2013 to convene a restitution working group, the Legislature requested that the State Court Administrator’s Office provide the working group with summary data on restitution. Sections 1 through 6 of this part of the report are taken from *Restitution in Minnesota: 2010 Cohort Analysis*, a report prepared by the State Court Administrator’s Office.<sup>60</sup> All data presented in those sections were gathered from specific transactions attached to cases in the **Minnesota Court Information System (MNCIS)**.

#### SECTION 1: THE COHORT 2010 MODEL

The analytical framework used in this report is a cohort model, with the individual case assessed restitution as the unit of primary analysis. A cohort model means that a group of cases is isolated according to a given set of conditions, and data is collected from this group for a given time period. A cohort model allows for the analysis of events or practices that involve a significant time element, which is clearly true of restitution assessments and subsequent transactions. Using a cohort, the analysis is able to follow a group of cases as they move from assessment of restitution to satisfaction (or not) of that assessment. A cohort allows for the analysis of constituent cases that make up aggregate statistics, and provides a method to analyze the behavior of individuals and groups by case characteristics, size of assessment, geography, and other variables.

Data from **adult criminal cases disposed in 2010** with restitution assessments was pulled from MNCIS. The year 2010 was chosen because conversion to MNCIS was implemented in 2009, which makes more distant historical data less useful. The 2010 Cohort consists of **11,910 cases**. Transactions on these cases are followed for a minimum of 3 years and 4 months to a maximum of 4 years and 4 months from their date of disposition. No conditions on the number of days each case could be followed are enforced, so some cases in the cohort are followed for shorter periods than others. Cases disposed in January 2010 have a full year of transactions that cases disposed of at the end of 2010 do not. It is possible that some cases or case groups could appear to have differing financial outcomes, based largely on their having more or less time to satisfy their restitution assessments. This issue is avoided because Case Types and Offense Levels are generally evenly distributed across the months of the year, so one or more groups of case types and offense levels will not be biased by extra time. Nor does it appear that assessments vary greatly by time of year, so cases with differing assessment levels do not receive differing lengths of time for evaluation.

Cases in the 2010 Cohort are assigned a case type and disposition type according to their *most serious charge* on their *most serious disposition*. Some explanation of these terms will be necessary at this point:

- **Charge:** an accusation of criminal activity by a prosecuting agency. Charges follow a hierarchy of seriousness determined by the criminal code. Petty Misdemeanors are the least serious offenses, followed by Misdemeanors, Gross Misdemeanors, and Felonies. A further differentiation is made where the Charge Level does not provide a clear distinction, as when a case has two charges, that are both misdemeanors. For the purposes of this study, the following hierarchy of seriousness applies for case types, from least serious to most serious: Other, Traffic, DWI, Property, Drug, and Person. These case types should be relatively self-explanatory: **Traffic** are moving and parking violations; **DWI** are intoxicated driving; **Property** are theft, fraud, swindle, and damage to property;



**Drug** involve the possession and sale of drugs; **Person** involve crimes against people like assault, battery, rape, murder, etc. **Other** cases include obstruction of justice, fleeing police, some petty possession of drugs, illegal possession or sale of weapons, fish & game violations, tobacco related charges, some types of fraud, and others.

- **Disposition:** the final determination of culpability for a given offense, as determined by a judge or jury. Dispositions range in seriousness from Dismissals to Convictions. For example: There is a case with three charges, all misdemeanors, and all drug charges. If only one of these charges is convicted, and the other two are dismissed, the cohort model will assign the restitution assessment and subsequent activity to the Convicted charge.

In the event that a case has multiple charges of equal seriousness and the same disposition, the “Charge Number” assigned to each charge is used as a final tiebreaker, and the smallest charge number is taken as the most serious.

Hennepin and Ramsey counties – The Fourth and Second Judicial Districts, respectively—**are not included** in this analysis because they did not process their restitution transactions through the Minnesota Court Information System in 2010. In 2010, both Hennepin and Ramsey used their county probation offices to process restitution transactions. As of 2014, Ramsey uses MNCIS and Hennepin processes restitution through the county attorney’s office. Some restitution data were provided from these two counties and are provided below, following the cohort analysis.

There are a small number of cases disposed in 2010 that are excluded from this study due to difficulty in data collection. These cases have been assessed restitution “Joint and Several”<sup>61</sup> with at least one other case. The transactions associated with these cases are difficult to organize due to the way they are entered and processed by the case management system.

Cases in the 2010 Cohort are assigned 1 charge, based on the most serious case type, offense level, and disposition type. The following tables provide breakdowns of the 2010 Cohort by these groupings, plus geography.

**Figure 1.1: Summary of 2010 Cohort**

Restitution Assessed	Cases	Average Assessment
\$24,988,398	11,910	\$2,098

**Figure 1.2 2010 Cohort by Judicial District**

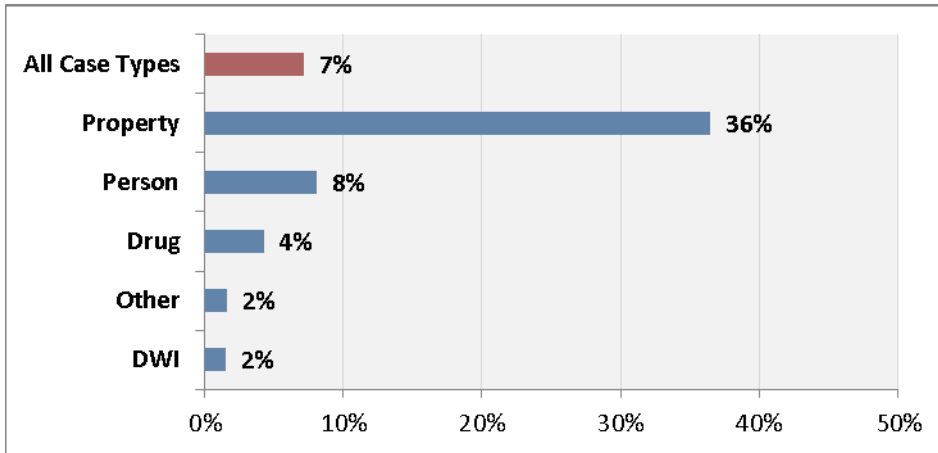
District	Restitution Assessed	Cases	Average Assessment
1	\$5,757,068	1,907	<b>\$3,019</b>
3	\$2,853,555	1,409	\$2,025
5	\$1,720,741	1,022	\$1,684
6	\$1,484,790	792	\$1,875
<i>Duluth</i>	\$571,685	278	\$2,056
<i>Hibbing</i>	\$196,064	99	\$1,980
<i>Virginia</i>	\$328,199	214	\$1,534
<i>Other</i>	\$388,842	201	\$1,935
7	\$2,881,159	1,897	\$1,519
8	\$957,733	547	\$1,751
9	\$3,092,401	1,925	\$1,606
10	\$6,240,951	2,411	<b>\$2,589</b>

There is significant variation among the different districts in terms of average assessment. The two judicial districts with the largest total restitution assessed (First, Tenth) are the two most populous districts in the 2010 Cohort. The first and the tenth have two of the three highest case totals, as well as the highest per-case average assessments. There is no significant difference in case type mix or offense level mix that explains why there is so much divergence in average assessment amount across districts. The distribution of assessment amounts will be discussed at length later in this report, and it will be demonstrated that the distribution of assessment amounts is critically important to financial outcomes.

**Figure 1.3: 2010 Cohort by Case Type**

Case Type	Assessment Total	% of Total \$\$	Cases	% of Cases	Average Assessment
Property	\$14,282,546	<b>57%</b>	<b>7,562</b>	<b>63%</b>	\$1,887
Person	\$5,255,531	<b>21%</b>	1,586	<b>13%</b>	<b>\$3,307</b>
Other	\$2,594,865	<b>10%</b>	1,361	<b>11%</b>	\$1,907
Traffic	\$1,814,403	<b>7%</b>	630	<b>5%</b>	\$2,880
Drug	\$455,187	<b>2%</b>	452	<b>4%</b>	\$1,007
DWI	\$585,866	<b>2%</b>	319	<b>3%</b>	\$1,837
<b>Total</b>	<b>\$24,988,398</b>	-	<b>11,910</b>	-	<b>\$2,098</b>

**Figure 1.4: Cases with Restitution as a Percentage of all 2010 Dispositions, by Case Type (Traffic Excluded)**



**Property** cases account for 63% of the 2010 Cohort (Figure 1.3), and 36% of all **Property** cases disposed in 2010 have restitution assessments (Figure 1.4). **Property** cases account for approximately 57% of the total assessment dollars for the 2010 Cohort (Figure 1.3). **Property** cases, while relatively numerous, also have average assessments which fall below the per-case average for the entire 2010 Cohort.

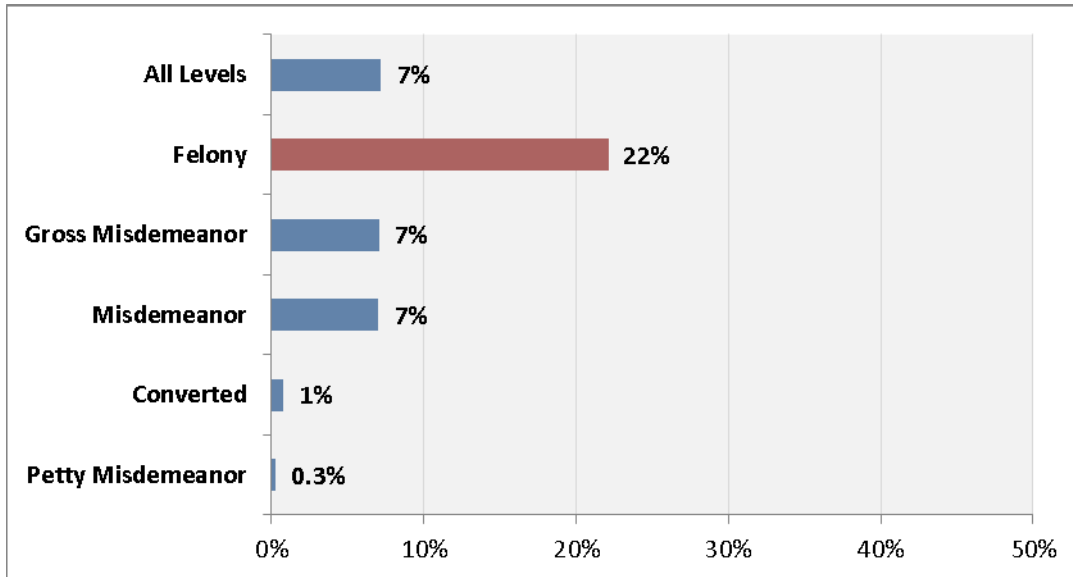
**Person** cases, on the other hand, have a much smaller share of cases, and a much larger average assessment, composing roughly 13% of all cases in the 2010 Cohort, but accounting for 21% of all assessments (Figure 1.3). In 2010, 8% of all disposed **Person** cases have a restitution assessment, compared to 7% of all case types, excluding Traffic cases (Figure 1.4). Traffic cases are excluded from the above chart because they make up an enormous proportion of all disposed cases, but less than 0.2% of all Traffic cases have restitution assessments in the 2010 Cohort. Including Traffic, restitution is assessed on less than 2% of the 2010 Cohort’s cases.

Restitution assessments also vary across offense levels, as shown in the figures below.

**Figure 1.5: 2010 Cohort by Offense Level**

Offense Level	Assessment Total	% of Total \$\$	Cases	% of Cases	Per Case Average
Misdemeanor	\$2,870,663	11%	6,691	56%	\$429
Felony	\$19,021,294	76%	3,789	32%	\$5,020
Gross Misdemeanor	\$2,124,173	9%	1,211	10%	\$1,754
Petty Misdemeanor	\$942,736	4%	171	1.44%	\$5,513
Converted: N/A	\$29,532	0%	48	0.40%	\$615
<b>Total</b>	<b>\$24,988,398</b>	-	<b>11,910</b>	-	<b>\$2,098</b>

**Figure 1.6: Cases with Restitution as a Percentage of all 2010 Dispositions, by Offense Level (Traffic Excluded)**



Felony level offenses account for 76% of assessed restitution (*Figure 1.5*), and have the second highest average assessment. Felony dispositions also have the highest proportion of cases with assessed restitution (22%) of any offense level (*Figure 1.6*). The key numbers in the table above involve Misdemeanor offenses. It is here that we clearly see the effects of the distribution of assessment amounts across cases in the 2010 Cohort. Misdemeanor offenses account for 56% of all cases, but only 11.5% of total assessments (*Figure 1.5*). Therefore, the average assessment total for a **majority** of the cases in the 2010 Cohort is \$429, which is *roughly 20%* of the average assessment for the entire cohort (\$2,098). This result implies that the distribution of assessment amounts is **heavily skewed** towards higher totals, and that most assessments on most cases are substantially lower than the average for the Cohort taken as a whole. This topic will be addressed shortly, after taking a preliminary look at financial outcomes for the 2010 Cohort.

## SECTION II: FINANCIAL OUTCOMES FOR THE 2010 COHORT

The following section analyzes data from individual financial transactions attached to cases in the 2010 Cohort. Financial transactions in MNCIS are organized into Transaction Types, which are broken down further into subcategories called Transaction Details. For example, a transaction of the type “Credit” is a transaction which reduces a financial balance or debt, and can have a detail “Credit for Time Served”: the result of this transaction is a credit against a restitution balance based on the amount of time an offender has been incarcerated for reasons related to the case in question. For the purposes of this analysis, transaction types and details are grouped according to their effects on balances, among other factors. These new transaction groups are:

**Assessments:** “Assessments” refers to any transaction that creates or increases a restitution balance, independent of adjustments, is counted as an assessment. Assessments do not have additional transaction details.

**Payments:** “Payments” refers to any transaction that constitutes the payment of a balance, whether to the courts, another government body, a victim, revenue recapture, or a collection agency is categorized as a

Payment. This includes credits for payments made to victims, governmental bodies, and collection agencies. Total payments are presented as net of voided payments.

**Credits:** “Credits” refers to any transaction that reduces a balance with a “credit” transaction detail, not including payments to victims, governmental bodies, or collection agencies.

**Assessment reductions:** “Assessment reductions: “refers to any transaction that reduces the amount of restitution owed through judicial order or correction of record error, or includes a “charge reduction” transaction detail. Reductions can occur for several reasons, the most common being judicial orders reducing the amount of restitution originally assessed. These orders can result from offenders challenging their original assessment amounts, and usually occur within a few months of disposition. Many assessment reductions occur long after disposition, however.

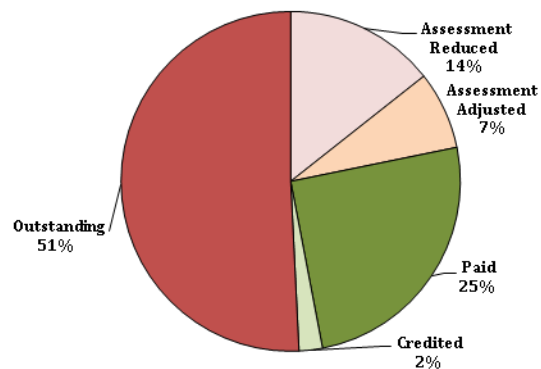
**Adjustments:** “Adjustments” refers to a specific “type” of transaction that can either reduce or increase balances, and can affect credits, payments, assessments, or disbursements. Adjustments can be used to apply bail or other fines to restitution balances. Adjustments can also be used to correct errors in the transaction record, or to account for transactions that otherwise do not have a specific type or detail.

**Disbursements:** “Disbursements: “Disbursements” refers to transactions that record the distribution of collected restitution. Disbursements can be made to victims, governmental bodies, or offenders in the case of refunds. Disbursements are not specifically analyzed in this report, but disbursement amounts are presented as net of voided disbursements.

The following figures present the financial outcomes for the 2010 Cohort.

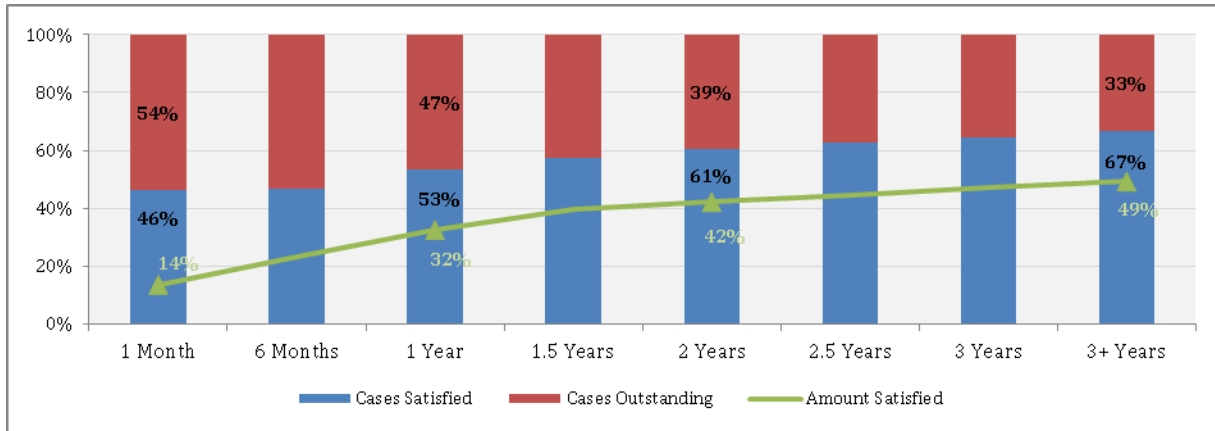
**Figure 2.1: Assessment Satisfied by Transaction Type - 2010 Cohort**

<b>Total Restitution Assessed</b>	<b>\$24,988,398</b>
Reduced	\$3,623,318
Adjusted	\$1,874,130
Paid	\$6,247,100
Credited	\$499,768
<b>Total Restitution Satisfied</b>	<b>\$12,244,315</b>
<b>Total Restitution Outstanding</b>	<b>\$12,744,083</b>



Of the \$24,988,398 assessed to cases disposed in 2010, \$12,244,315 is satisfied by payments, credits, adjustments, or reductions. \$12,744,083 remains outstanding, even after a minimum of three years has passed from disposition for each case in the 2010 Cohort. Payments constitute only 25% of the total satisfied amount, with a roughly equal share being satisfied by Reductions, Adjustments, and Credits.

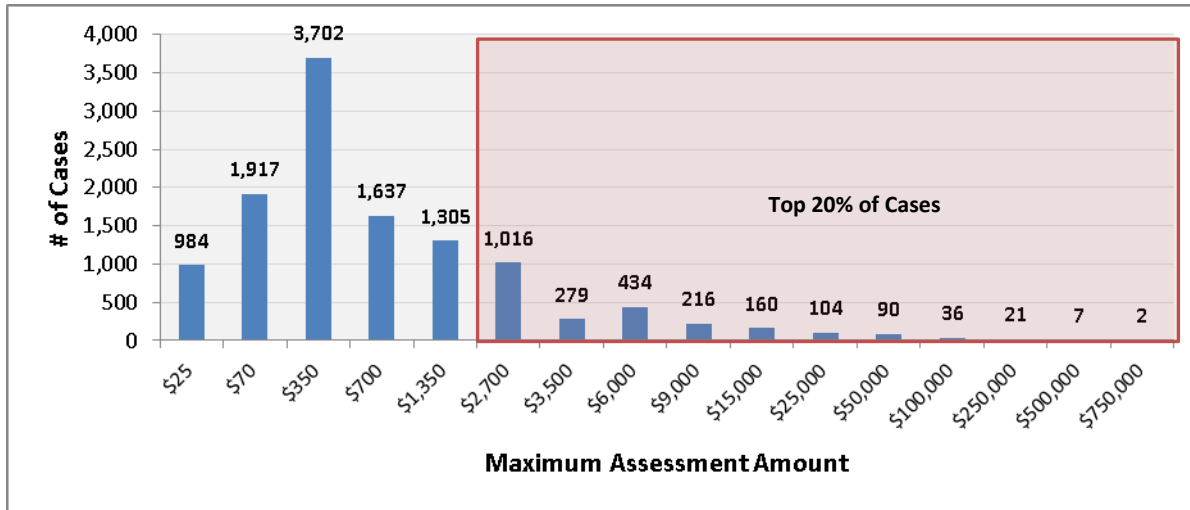
**Figure 2.2: Restitution Satisfied and Outstanding by Days from Disposition**



This chart assigns a measure of Days from Disposition to each transaction for every case in the 2010 Cohort. The transactions are attached to individual cases, and are used to track a case’s progress in satisfying a restitution assessment. When a case satisfies its assessment (through a combination of payments, credits, adjustments, reductions), it is counted as “Satisfied,” or “100% Satisfied.” Cases with any amount of assessment outstanding are counted “Outstanding.” The blue bar represents “Satisfied Cases” and the red bar represents “Outstanding Cases.” The Green line through the chart measures the total amount of assessment that has been satisfied at any given point in time.

The most striking insight provided by this chart is that **46%** of the cases in the 2010 Cohort satisfy their entire assessment within 1 month of disposition. Within 1 year of disposition, **53%** of cases satisfy their balances. After 3+ years from disposition, **67%** of cases satisfy their balances. This seems to suggest a highly skewed distribution of assessment amounts, which is verified by tracking the Amount Satisfied across the chart. After 1 month, **46%** of cases satisfy their balances, but these cases account for only **14%** of the total amount assessed after 1 month. This means that the average assessment amount for these cases is roughly \$638, which is 30% of the average assessment for the entire cohort:  $[(14/46) * \$2,098 = \$638]$ . This result recurs throughout the chart, where the amount of assessment satisfied trails the proportion of cases satisfied, indicating that the average assessment of satisfied cases **never** equals the average assessment for the entire 2010 Cohort. After 3+ Years, **67%** of cases are satisfied, accounting for **49%** of all assessments, meaning the average assessment for a satisfied case after 3+ years is \$1,534, or 73% of the average assessment for the entire 2010 Cohort. The distribution of assessment amounts must therefore skew heavily towards higher amounts. This distribution is illustrated below.

**Figure 2.3: Distribution of Cases by Assessment Amount**



The figure above is a bucket distribution chart. The vertical axis is the count of cases in a given bucket. The buckets themselves run along the horizontal axis. Each bucket has a dollar amount attached to it, and this dollar amount is the **maximum** assessment total allowed in that bucket. For example, the bucket on the Horizontal Axis labeled **\$700** contains all cases with total assessments between \$351 and \$700. Unsurprisingly, the distribution of assessment amounts skews heavily to the right side of the chart, where higher assessment amounts are found. Fifty-five percent of cases have total assessments of \$350 or less, and 80% of cases have total assessments of \$1,350 or less. The Top 20% of cases by assessment amount are highlighted in the red box, beginning at the \$2,700 bucket. The Top 20% of cases are heavily biasing the average assessment upwards. The Top 20% of cases also bias financial outcomes, as demonstrated by **Figure 2.2**. The issue of the influence the Top 20% of cases have on financial outcomes will be taken up in the next section.

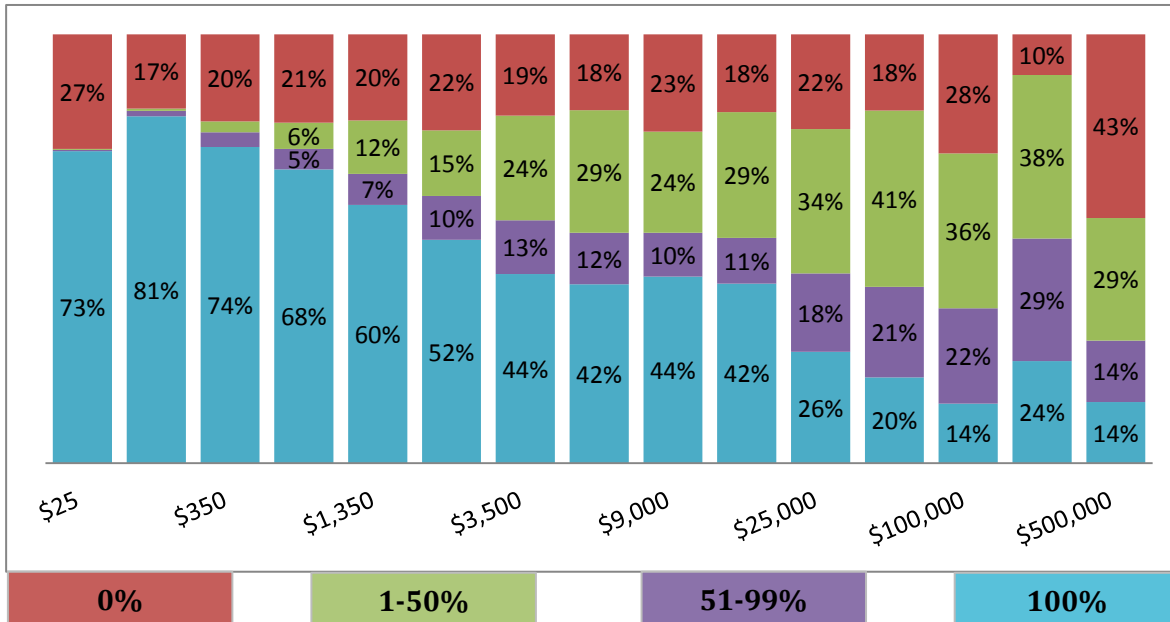
**Figure 2.4: Descriptive Statistics by Total Assessment Group**

Bottom 80% of Cases		Top 20% of Cases	
Mean	\$296	Mean	\$9,336
Median	\$156	Median	\$3,093
Maximum	\$1,332	Maximum	\$663,467
Sum	\$2,824,287	Sum	\$22,164,111
Count	9,536	Count	2,374

The figure above demonstrates the overwhelming influence of the Top 20% of cases. The **Top 20% of cases account for 89% of all assessments**. The median assessment for the Top 20% of cases is \$3,093, which is roughly 20 times larger than the median assessment for the Bottom 80% of cases. **Figure 2.2** demonstrates that after 3+ years, nearly 70% of all cases have satisfied their balances, but only 49% of assessments have been satisfied. It is likely that the Bottom 80% of cases are much more successful at satisfying their balances, and that the overall financial picture of restitution, shown in **Figure 2.1**, would look much different if the

Bottom 80% of cases were analyzed separately from the Top 20%. **Figure 2.5** examines this below by combining **Figure 2.2** and **Figure 2.3**.

**Figure 2.5: Satisfaction Rates within Total Assessment Distribution**



**Figure 2.5** measures the Satisfaction Rates of cases within a given total assessment bucket. These buckets work the same way as they do in **Figure 2.3**, with dollar amounts representing the maximum total assessment allowed in a given bucket. The bars in this figure are color coded; blue represents 100% Satisfaction, red represents 0% Satisfaction, and the two middle bars measure 1-50% and 51-99% Satisfaction. Please note that the Top 20% of cases begin at the bucket labeled \$2,700. The immediately noticeable trend is that 100% Satisfaction is very high among the lowest assessment amounts. Seventy-six percent of cases with assessments totaling \$350 or less satisfied their balances entirely by the end of 3+ years. Overall, 72% of the cases in the Bottom 80% achieved full satisfaction of their assessments after 3+ years, compared to only 45% of cases in the Top 20%.

**Figure 2.6: Satisfaction Rates by Assessment Group**

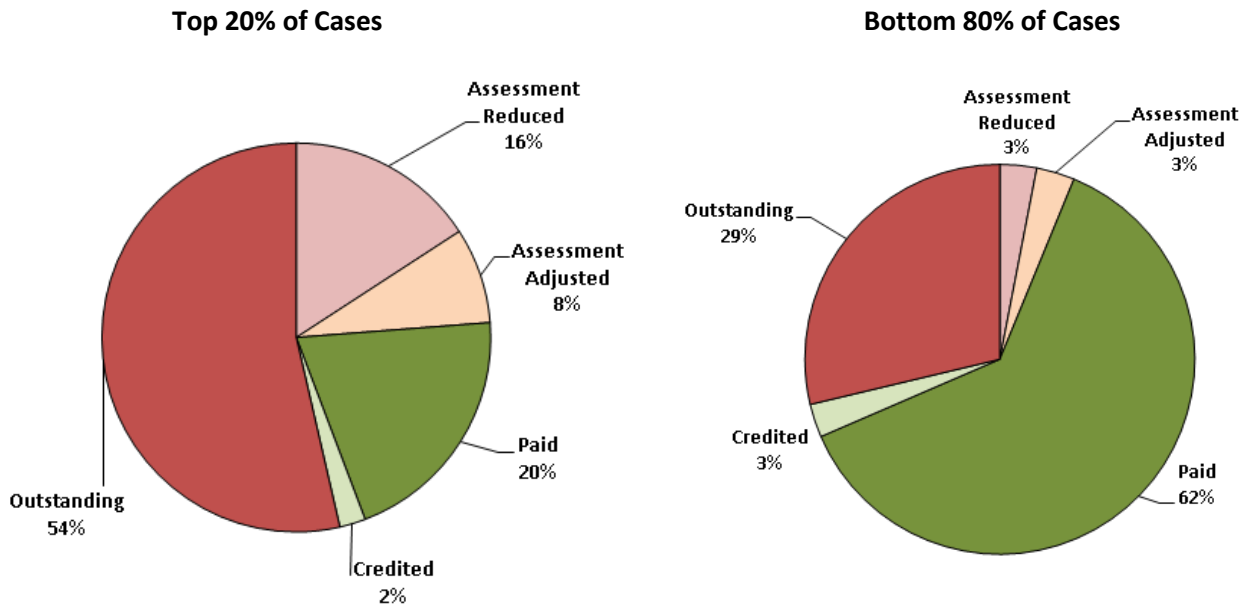
Satisfaction Rates	0%	1-50%	51-99%	100%
Top 20%	21%	23%	12%	45%
Bottom 80%	20%	4%	3%	72%

As total assessment amounts increase, rates of 100% satisfaction decrease. Cases that satisfy 100% of their assessments represent a majority of cases in only one bucket in the Top 20% of cases (\$2,700). It is clear



from **Figures 2.5** and **2.6** that satisfaction rates decline as assessment totals increase. Splitting **Figure 2.1** along these assessment groups yields a very interesting and divergent picture of overall financial outcomes.

**Figure 2.7: Assessment Satisfied by Transaction Type and Assessment Group**

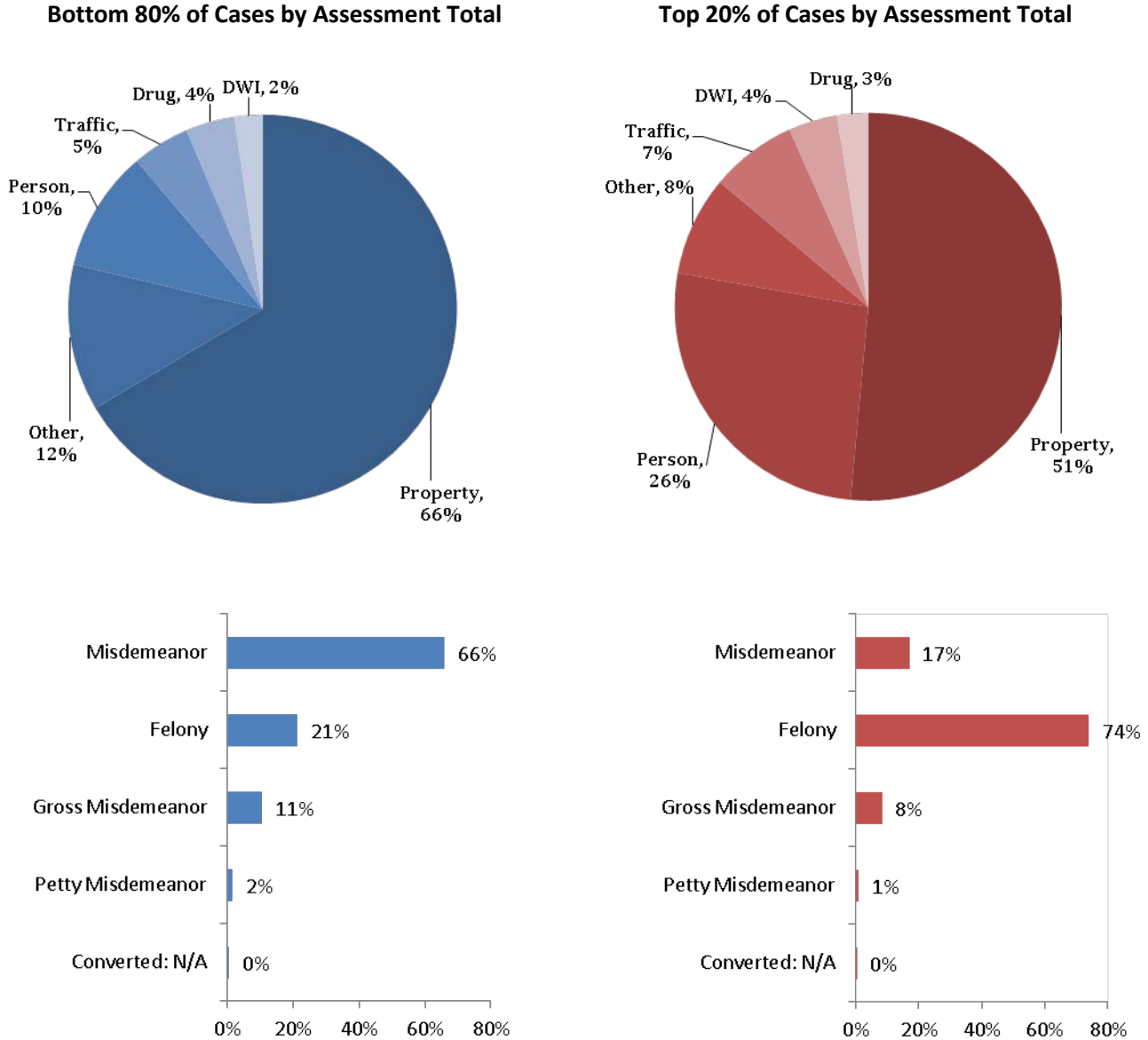


Stark differences in financial outcomes are apparent when examining these two case groups separately. After 3+ years, the Bottom 80% of cases satisfied 71% of their original assessment totals, with 29% of the total assessment still outstanding. Conversely, 54% of total assessment is still outstanding for the cases in the Top 20%. The Bottom 80% of cases also satisfies a much greater share of their balances coming from direct payments; 62% vs 20%. Assessments in the Top 20% are more likely to be settled through Assessment Reductions, Adjustments, and Credits than through Payments. The Bottom 80% of cases rely much less on Adjustments and Reductions than do the Top 20% of cases. **Figure 2.1**, which summarizes financial outcomes for the entire 2010 Cohort, has essentially the same outcomes as those for the Top 20% of cases in **Figure 2.7** above. The points of similarity between the aggregate 2010 Cohort and the Top 20% in outcomes are: Outstanding (51% to 54%), Paid (25% to 20%), Assessment Reduced (14% to 16%), and Assessment Adjustment (7% to 8%). The Top 20% of cases accounts for 89% of all assessments, which explains why outcomes for this group are essentially the same as the outcomes for the aggregate 2010 Cohort. Simple summary statistics would mask this divergence in outcomes, which is crucial to an understanding of efficacy of current restitution practices in satisfying assessments.

**SECTION III: POSSIBLE EXPLANATIONS FOR THE DISTRIBUTION OF ASSESSMENTS**

Different case types and offense levels carry different average assessments per case. It is important to determine if there are differences in case type or offense level composition between the Top 20% and Bottom 80% that could explain their vastly different financial compositions and outcomes. The case type and offense level compositions of the Bottom 80% and the Top 20% are shown below in **Figure 3.1**.

Figure 3.1: Case Type and Offense Level Composition by Assessment Group



Two obvious differences are immediately clear when the Bottom 80% and the Top 20% of cases are broken out by case type and offense level. The bottom 80% is dominated by Misdemeanor level offenses, while the Top 20% is dominated by Felony level offenses. While Property cases constitute a majority in both groups, Person cases are 75% more prevalent in the Top 20% of cases than in the Bottom 80%. These results are unsurprising; as shown in **Figure 1.2**, Person and Felony cases have the highest per case average assessment in the 2010 Cohort. Therefore, it seems as though the Top 20% has a greater share of serious crimes than does the Bottom 80%, which is primarily composed of less serious Property and Misdemeanor offenses. Due to the prevalence of Felony offenses, the Top 20% of cases are more likely to face incarceration, which would make the payment of restitution assessments more difficult for the offenders. Nevertheless, the simplest explanation for the divergence of the Bottom 80% and the Top 20% appears to be that there are simply a relatively small number of cases with assessments that are disproportionately large relative to the vast bulk of cases with restitution assessments, and these groups differ greatly in their financial outcomes.

It is also helpful to look at how assessment groups vary by judicial district to determine if some districts have a much larger share of the highest assessment totals.

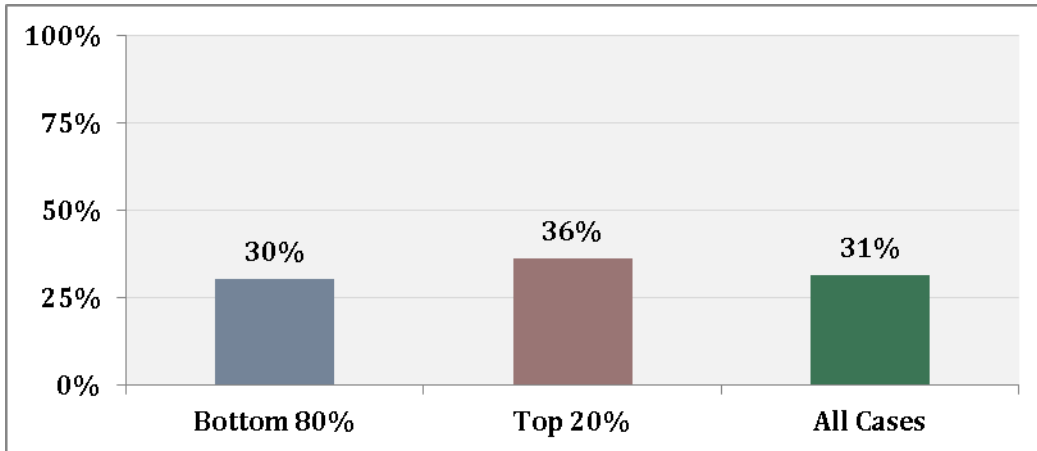
**Figure 3.2: Share of Assessment Groups by Judicial District**

Judicial District	Bottom 80%	Top 20%
1	79%	21%
3	78%	22%
5	81%	19%
<b>6</b>	<b>77%</b>	<b>23%</b>
<i>Duluth</i>	71%	29%
<i>Hibbing</i>	76%	24%
<i>Virginia</i>	80%	20%
<i>Other</i>	83%	17%
7	82%	18%
8	79%	21%
9	84%	16%
10	78%	22%

The figure above demonstrates that the Top 20% of cases are not distributed evenly across all judicial districts. The differences in shares between districts are not extreme, but they could be large enough to explain why some districts have much higher average assessments than others. For example, **Figure 3.2** shows that the 1<sup>st</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> all have proportionally larger shares of cases in the Top 20%. These districts have the highest average assessments in the 2010 Cohort, as shown in **Figure 1.4**.

As demonstrated in **Figures 2.5, 2.6, and 2.7**, the Top 20% of cases have much different financial outcomes than the Bottom 80%. Notably, these cases are much less likely to have their assessments satisfied entirely by the end of 3+ Years. One potential explanation for the variance in payment rates between the Bottom 80% and the Top 20% could be found in payment plans. Restitution payment plans allow an offender to make equal payments towards a balance over time. Larger assessments likely require lengthier timeframes for payment, which could explain partially why cases in the Top 20% have much lower 100% Satisfaction Rates after three years, but also have much larger proportions of cases with at least a partial satisfaction (see **Figure 2.6**). This issue is examined in **Figure 3.3** below.

**Figure 3.3: Proportion of Cases on Payment Plans by Assessment Group**



The data indicate a greater proportion of cases are on payment plans in the Top 20% than in the Bottom 80%. Plan length also differs significantly between the two groups, as shown below in **Figure 3.4**.

**Figure 3.4: Payment Plan Length by Assessment Group**

Row Labels	Cases	Average Plan Days	Average Plan Years
Bottom 80%	2,883	326.7	0.9
Top 20%	857	3,177.5	8.7
<b>All Cases</b>	<b>3,740</b>	<b>1,100.6</b>	<b>3</b>

The figures above show that a larger proportion of cases with an assessment in the Top 20% are on payment plans than cases in the Bottom 80%. The average length of payment plans for cases in the Top 20% is also 9.6 times longer than the average payment plan length for a case in the Top 80%. Because it is only possible to track cases in the 2010 Cohort for a maximum of 4.3 years, it may be that the Top 20% of cases diverges in financial outcomes simply because there has not been enough time from disposition to conduct a complete analysis. If the 2010 Cohort is studied again in the near future, more success in fulfilling assessments may be observed.

The **Fourth Judicial District** (Hennepin County) is absent from the preceding analyses because restitution on 4<sup>th</sup> District cases in 2010 was not administered through MNCIS. Restitution data was provided directly by the 4<sup>th</sup> District, and some of the charts used in this report are reproduced where possible below. Some charts are not possible to reproduce due to differences in data collection between MNCIS and the 4<sup>th</sup> District systems. The overall results in the 4<sup>th</sup> District are not substantially different from the statewide analysis.

## SECTION IV: OUTCOMES BY DISTRICT AND COUNTY

The figures presented in this section detail the outcomes by judicial district and county, including total amounts assessed by the court, the average restitution amount assessed, the percentage of the total assessment for the county that is outstanding (not paid), and the percentage of cases in which the restitution amount was 100% satisfied.

**Figure 4.1: Outcomes by Judicial District and County**

OUTCOMES BY JUDICIAL DISTRICT AND COUNTY									
District	County	Cases	Assessments	Average Assmt	Reduced	Adjust.	Credited	Paid	Outstanding
1	Carver	207	\$998,962	\$4,826	0%	2%	14%	9%	75%
1	Dakota	803	\$2,417,256	\$3,010	13%	8%	6%	20%	54%
1	Goodhue	185	\$359,134	\$1,941	10%	4%	1%	35%	49%
1	Le Sueur	178	\$379,936	\$2,134	0%	4%	0%	13%	83%
1	McLeod	103	\$208,302	\$2,022	0%	7%	4%	23%	65%
1	Scott	358	\$1,225,647	\$3,424	60%	3%	1%	13%	23%
1	Sibley	73	\$167,831	\$2,299	0%	17%	3%	17%	63%
<b>1 Total</b>		<b>1,907</b>	<b>\$5,757,068</b>	<b>\$3,019</b>	<b>19%</b>	<b>6%</b>	<b>5%</b>	<b>17%</b>	<b>53%</b>
3	Dodge	45	\$78,772	\$1,750	8%	11%	0%	34%	46%
3	Fillmore	142	\$99,845	\$703	0%	28%	2%	24%	46%
3	Freeborn	89	\$260,303	\$2,925	61%	3%	1%	18%	17%
3	Houston	102	\$107,919	\$1,058	4%	2%	1%	17%	76%
3	Mower	119	\$198,665	\$1,669	6%	5%	6%	21%	61%
3	Olmsted	327	\$915,095	\$2,798	11%	20%	1%	12%	56%
3	Rice	150	\$621,282	\$4,142	12%	6%	3%	26%	53%
3	Steele	82	\$213,369	\$2,602	15%	3%	0%	11%	71%
3	Wabasha	58	\$83,194	\$1,434	0%	51%	1%	37%	10%
3	Waseca	85	\$128,252	\$1,509	62%	1%	14%	14%	9%
3	Winona	210	\$146,859	\$699	23%	7%	1%	36%	33%
<b>3 Total</b>		<b>1,409</b>	<b>\$2,853,555</b>	<b>\$2,025</b>	<b>18%</b>	<b>12%</b>	<b>2%</b>	<b>19%</b>	<b>49%</b>
5	Blue Earth	233	\$446,765	\$1,917	21%	3%	5%	16%	54%
5	Brown	57	\$286,797	\$5,032	14%	15%	5%	18%	47%
5	Cottonwood	45	\$55,654	\$1,237	0%	47%	0%	46%	8%
5	Faribault	47	\$21,067	\$448	0%	2%	0%	56%	42%
5	Jackson	50	\$38,747	\$775	0%	0%	3%	90%	7%
5	Lincoln	7	\$3,966	\$567	0%	16%	0%	78%	6%
5	Lyon	100	\$110,733	\$1,107	0%	1%	9%	43%	48%
5	Martin	107	\$106,462	\$995	0%	6%	15%	38%	42%
5	Murray	43	\$63,406	\$1,475	0%	1%	1%	15%	83%
5	Nicollet	32	\$64,202	\$2,006	0%	7%	6%	61%	26%

OUTCOMES BY JUDICIAL DISTRICT AND COUNTY									
District	County	Cases	Assessments	Average Assmt	Reduced	Adjust.	Credited	Paid	Outstanding
5	Nobles	96	\$164,921	\$1,718	0%	3%	3%	21%	73%
5	Pipestone	77	\$73,172	\$950	31%	5%	1%	21%	42%
5	Redwood	61	\$142,970	\$2,344	17%	3%	42%	22%	15%
5	Rock	19	\$4,928	\$259	0%	4%	11%	73%	12%
5	Watonwan	48	\$136,951	\$2,853	0%	1%	1%	19%	80%
5 Total		1,022	\$1,720,741	\$1,684	11%	7%	8%	26%	49%
6	Carlton	148	\$135,047	\$912	0%	16%	7%	35%	42%
6	Cook	26	\$97,135	\$3,736	0%	4%	1%	35%	61%
6	Lake	27	\$156,660	\$5,802	1%	43%	1%	12%	44%
6	St. Louis	591	\$1,095,948	\$1,854	4%	11%	2%	25%	58%
6 - SL	Duluth	278	\$571,685	\$2,056	2%	6%	1%	22%	69%
6 - SL	Hibbing	99	\$196,064	\$1,980	0%	22%	6%	25%	46%
6 - SL	Virginia	214	\$328,199	\$1,534	10%	12%	0%	31%	47%
6 Total		792	\$1,484,790	\$1,875	3%	14%	2%	25%	56%
7	Becker	245	\$339,234	\$1,385	0%	14%	1%	28%	56%
7	Benton	78	\$116,519	\$1,494	4%	11%	3%	36%	46%
7	Clay	186	\$179,314	\$964	1%	2%	4%	42%	50%
7	Douglas	148	\$215,629	\$1,457	0%	9%	8%	31%	52%
7	Mille Lacs	161	\$184,339	\$1,145	1%	25%	3%	27%	45%
7	Morrison	120	\$250,618	\$2,088	8%	17%	5%	40%	30%
7	Otter Tail	179	\$320,097	\$1,788	30%	5%	1%	34%	30%
7	Stearns	564	\$1,028,559	\$1,824	4%	4%	3%	23%	66%
7	Todd	59	\$163,874	\$2,778	0%	20%	0%	21%	59%
7	Wadena	157	\$82,976	\$529	0%	0%	32%	31%	36%
7 Total		1,897	\$2,881,159	\$1,519	6%	9%	4%	29%	52%
8	Big Stone	22	\$72,119	\$3,278	0%	51%	0%	36%	13%
8	Chippewa	53	\$90,243	\$1,703	6%	13%	2%	25%	54%
8	Grant	19	\$3,699	\$195	0%	6%	0%	48%	46%
8	Kandiyohi	145	\$322,269	\$2,223	1%	11%	3%	33%	52%
8	Lac qui Parle	24	\$93,768	\$3,907	12%	1%	11%	12%	64%
8	Meeker	59	\$106,924	\$1,812	5%	17%	5%	30%	42%
8	Pope	36	\$20,590	\$572	0%	7%	3%	29%	61%
8	Renville	39	\$52,083	\$1,335	2%	0%	7%	39%	51%
8	Stevens	36	\$12,091	\$336	17%	1%	0%	57%	26%
8	Swift	30	\$27,453	\$915	0%	6%	0%	69%	24%
8	Traverse	16	\$15,002	\$938	0%	0%	2%	47%	50%
8	Wilkin	30	\$20,568	\$686	0%	34%	0%	49%	18%
8	Yellow	38	\$120,924	\$3,182	2%	6%	3%	25%	64%

OUTCOMES BY JUDICIAL DISTRICT AND COUNTY									
District	County	Cases	Assessments	Average Assmt	Reduced	Adjust.	Credited	Paid	Outstanding
Medicine									
8 Total		547	\$957,733	\$1,751	3%	13%	4%	31%	49%
9	Aitkin	94	\$373,596	\$3,974	1%	1%	14%	19%	65%
9	Beltrami	190	\$475,541	\$2,503	8%	9%	11%	14%	58%
9	Cass	115	\$142,485	\$1,239	16%	14%	4%	37%	29%
9	Clearwater	63	\$55,205	\$876	0%	5%	4%	56%	36%
9	Crow Wing	293	\$334,561	\$1,142	0%	10%	1%	43%	46%
9	Hubbard	61	\$44,941	\$737	0%	18%	1%	44%	37%
9	Itasca	375	\$617,807	\$1,647	0%	7%	3%	30%	61%
9	Kittson	20	\$44,163	\$2,208	0%	13%	3%	57%	27%
9	Koochiching	61	\$29,942	\$491	2%	2%	10%	65%	21%
9	Lake OTW	61	\$41,069	\$673	0%	4%	1%	51%	44%
9	Mahnomen	40	\$181,788	\$4,545	55%	0%	3%	8%	33%
9	Marshall	49	\$48,559	\$991	19%	0%	0%	66%	15%
9	Norman	21	\$33,875	\$1,613	0%	0%	11%	25%	65%
9	Pennington	136	\$77,255	\$568	0%	8%	12%	39%	40%
9	Polk	153	\$364,535	\$2,383	1%	4%	33%	18%	43%
9	Red Lake	59	\$58,831	\$997	0%	6%	4%	30%	61%
9	Roseau	134	\$168,248	\$1,256	17%	0%	2%	49%	32%
9 Total		1,925	\$3,092,401	\$1,606	7%	6%	9%	29%	50%
10	Anoka	994	\$2,311,921	\$2,326	15%	12%	2%	22%	49%
10	Chisago	170	\$415,933	\$2,447	8%	7%	6%	20%	60%
10	Isanti	91	\$1,002,704	\$11,019	78%	4%	2%	4%	12%
10	Kanabec	60	\$326,847	\$5,447	0%	16%	3%	14%	67%
10	Pine	106	\$138,744	\$1,309	0%	9%	7%	38%	47%
10	Sherburne	243	\$576,125	\$2,371	15%	4%	11%	23%	47%
10	Washington	392	\$829,558	\$2,116	3%	22%	1%	20%	54%
10	Wright	355	\$639,119	\$1,800	6%	13%	7%	22%	52%
10 Total		2,411	\$6,240,951	\$2,589	21%	11%	3%	19%	46%
<b>Grand Total</b>		<b>11,910</b>	<b>\$24,988,398</b>	<b>\$2,098</b>	<b>14%</b>	<b>7%</b>	<b>2%</b>	<b>25%</b>	<b>51%</b>

**Figure 4.2: 100% Satisfied Cases by District & County: Cases with 100% of Assessments Satisfied after 3+ Years, by Judicial District and County.**

OUTCOMES BY JUDICIAL DISTRICT AND COUNTY				
District	County	Total Number of Cases	# that were 100% Satisfied	% Share of Total Cases
1	Carver	207	146	71%
1	Dakota	803	492	61%
1	Goodhue	185	130	70%
1	Le Sueur	178	157	88%
1	McLeod	103	76	74%
1	Scott	358	257	72%
1	Sibley	73	57	78%
1 Total		1,907	1,315	69%
3	Dodge	45	30	67%
3	Fillmore	142	110	77%
3	Freeborn	89	57	64%
3	Houston	102	71	70%
3	Mower	119	66	55%
3	Olmsted	327	139	43%
3	Rice	150	73	49%
3	Steele	82	32	39%
3	Wabasha	58	45	78%
3	Waseca	85	59	69%
3	Winona	210	136	65%
3 Total		1,409	818	58%
5	Blue Earth	233	133	57%
5	Brown	57	37	65%
5	Cottonwood	45	35	78%
5	Faribault	47	34	72%
5	Jackson	50	38	76%
5	Lincoln	7	6	86%
5	Lyon	100	78	78%
5	Martin	107	82	77%
5	Murray	43	35	81%
5	Nicollet	32	20	63%
5	Nobles	96	67	70%
5	Pipestone	77	69	90%
5	Redwood	61	37	61%
5	Rock	19	18	95%
5	Watsonwan	48	28	58%



<b>OUTCOMES BY JUDICIAL DISTRICT AND COUNTY</b>				
<b>District</b>	<b>County</b>	<b>Total Number of Cases</b>	<b># that were 100% Satisfied</b>	<b>% Share of Total Cases</b>
5 Total		1,022	717	70%
6	Carlton	148	111	75%
6	Cook	26	21	81%
6	Lake	27	19	70%
6	St. Louis	591	291	49%
6 - SL	Duluth	278	122	44%
6 - SL	Hibbing	99	49	49%
6 - SL	Virginia	214	109	51%
6 Total		792	442	56%
7	Becker	245	159	65%
7	Benton	78	42	54%
7	Clay	186	111	60%
7	Douglas	148	109	74%
7	Mille Lacs	161	85	53%
7	Morrison	120	85	71%
7	Otter Tail	179	125	70%
7	Stearns	564	340	60%
7	Todd	59	39	66%
7	Wadena	157	122	78%
7 Total		1,897	1,217	64%
8	Big Stone	22	16	73%
8	Chippewa	53	39	74%
8	Grant	19	11	58%
8	Kandiyohi	146	87	60%
8	Lac qui Parle	24	18	75%
8	Meeker	58	39	67%
8	Pope	36	26	72%
8	Renville	39	26	67%
8	Stevens	36	28	78%
8	Swift	30	18	60%
8	Traverse	16	13	81%
8	Wilkin	30	23	77%
8	Yellow Medicine	38	23	61%
8 Total		547	367	67%
9	Aitkin	94	72	77%
9	Beltrami	190	118	62%
9	Cass	115	78	68%
9	Clearwater	63	45	71%

OUTCOMES BY JUDICIAL DISTRICT AND COUNTY				
District	County	Total Number of Cases	# that were 100% Satisfied	% Share of Total Cases
9	Crow Wing	293	208	71%
9	Hubbard	61	40	66%
9	Itasca	375	304	81%
9	Kittson	20	15	75%
9	Koochiching	61	51	84%
9	Lake of the Woods	61	54	89%
9	Mahnomen	40	22	55%
9	Marshall	49	34	69%
9	Norman	21	11	52%
9	Pennington	136	86	63%
9	Polk	153	87	57%
9	Red Lake	59	46	78%
9	Roseau	134	118	88%
9 Total		1,925	1,389	72%
10	Anoka	994	722	73%
10	Chisago	170	119	70%
10	Isanti	91	58	64%
10	Kanabec	60	44	73%
10	Pine	106	63	59%
10	Sherburne	243	170	70%
10	Washington	392	261	67%
10	Wright	355	252	71%
10 Total		2,411	1,689	70%
<b>Grand Total</b>		<b>11,910</b>	<b>7,954</b>	67%

## SECTION V: FOURTH JUDICIAL DISTRICT (HENNEPIN COUNTY) RESTITUTION FIGURES

Where possible, figures used in the preceding pages are reproduced using data obtained directly from the Fourth District. This is not possible for a majority of figures, due to the differences in data collection between MNCIS and Fourth District systems. The Fourth District does not track credits, reductions, or adjustments in a way that allows for the compilation of statistics that are comparable to the statewide data from MNCIS. Therefore, only a handful of figures could be reproduced.

It should be noted that the analysis would not be significantly altered if data from the Fourth District could be integrated. The Fourth District has a familiar distribution of assessment amounts, with the vast bulk (90%) of assessment money concentrated in a minority of cases (roughly 20%). Those cases with the highest

assessment amounts account for the vast majority of outstanding assessments, while cases with smaller assessment amounts are more successful at satisfying their balances.

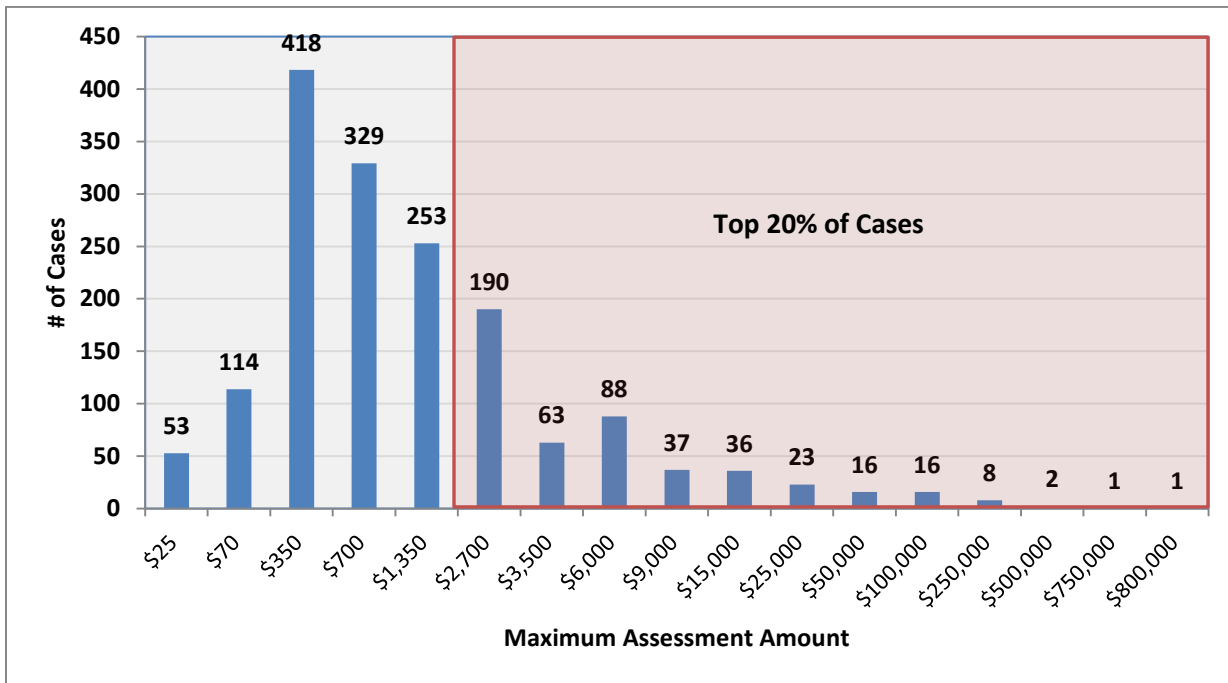
**Figure 5.1: Summary of 4<sup>th</sup> District 2010 Cohort**

Restitution Assessed	Cases	Average Assessment
\$7,596,384	1,658	\$4,582

**Figure 5.5: 4<sup>th</sup> District 2010 Cohort by Offense Level**

Offense Level	Assessment Total	% of Total \$\$	Cases	% of Cases	Per Case Average
Misdemeanor	\$520,600	7%	676	41%	\$770
Felony	\$6,926,417	91%	805	49%	\$8,604
Gross Misdemeanor	\$148,355	2%	170	10%	\$873
Petty Misdemeanor	\$1,012	0%	7	0%	\$145
Converted: N/A	-	-	-	-	-
<b>Total</b>	<b>\$7,596,384</b>	-	<b>1,658</b>	-	<b>\$4,582</b>

**Figure 5.3: 4<sup>th</sup> District Distribution of Cases by Assessment Amounts**



**Figure 5.4: 4<sup>th</sup> District Descriptive Statistics by Total Assessment Group**

Bottom 80% of Cases		Top 20% of Cases	
Mean	\$597	Mean	\$20,498
Median	\$463	Median	\$5,487
Maximum	\$2,366	Maximum	\$764,125
Sum	\$791,117	Sum	\$6,805,267
Count	1,326	Count	332

**Figure 5.6: 4<sup>th</sup> District Satisfaction Rates by Assessment Group\***

Satisfaction Rates	0%	1-50%	51-99%	100%
Top 20%	25%	58%	6%	11%
Bottom 80%	23%	18%	6%	53%

\*Data only counts payments. Credits, reductions, and adjustments not included.

**SECTION VI: SECOND JUDICIAL DISTRICT (RAMSEY COUNTY) RESTITUTION FIGURES**

Ramsey County provided data for those cases from 2010 that had restitution ordered and were closed. Although the data did not contain the same detail as the cohort analysis above, it did demonstrate trends similar to those from the cohort analysis, specifically, that while a significant number of cases had 100% satisfaction, those cases represented a disproportionately smaller amount of the total amount of restitution ordered: 41% of the cases had 100% satisfaction while total payments for that set of closed cases represented only 16% of the total amount assessed.

2010 CLOSED CASES	Number	% of total	Amount Assessed	Amount paid	% of total paid	% of total assessed
100% Satisfied	138	41%	\$233,638	\$233,639	65%	16%
Partially Satisfied	95	28%	\$965,746	\$127,095	35%	9%
No restitution paid	106	31%	\$239,382	\$0	0%	0%
Total	339	100%	\$1,438,766	\$360,734	100%	25%

**SECTION VII: DEPARTMENT OF CORRECTIONS**

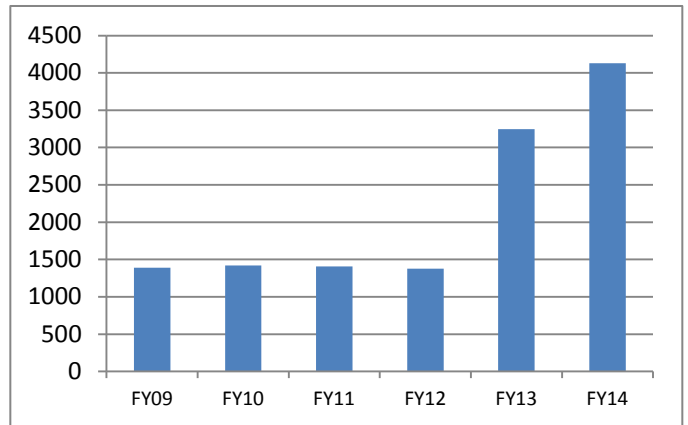
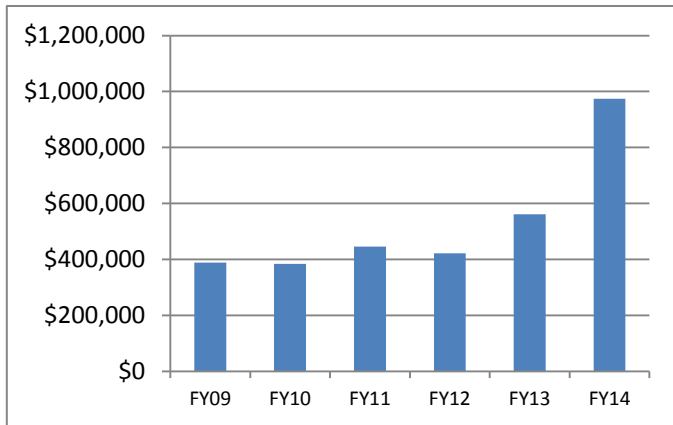
Over 60 percent of DOC offenders owe restitution or fines, and the average amount owed is \$800. Currently, incarcerated offenders owe more than \$25 million in restitution. In 2013, the DOC instituted new collection procedures to improve payment of restitution by incarcerated offenders.<sup>62</sup> As part of the RWG process, DOC staff presented a webinar in March 2014 explaining new procedures, their dramatic impact on the

number of inmates making restitution payments, and the amount of restitution collected from inmates since the new procedures were implemented.<sup>63</sup>

In FY 2013, the DOC collected approximately \$560,000 annually from offender wages for restitution payments. Following implementation of the new procedures, payments increased over 130%. The following figures illustrate the increase in offenders making payments and the amount of restitution being paid.

**Figure 7.1: Amount of restitution paid by DOC offenders**

**Figure 7.2: Number of DOC offenders making payments**



**PART 3 – CONCLUSION**

Data collected as part of this process demonstrate that restitution is being paid in many cases. The majority of cases involve restitution amounts ordered of less than \$3000, and cases in that category showed the greatest likelihood of payment.

The data also reveal the extent to which restitution is not paid, even in cases where the restitution amounts ordered are very low. That reaffirms the need to identify and focus on offenders with the ability to pay. Research and analysis by the State Court Administrator’s Office form the building blocks for ongoing collection and review of restitution data. This will be valuable not just as a mechanism for the accountability of our systems, but to assess the impact of any changes made as a result of the adoption of the RWG recommendations.

## PART 4 - RECOMMENDATIONS

The RWG created a long list of recommendations, some very specific and others general, that spanned the entire restitution process and touched on every type of stakeholder involved with restitution. These recommendations were grouped into categories and identified as statutory or practice recommendations. Nearly all recommendations received unanimous support; those few with dissenting opinions are presented here with explanation for the opposition.

In order to maintain a conversation of unfettered possibilities, recommendations were developed without regard to the fiscal considerations. It was acknowledged throughout the process that many of the recommendations involved significant financial costs and might not be feasible in the near term. Even so, such recommendations represent goals to work toward.

A number of recommendations concerned changes in the statutory scheme for restitution, primarily in Minnesota Statutes section 611A.04. No attempt was made to present a legislative proposal for the 2015 legislative session due to the complexity and interrelatedness of the statutes, the potential impact on court processes, the need for careful deliberation by stakeholders, and the time it will take to draft new legislation. Instead, the RWG recommends forming a drafting committee to create a comprehensive legislative proposal for the 2016 legislative session that incorporates the recommendations presented below.

In addition to the recommendations for statutory change, the RWG crafted a number of practice-related recommendations to improve the processing of restitution requests, promote greater understanding of the process by victim and offender, and educate all stakeholders involved with restitution.

The following is a list of RWG recommendations, starting with overarching goals, followed by specific recommendations addressing the statutory restitution process and concluding with the general recommendations highlighting strategies to improve collection, training, data privacy, and technology needs.

### OVERARCHING GOALS AND RECOMMENDATIONS

- **Make restitution a priority:** Restitution is a right of victims who have been harmed by a criminal offense, and the justice system should take steps to ensure that offenders pay restitution to the greatest extent possible.
- **Establish a clear, consistent process:** Strive for a measure of consistency and uniformity in process and procedures across the state, with the goal of providing all victims a realizable opportunity to be made whole.
- **Utilize data:** Continue the comprehensive examination of restitution data and determine ways to make relevant information readily available to stakeholders.
- **Devote resources:** Devote resources to the restitution process to make it more efficient and effective. Invest in technology that improves processing and collection, comprehensively tracks restitution payments, helps make victims a part of the process, and facilitates evaluation of restitution collection efforts.

- **System oversight:** Establish an ongoing, collaborative group of stakeholders with responsibility for statewide restitution oversight, including review of new statutory provisions to ensure they have the desired effect, monitoring restitution collection data, and promoting the adoption of the RWG recommendations.

The following list of recommendations starts with those regarding process changes in requesting, ordering, and collecting restitution. Unless noted otherwise, every process recommendation requires a statutory change.

## PROCESS — PRETRIAL

**Require application of cash bail to restitution:** Create a statutory presumption that any cash bail will be applied to restitution. This presumption should apply to convictions and stays of adjudication. As a best practice, in cases of continuance for dismissal, the prosecutor should include as part of the agreement that the offender’s cash bail be applied to restitution.

**Clarify primary responsibility for processing restitution request:** The prosecutor should be responsible for providing the restitution form/affidavit to the victim, collecting the form and supporting documentation from the victim, and giving it to the court. The prosecutor should be responsible for providing the restitution request information to agents conducting a pre-sentence investigation (PSI).

**Improve victim support and assistance in the requesting process:** Direct OJP to create materials and forms in easy-to-understand language that can be distributed to crime victims by prosecutors. The information should include clear timelines and guidance to improve timeliness of requests, victims’ understanding of proper documentation to substantiate their requests, and appropriateness of requests, thereby reducing the need for hearings on contested restitution. Advocates, or prosecutors when advocates not available, should prepare victims for contested restitution hearings. Direct OJP to convene a stakeholder group to develop best practices, training, and protocols for working with victims on restitution issues. (*Practice and statutory.*)

**Citation cases and victims:** Prosecutors should work with local court administration to establish policies and procedures for the processing of citation cases that involve victims.<sup>64</sup> These policies should provide prosecutors the ability to identify victim-related citations and give sufficient opportunity for prosecutors to ensure that victims are afforded their rights, including notice of the prosecution and the right to request restitution. (*Practice recommendation*)

## PROCESS - CONTESTING RESTITUTION

**Streamline the process for contesting restitution:** Eliminate the requirement that the offender submit an affidavit to contest restitution.<sup>65</sup> Add a requirement for the defendant or defense attorney to submit a notice and motion for the hearing containing the basis for the objection. This notice and motion would alert the court that the requested restitution amount is disputed and a hearing is necessary.

## PROCESS - ORDERING

**Filing insurance claims:** Victims should not be required to file an insurance claim as a condition for requesting and receiving restitution.

**Joint and several liability:** In cases of multiple offenders, there should be a presumption of joint and several liability for the restitution obligation. The court has the discretion to order offenders to pay different restitution amounts, and when doing so, should provide on the record the basis for not ordering joint and several liability.

**Priority of payment:** When there are multiple victims in a single criminal case, the priority of payment should be given to real persons, followed by corporations, then government agencies. *(Note: This involves a manual process on the part of court administration; additional cost involved.)*

**Standard Order:** Create a standard, separate restitution order rather than including restitution within the sentencing order. Establish a process by which a proposed order containing offender and victim information can be submitted to the court for completion at the sentencing hearing. *(Practice recommendation.)*

## PROCESS - FORMS AND PAYMENT PLANS

**Payment plan “calculator”:** Encourage the use of payment plans with installment amounts based on a standard calculation. This standard scheme, similar to the child support payment calculator, would automatically determine payment plan amounts. The payment plan “calculator” would establish a presumptive payment amount based on such information as: (1) amount of restitution owed (2) length of supervision period, and (3) financial factors including monthly gross income, number of dependents, child and spousal support obligations, and other factors to be determined. Ideally, this “calculator” would be automated so information entered online would generate a report that could be submitted to the court.

**Financial disclosure forms:** Develop a standard financial disclosure form for the purposes of (1) establishing ability to pay as required by section 611A.045, subd. 1(2); (2) establishing an appropriate payment schedule; and (3) determining if noncompliance with restitution order is willful.

**Information from offender prior to sentencing:** When possible, the offender should complete the financial disclosure form prior to sentencing (such as during a pre-plea investigation or PSI). The restitution amount and recommended payment schedule should be part of the pre-plea or PSI report provided to the court. Given the unique opportunity afforded by the PSI to get information from the offender, the PSI should not be waived when restitution is an issue in the case. *(Practice recommendation.)*

**Information from offender after sentencing:** In those cases where restitution is determined after sentencing, either because it has been reserved or because it has been referred to the court’s designee (e.g., community corrections), the offender should be asked to complete the financial disclosure form within a set amount of time after receiving notice of the restitution amount. At that point, the offender could contest the requested restitution amount, submit the financial disclosure form within the required timeline (e.g., 30 days upon receipt of notice) to be used in establishing a payment plan, or pay restitution in full.

**Information from offender after release from DOC facility:** Establish a process that requires the offender to complete the standard, statewide financial disclosure forms and set up a payment plan within a set amount of time following release from a DOC facility (e.g. 60 days) as condition of the offender’s supervision.<sup>66</sup> The



offender would be required to provide verification to the supervising agent that a payment plan has been set up.

**Change in circumstances:** Place an ongoing responsibility on offenders to submit a new financial disclosure form when their circumstances change (e.g., new job). Provide a clear process in statute that allows the court or its designee to amend a payment plan based on changed circumstances, providing within a process for the offender to contest the amendment.

**Multidisciplinary collaboration:** Create a multidisciplinary group to develop the standardized financial disclosure forms and payment plan schedule, including identification of factors and calculation methodology.

## PROCESS—FOLLOWING A CONVICTION

**Amended restitution orders:** Require the court to notify the prosecutor and victim in cases where a restitution order is amended.

**Early release from probation:** Create a statutory presumption that an offender cannot get an early release from probation if restitution is still owed in that case. The court has the authority to grant early release upon consideration of factors specific to the offender, including: attempts by offender to pay restitution during probationary period, the amount of restitution, the length of probation, and the offender's financial circumstances. Similar to expungement, early release is an incentive for offenders to pay their restitution. Notice that early release is being considered should be given to the prosecutor and the victim if there is outstanding restitution. *Note: Opposition to this recommendation was voiced by defense attorney representatives who expressed the concern that probation would be unnecessarily extended for offenders who do not have the ability to pay. It should also be noted that termination of probation does not terminate the obligation to pay restitution and that the proposed scheme would treat indigent offenders different from non-indigent offenders. Minn. Stat. § 609.104 provides for collection for an additional 10 years, and the opportunity to docket restitution as a civil judgment still extends beyond the life of the criminal case.*

**Expungement:** Create a statutory presumption that an offender cannot get a criminal case expunged if restitution is still owed in that case. The court would have the authority to grant the petition upon consideration of factors listed in the 2014 expungement legislation,<sup>67</sup> specifically, the past efforts made by the offender toward payment and the measures in place to help ensure completion of restitution payment after expungement of the record if granted.

**Victim information:** The prosecutor shall provide victim information to court administration upon request for the purpose of collecting/dispersing restitution.

**DOC commits:** Develop a standard process for offenders to complete financial disclosure forms following release from a DOC facility. It should cover setting up payments plans, identifying due dates for payment, and, if restitution is not paid, referring restitution to the department of revenue. Explore development of automated process in MNCIS for referral to DOR. *(Practice recommendation.)*

**Payments to victims:** Ensure that payments to victims are timely and accurate. Track restitution balances at counties and pay out process. Establish system of good practices and training for court personnel. *(Practice recommendation.)*

## PROCESS - CIVIL JUDGMENTS

**Notice to victim:** Include in the notice of disposition provided to the victim following resolution of the case information about restitution and steps necessary to pursue civil judgment process.

**Notice to parties:** Clarify the process of providing notice to the parties about the entry of the civil judgment and docketing of the order. Court administration should mail a copy of the order for judgment and judgment to the prosecutor, offender, and victim upon receipt of the order.

**Opening a civil case:** Change the process so the victim initiates a civil case by filing two documents: *Affidavit of Identification of Judgment Debtor* (current form) and a new form called *Request for Entry of Judgment*. If, by the expiration of sentence or end of probation, the victim has not taken these steps, court administration will enter the restitution as a judgment in the criminal case, starting the 10 year collection period. *Note: This would likely be an administrative process requiring some automated method to bring this to the court's attention.*

**Renewal of judgment:** Change process for renewal of a civil restitution judgment so that victim is not required to petition the court to open a new case. Instead, the victim would submit a request to the court for a renewal (or extension) of the judgment for 10 years. The request would be submitted under the same case number and there would be no filing fee.

## INFORMATION TO PARTIES

**To the offender:** Provide consistent, standardized information, written in plain language, to the offender at multiple points in the process (e.g. during PSI, at sentencing, when under supervision) that explains the restitution obligation, setting up payment plans, and the consequences for nonpayment. This could be a fact sheet distributed with other correspondence to the offender. The offender should receive an explanation of what happens when a debt is sent to the DOR for collections, the additional cost to the offender when that happens, how offenders can contact the DOR to discuss payment, and how the offender can apply their payments to specific debts. In addition, explain the process for entering a civil judgment and the additional costs that may be assessed in that process. *(Practice recommendation.)*

**To the victim:** Victims should be given information about restitution as early in the process as possible. Prosecutors should provide restitution information and forms in their initial correspondence to victim. Victims should be encouraged in that correspondence to notify the prosecutor that restitution will be requested, even if the exact amount is not yet known.

In the correspondence to the victim at the start of the case, victims should be provided clear information so they can make appropriate restitution requests and have realistic expectations regarding payment. Victims should be provided with information on back-up documentation needed for a restitution request, using examples, and guidance on how to justify the requested amounts.

After sentencing, victims should be provided information about the restitution collection process, again, setting realistic expectations. Victims should be informed about the need to maintain an up-to-date address with court to ensure that payments are directed to the victim, and when an offender is on probation, the victim should be provided information about how to check the status of restitution and who to contact with

questions or to request a hearing if restitution is not being paid. These documents should be included as part of OJP's development of informational materials, explained above.

Regarding civil judgments, victims should be provided information about the process, the required paperwork, the pros and cons of docketing a civil judgment, the implications of the timing of opening a civil case, the process to collect on a civil judgment, and the cost of using the enforcement tools available with a civil judgment. It should be explained that Safe at Home participants can use their Safe at Home address on the court documents required for a civil judgment action and that victims who wish to keep their address confidential can request that the civil file be sealed. (*Practice recommendation.*)

## STRATEGIES TO SUPPORT COLLECTION EFFORTS

The RWG's recognition of the critical role played by supervising agents in the restitution process resulted in a series of practice recommendations:

- **Role of agents:** Agents should regard restitution as a priority in working with offenders, including requiring offenders to complete financial disclosure forms, setting up payment plans, and getting offenders to make payments.
- **Emphasize restitution at PSI stage:** During the pre-sentence investigation process, the agent should explain to the offender that restitution will be ordered as part of the sentence, and that it can be paid at the time of sentencing. Agents should make clear that the restitution obligation starts immediately and should not be put off to the end of probation. Agents should explain the consequences of the order going to collections.
- **Use available tools:** The DOC Hearings and Release Unit (HRU) should consider a restructure for willful nonpayment of restitution. Agents should be encouraged to use informal sanctions in willful nonpayment situations.
- **Emphasize restitution at sentencing:** The court should provide a strong message to the offender at the time of plea acceptance and at sentencing about the importance of restitution, the expectation of payment, and the consequence of nonpayment. If restitution is identified at the plea stage, an agent can inform offender during PSI to bring payment to sentencing

Discussions during the RWG process yielded a number of best practices, creative strategies, and successful practices used in the post-conviction phase — primarily ones that could be employed by probation services, community corrections, and the department of corrections.

- **Provide past-due notice to offender:** Develop strategies to communicate with the offender when restitution is past due such as by sending past-due notices by mail or email, or creating automated notices sent by email or text. Some county probation agencies have a system of mailing reminder notices or past-due notices to offenders who owe restitution or are late on their payments and these counties report an increase in restitution payments as a result.
- **Accept credits cards:** While the state can accept credit card payments, some local jurisdictions are not set up to accept these payments. Local jurisdictions, to the extent possible, should accept restitution payments by credit card.

- **Use voluntary wage assignments:** In some counties, offenders can voluntarily agree to have restitution payments deducted from their wages. These counties have found that offenders like the automatic withdrawals, and they improve restitution payment in some cases.
- **Allow revenue recapture by counties:** In some circumstances (such as when DOR returns the restitution order to the county), employing revenue recapture may be an effective strategy to collect restitution. This strategy is recommended for counties as long as it does not conflict with DOR revenue recapture efforts. Explore development of an automated process for referral eliminating the need for manual entry by the county court administration. *Note: Requires funding. (Practice recommendation.)*
- **Use restorative justice opportunities:** In general, restorative justice programs are supported and encouraged as an alternate way to handle some offenses, particularly those committed by juveniles. Restorative justice programs that notify the victim, include the victim in the process, and take into consideration the victim's desire regarding restitution are favored.
- **Support restitution funds:** There are various models for restitution funds in Minnesota with the general concept being a local, revolving fund where victims are paid restitution from a fund rather than by the offender. Counties with these funds report that they're effective in getting restitution to victims. In the past, these funds were supported by state grants, but now are funded using a variety of strategies. In general, it is recommended that restitution funds be supported as a strategy to ensure the victim is paid restitution. *Note: Any broad scale development and implementation of county-based restitution funds will require financial support from the state.*

## DATA PRIVACY

**Victim data:** Classify as confidential all victim location information provided to the court for purposes of requesting, ordering, and collecting restitution. *(Statutory recommendation.)*

**Offender data:** Classify the offender data provided in a restitution-related financial disclosure as having the same data protections that apply to the public defender application, subject to the victim's right to offender information under section 13.84, subd. 6(a)(2). *(Statutory recommendation.)*

## TRAINING

The RWG made the following training suggestions for judges, court personnel, supervising agents, prosecutors, and advocates. While there were no recommendations that training be mandated by statute, the following came forward:

### ***Criminal justice personnel:***

- Train criminal justice professionals on: statutes, court rules and court policy that specify timelines and requirements related to restitution, including when restitution is due, when payment plans are set up, and the automated process for sending restitution to collections.
- Train court administration staff and Department of Revenue staff on their respective functions, procedures, and appropriate contacts for inquiries, problem solving, and collaboration. Identify process for ongoing collaboration and communication between the Judicial Branch and the DOR.

- Train appropriate criminal justice personnel outside of the courts on how to view restitution payments in MNCIS.
- Train agents, judges, and other criminal justice professionals on
  - Responsibilities and actions that can be taken related to restitution even if the debt has gone to collections or restitution order has been docketed as civil judgment.
  - The ability of the victim to proceed with enforcement tools to collect on a civil judgment when the offender still on probation.<sup>68</sup>
- Train supervising agents and others with responsibility for court services data, as defined in section 13.84, on the ability of the victim to get otherwise private or confidential information about the offender for the purposes of asserting their right to restitution (Minn. Stat. 13.84, subd. 6(a)(2)).

### ***Advocacy community***

- Educate community-based advocates about the restitution process and encourage them to take a bigger role in checking on the status of restitution for the victims they support.

### ***Law enforcement:***

- Provide training for law enforcement agencies about importance of checking the “endangerment box” on citations related to crashes and including on the citation information about driving conduct that caused the crash, even if citation is issued only for conduct such as driving without insurance or driving after revocation. Explain the implications for victims regarding restitution when the endangerment box is not checked.

## **GENERAL**

**Other stakeholders:** The RWG identified other agencies and organizations that could assist in the restitution process, leading to two recommendations:

- Encourage legal service providers to assist low income crime victims with collecting civil judgments
- Recommend that the Minnesota State Bar Association expand the restitution section in the Minnesota Judges Criminal Bench book to include more information about the restitution process and case law

**Data:** Three specific types of data were identified as important to examine:

- Data related to joint and several liability cases
- Cases with multiple juvenile offenders being dealt with in different counties
- The number of expungement petitions granted with restitution still owing

### **Technology:**

- Develop electronic solutions to track restitution data
- Enhance the restitution module with the DOC’s Minnesota CHOICE service to create an automated process for transmitting custody status information on incarcerated offenders with restitution orders from the DOC to the DOR
- Explore technology options for improved communication and data transfer between the Judicial Branch and the DOC, including the use of Minnesota CHOICE

## FURTHER DISCUSSION REQUIRED

RWG members were unable to craft recommendations for some issues because of the complexity and potential for unintended consequences. The following is a list of issues requiring further discussion.

### Civil judgments:

- Improvements to the civil judgment process are necessary to reduce the impact on the victim
- The impact on the general fund of waiving the fees associated with filing and enforcement actions needs to be discussed.

**Insurance companies:** Several discussions centered on the appropriateness of insurance companies seeking restitution.

- Should insurance companies (auto, health, homeowners, workers' compensation) be considered "victims"?
- If insurance companies are victims, should they be treated in the same way as human victims?

There are different practices across the state related to restitution requests from insurance companies. Some jurisdictions never consider the requests and others routinely order restitution. Also, there is a concern about the impact these restitution orders have on defendants given that full payment of the big restitution amounts owed to insurance companies may be unattainable. There is also a philosophical issue of whether insurance companies should be able to request restitution for their payouts to insured victims.

**Interim dispositions:** The issues related to interim disposition cases (including stays of imposition, stays of adjudication, and continuances for dismissal) go beyond restitution and require a broader discussion. Practices vary across the state. There are no resources to monitor these cases, and there is no easy way to retrieve city-specific information on these cases from MNCIS. There is the additional problem that, under current law, restitution in interim disposition cases is never sent to collections. Further discussion should focus on establishing statutory responsibility for monitoring these cases and for bringing noncompliance to the attention of the court when the case warrants.

**Unsupervised probation:** Engage in further discussion to:

- Determine the extent to which offenders on unsupervised probation pay restitution.
- Identify a technological strategy to provide prosecutors with information on offenders on unsupervised probation.

**Addressing the *Barrientos* case:** There was some discussion that focused on the impact of *State v. Barrientos*, a case where the Minnesota Supreme Court held that probation can be extended up to the statutory maximum for the offense in cases of nonpayment of restitution.<sup>69</sup> While this approach may provide an incentive to get the offender to pay, negative impacts were also identified. One RWG member felt that the statute should be changed so that courts do not have the ability to extend probation up to the statutory maximum; this member's position statement was provided to the RWG for review and discussion at the final RWG meeting.<sup>70</sup>

**Miscellaneous:** Two miscellaneous issues that came up during the discussion which require further inquiry and discussion include the process for handling situations with multiple victims and orders and the process for setting a "due date" which impacts the length of time collection efforts can be employed.

## CALL TO ACTION

This lengthy list of recommendations was developed as a result of the RWG's extensive examination of restitution in Minnesota, including identification of problems with the current process, intensive discussions by individuals with a high level of expertise on all aspects of the process, and creative problem solving. As evident from the active participation of the RWG members, the members were clearly committed to completing this process and, most importantly, to continuing the work to improve restitution in Minnesota. With that commitment in mind, the following action items emerged.

**Form an ad hoc drafting committee on restitution:** Form a drafting committee to work on legislative changes flowing from RWG recommendations, including revision of the structure and organization of Minnesota Statutes section 611A.04. While beyond the statutory charge of the Restitution Working Group, this committee would include the same stakeholders represented on the RWG, including prosecutors, defense attorneys, supervising agents, advocates, court administrators, and judges.

**Distribute findings:** Publicize the findings of the Restitution Working Group and encourage adoption of improved restitution practices by those involved in the process. Present RWG findings to all key stakeholder groups.

**Request of Legislature:** Request that the Minnesota Legislature consider the comprehensive legislative proposal in the 2016 legislative session. Further, request continued support from the legislature for all efforts aimed at increasing process efficiency, improving the likelihood of collecting restitution, and focusing collection efforts on those offenders with the ability to pay.

## CONCLUSION

As a result of the legislative directive, the RWG process brought together a large group of key stakeholders with diverse views and perspectives for an intensive examination of the restitution process from beginning to end. This report reflects their collective effort, which entailed many hours of discussion, document review, data analysis, and reflection as the RWG members sought to find ways to make the process more efficient, consistent, and effective. The group garnered a much greater understanding of restitution, in general and in practice, and the discussions revealed the current challenges for practitioners, offenders, and victims. This concerted effort by the RWG resulted in a comprehensive set of practice and statutory recommendations to address these challenges

Clearly, the work is not done. The stakeholders who contributed to this process remain committed to continuing to the next step, to revise Minnesota Statutes section 611A.04, as well as to seek ways within their own constituencies to implement the practice recommendations from the RWG. Throughout the RWG process, the group recognized that to accomplish some of the desired goals, additional resources would be necessary; while funding was not specifically addressed in this report, the RWG members were ever cognizant of the landscape of limited resources and competing needs.

It is the hope of the RWG that by adopting the recommendations made in this report, Minnesota will move toward a more predictable and responsive restitution process that recognizes and emphasizes the centrality of restitution for victim restoration. An improved process will encourage and empower those criminal justice professionals whose work touches restitution, and will maintain a focus on those offenders who do have the ability to pay. Ultimately, and most importantly, these recommended changes should allow more victims in Minnesota to have their promise of restitution fulfilled.



<sup>1</sup> See, e.g., Kercher, G., Johnson, M., Ilhong, Y., and Proctor, A. (n.d.). *Restitution in Texas: A Report to the Legislature*. Austin, TX: Crime Victims' Institute; Pennsylvania Office of the Victim Advocate. (February 2013). *Restitution in Pennsylvania Task Force Final Report*; National Center for Victims of Crime. (2011). *Making Restitution Real: Five Case Studies on Improving Restitution Collection*; American Probation and Parole Association (2009). *Restitution and Other Legal and Financial Obligations, Fact Sheet 4: Promising Victim Related Practices in Probation and Parole*; McLean, R., Thompson M. (2007). *Repaying Debts*, A publication about how policy makers can increase accountability among people who commit crimes, improve rates of child support collection and victim restitution, and make people's transition from prisons and jails to the community safe and successful.

<sup>2</sup> *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984).

<sup>3</sup> *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007).

<sup>4</sup> Woolpert, S., *Applying humanistic psychology to politics: The case for criminal restitution*, 28 *Journal of Humanistic Psychology* 45, 51 (1988) (an offender's accountability for the damage done to a victim "holds the central place in restitutionary theory").

<sup>5</sup> *State v. Pflapsen*, 590 N.W.2d 759, 769 (Minn. 1999) (finding that "[r]estitution is intended to be compensatory, not punitive").

<sup>6</sup> Woolpert at 57-58.

<sup>7</sup> *Kelly v. Robinson*, 479 U.S. 36 (1986) (citing Note, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 *Harv. L. Rev.* 931, 937-941 (1984).).

<sup>8</sup> *State v. Maidi*, 537 N.W.2d 280, 286 (Minn. 1995).

<sup>9</sup> Woolpert at 56, 59.

<sup>10</sup> The Reparations Board is a state victim-compensation program that can provide financial assistance to victims of violent crime for some of their financial losses; the Board can seek restitution on behalf of the victim for payments made to the victim. Minn. Stat. §§ 611A.04, subd. 1a; 611A.51-.68.

<sup>11</sup> See Herman, J. *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 *J. of Traumatic Stress* 159, 159 (2003); Parsons J., Bergin T. (April 2010) *The Impact of criminal justice involvement on victims' mental health. Journal of Traumatic Stress* 23(2):182-8.

<sup>12</sup> Summary of Minnesota restitution statutes available on the [OJP website](#).

<sup>13</sup> Summary of Minnesota restitution case law available on the [OJP website](#).

<sup>14</sup> Minn. Stat. § 611A.04, subd. 1. See also Minn. Stat. §§ 609.10, subd. 2, 609.125, subd. 2.

<sup>15</sup> Minn. Stat. § 611A.01(b).

<sup>16</sup> Minn. Stat. § 611A.04, subd. 1.

<sup>17</sup> Minn. Stat. § 611A.04, subd. 1.

<sup>18</sup> Minn. Stat. § 611A.04, subd. 1.

<sup>19</sup> Minn. Stat. § 611A.045, subd. 3. As a result of a legislative change during the 2014 legislative session, the offender must be served directly; notice to the offender's attorney is no longer deemed notice to the offender. 2014 Minnesota Session Laws ch. 245 (HF 2386) (amending 611A.045, subdivision 3(b)).

<sup>20</sup> Minn. Stat. § 611A.045, subd. 3.

<sup>21</sup> Minn. Stat. § 611A.04, subd. 1(c).

<sup>22</sup> Minn. Stat. §§ 609.10, subd. 1, 609.125, subd. 1. Minnesota's crime victim rights statutes apply equally to all levels of crime, as well as offenses committed by juvenile offenders. Minn. Stat. §§ 611A.01, 611A.015.

<sup>23</sup> Minn. Stat. §§ 609.10, subd. 1; 609.125, subd. 1.

<sup>24</sup> Minn. Stat. §§ 260B.198, subd.1(5), 611A.01, 611A.015.

<sup>25</sup> Minn. Stat. §§ 609.527 (identity theft); 609.596 (killing or harming public safety dog). A complete summary of special restitution statutes available on the [OJP website](#).

<sup>26</sup> Minn. Stat. § 611A.045, subd. 1(a).

<sup>27</sup> Minn. Stat. § 611A.04, subd. 1.

<sup>28</sup> Minn. Stat. § 611A.04, subd. 1.

<sup>29</sup> Minn. Stat. § 611A.045, subd. 2a. There are different procedures depending on whether or not an offender is on probation.

<sup>30</sup> Minn. Stat. § 609.125, subd. 1(6)(b).

<sup>31</sup> Minn. Stat. § 611A.04, subd. 1.

<sup>32</sup> Minn. Stat. § 611A.04, subd. 2.

<sup>33</sup> Minn. Stat. § 609.104, subd. 1. Chapter 16D governs state debt collection.

<sup>34</sup> The DOR acts as a collection agency for all types of debts owed to local and state governmental agencies. See: Minn. Stat. § 609.104; *see also* Minnesota Judicial Branch Procedures, Policy Number 2.09(B), *Collection of Past-Due Accounts* (Effective date February 1, 2010).

<sup>35</sup> Minn. Stat. § 609.104, subd. 1.

<sup>36</sup> *See* Minn. Stat. § 609.135, subds. 1a & 2(g).

<sup>37</sup> Minn. Stat. § 609.135, subd. 1a. The court may extend the offender's term of probation for up to one year for failure to pay restitution if certain requirements are met. Minn. Stat. § 609.135, subd. 2(g). Other options available to the court upon a finding of a probation violation, including revocation, are listed in Minn. R. Crim. P. 27.04, subd. 3 and Minn. Stat. § 609.14.

<sup>38</sup> Minn. Stat. § 611A.046.

<sup>39</sup> *State v. Austin*, 295 N.W.2d 246, 250 (Minn.1980) (for probation violation, one of three required factors is that violation is intentional or inexcusable).

<sup>40</sup> *See* Minn. Stat. §§ 611A.64; 243.23, subd. 3; Carlson, T., Deputy Commissioner, Department of Corrections memorandum, *Restitution and Fine Collection Changes for Minnesota DOC Offenders Effective April 1, 2013*, DOC memorandum, October 29, 2012. Document available on the [OJP website](#).

<sup>41</sup> *See, e.g.*, Minn. Stat. §§ 611A.04, subds. 1(c) & 3; 611A.05. The procedures for docketing a civil judgment are found in Minn. Stat. § 611A.04, subd. 3.

<sup>42</sup> Minn. Stat. § 609.104, subd. 2.

<sup>43</sup> Minn. Stat. § 611A.04, subd. 1(c).

<sup>44</sup> Minn. Stat. § 611A.04, subd. 3.

<sup>45</sup> 1983 Minnesota Session Laws chapter 262 (H.F. No. 218).

<sup>46</sup> For example, *see The Working Group on Restitution, 1998 Report to the Legislature*, Department of Corrections; *Final Report of the Victims of Juvenile Crime Committee*, Committee convened by the Minnesota Crime Victim and Witness Advisory Council, Department of Public Safety (March 1992); *Final Report of the Restitution Workgroup*. Workgroup convened by the Crime and Victim and Witness Advisory Council and the State Court Administrator's Office (September 1988).

<sup>47</sup> "The Cloud" was later used to store all of the Restitution Working Group materials, including background information, meeting notes, presentation slides, and documents distributed during the RWG process.

<sup>48</sup> Bigham, K.; Bauer, L.; Palmer, L., and Ross, D. *Restitution Practices in Minnesota*, Student Capstone Project, University of Minnesota Humphrey School of Public Affairs, August 2013.

<sup>49</sup> 2013 Minnesota Session Laws, chapter 34 (S.F. No. 769) (Signed by Governor Mark Dayton on May 1, 2013).

<sup>50</sup> *Id.* subd. 2

<sup>51</sup> Minnesota has three delivery models for providing supervision to offenders on probation and supervised release: county probation departments, Minnesota Department of Corrections field services, and Community Corrections Act agencies. The term "supervising agent" as used in this report refers to all agents providing community supervision services.

<sup>52</sup> Presentation slides available on the [OJP website](#).

<sup>53</sup> Binder materials available on the [OJP website](#).

<sup>54</sup> Survey results available on the [OJP website](#).

<sup>55</sup> *Id.*

<sup>56</sup> Minn. Stat. §§ 609.104, 611A.045, subd. 2a.

<sup>57</sup> Minn. Stat. §§ 260B.198, subd. 8, 609.135, subds. 1a and 2(g), 611A.046.

<sup>58</sup> 2009 Minnesota Session Laws chapter 83 (SF 802).

<sup>59</sup> Minn. Stat. § 609.104; *see also* Minnesota Judicial Branch Procedures, Policy Number 2.09(B), *Collection of Past-Due Accounts* (Effective date February 1, 2010).

<sup>60</sup> Jannett, P., *Restitution in Minnesota: 2010 Cohort Analysis*, State Court Administrator's Office, Court Services Division, Research and Evaluation Unit (December 2014). A detailed documentation of data collection from MNCIS is available upon request.

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<sup>61</sup> “Joint and several” liability for restitution can be ordered in cases with multiple defendants. Each defendant is equally responsible to pay the entire amount of restitution ordered. See *State v. Johnson*, A13-2353 (Sup. Ct. July 30, 2014) (sentencing court has the authority to order restitution based on joint and several liability).

<sup>62</sup> These changes came about as a result of recommendations made by the “Restitution Recovery Team,” a DOC leadership project with the mission “to restore justice for victims by identifying methods and incentives to increase the amount of monetary obligations paid by offenders.” See Carlson, T., Deputy Commissioner, Department of Corrections memorandum, *Restitution and Fine Collection Changes for Minnesota DOC Offenders Effective April 1, 2013*, DOC memorandum, October 29, 2012. Memorandum available on the [OJP website](#).

<sup>63</sup> Recorded webinar available on the [OJP website](#).

<sup>64</sup> Citations issued for traffic related offense are considered “payable offenses” unless the law enforcement officer checks the “endangerment” box on the citation. This box is checked if the officer believes the offense was committed in a manner that endangered or was likely to endanger any person or property. For payable offenses, the offender does not have to appear in court. For citation cases involving victims, the offender must appear in court.

<sup>65</sup> Minn. Stat. § 611A.045, subd. 2(a).

<sup>66</sup> Currently, the process of setting up a payment plan differs depending on the county. In some counties it is done by court administration; in others, the supervising agent sets up a payment plan and may (or may not) notify the court that a payment plan has been established along with the due date for payment. This recommendation does not specify the exact manner in which the payment plan is set up, just that one is required. Further discussion will be necessary about who sets up the payment plan and how to ensure that appropriate due dates are entered into MNCIS.

<sup>67</sup> 2014 Minnesota Session Laws chapter 246, subd. 5(b) (HF No. 2576).

<sup>68</sup> See Minn. Stat. § 611A.05.

<sup>69</sup> *State v. Barrientos*, 837 N.W.2d 294, 298 (Minn. 2013) (court recognized that in cases where a judge initially orders a shorter period of probation than the statutory maximum, the judge has the authority to lengthen the period of probation up to statutory maximum to give the probationer more time to comply with the terms of probation).

<sup>70</sup> It is anticipated that a proposal will be introduced in the 2015 legislative session that addresses this issue.

## APPENDIX 1 – STATUTORY AUTHORITY

### 2013 Minnesota Session Laws chapter 34 (SF No. 769, sec. 11)

#### WORKING GROUP; REPORT.

Subdivision 1. **Direction.** By August 1, 2013, the Department of Public Safety shall convene a working group to study how restitution is currently being requested, ordered, and collected in Minnesota.

The commissioner of public safety shall invite representatives from the Department of Corrections, city and county prosecuting agencies, statewide crime victim coalitions, Minnesota Judicial Branch, county probation departments, Minnesota Association of Community Corrections Act counties, Minnesota Board of Public Defenders, and other interested parties to participate in the working group.

The state court administrator's office shall provide to the working group summary data on the restitution.

Subd. 2. **Duties.** The working group must review, assess, and make specific recommendations with regard to the following areas:

- (5) the process by which restitution is requested by victims and ordered by the court, including procedures used by prosecutors' offices, probation and court services, and court administration;
- (6) the statutory mechanisms for collecting restitution, including the establishment of payment plans, revenue recapture, and entry of civil judgments;
- (7) state and local policies, procedures, and strategies for collecting restitution, including restitution collection units, designated restitution probation officers, and department of corrections administrative policies; and
- (8) the extent to which data on restitution is collected.

Subd. 3. **Report to legislature.** The commissioner of public safety shall file a report detailing the working group's findings and recommendations with the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over criminal justice policy and funding by January 15, 2015. The report may include recommendations for legislation designed to improve, in a cost-efficient manner, the right to restitution granted to victims of crime under Minnesota Statutes, section 611A.04.

Subd. 4. **Sunset.** The working group shall sunset the day after the commissioner submits the report under subdivision 3.

## APPENDIX 2 – RESTITUTION WORKING GROUP MEMBERSHIP

Karen Andrews  
Office of Minnesota Attorney General

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Carver County Court Administrator  
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State Court Administrator's Office

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Minnesota Association of Comm. Corr. Act Counties (rep.)  
Co-Director, Central MN Community Corrections

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Supervisor, Domestic Violence Unit  
St. Paul City Attorney's Office

The Honorable Pat Diamond  
District Court Judge  
Second Judicial District

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Alternate

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Brooklyn Center Police Department

Donna Dunn  
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Minnesota Coalition Against Sexual Assault

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Alternate

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Office of the Minnesota Appellate Public Defender

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Wright County Probation

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Hennepin County Attorney's Office  
Formerly Mille Lacs County Attorney's Office

The Honorable Conrad Freeberg  
District Court Judge  
Seventh Judicial District

Scott Halvorson  
District Supervisor, Red Wing District  
Minnesota Department of Corrections

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Minneapolis City Attorney's Office

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Kandiyohi County Attorney's Office

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Department of Revenue  
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Home Free  
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Office of the Public Defender—Third Judicial District

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Court Administrator  
Carlton County

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University of Minnesota Law School  
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Commission

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Hennepin County Attorney's Office  
Former Executive Director, Minnesota Alliance on Crime

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Director, Victim Assistance and Restorative Justice Program  
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Prosecuting Attorney for multiple cities

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State Court Administrator's Office, Minnesota Judicial Branch  
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Evonn Westcott  
Assistant Director  
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Suzanne Elwell, Director, Crime Victim Justice Unit  
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Lesa Kramer, Financial Analyst  
State Court Administration - Finance Division

Kelly Moller, Hennepin County Attorney's Office  
Former Executive Director, Minnesota Alliance on Crime

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Caroline Palmer  
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## ORGANIZATIONS REPRESENTED

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Arrowhead Regional Corrections  
Brown County Attorney's Office  
Council on Crime and Justice  
Dakota County Attorney's Office  
Department of Corrections  
Department of Human Services—Office of Inspector General  
Department of Public Safety  
Department of Revenue  
Freeborn County Attorney's Office  
Hennepin County Attorney's Office  
Kandiyohi County Attorney's Office  
Le Sueur County Attorney's Office  
Minneapolis City Attorney's Office  
Minnesota Coalition Against Sexual Assault  
Minnesota Alliance on Crime  
Minnesota Association of Community Corrections Act Counties  
Minnesota Association of County Probation Officers  
Minnesota Association of Court Management  
Minnesota Chiefs of Police Association  
Minnesota Coalition for Battered Women  
Minnesota Corrections Association  
Minnesota County Attorneys Association  
Minnesota Crime Victim Reparations Board  
Minnesota Judicial Branch – 2<sup>nd</sup>, 4<sup>th</sup>, 7<sup>th</sup> Judicial Districts  
Minnesota Judicial Branch – State Court Administrator's Office  
Minnesota Office of the Attorney General  
Minnesota Sheriffs' Association  
Minnesota State Bar Association  
Minnesotans for Safe Driving  
Mothers Against Drunk Driving  
Office of the Public Defender – Fifth Judicial District  
Office of the Public Defender Appellate Office  
Office of the Public Defender-Fourth Judicial District  
Office of the Public Defender-Second Judicial District  
Ramsey County Attorney's Office  
Rice County Attorney's Office  
St. Paul City Attorney's Office  
Suburban Hennepin County Prosecutor's Association