Part I — Topic Summaries

RESTITUTION

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

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

Restitution

Restitution is money that the judge orders the offender to pay to reimburse the victim of the crime and/or the Crime Victims Reparations Board. Restitution may be ordered in both juvenile and adult cases after the offender has been convicted or found delinquent. Restitution may be ordered in addition to imprisonment and/or a fine. **State v. Knutson**, A12-0955 (Minn Ct. App. April 8, 2013b Under Minnesota Statutes section 611A.045, the amount of restitution must be based on the amount of economic loss sustained by the victim as a result of the crime and the offender's income, resources, and obligations. Under the sentencing statutes for felonies, gross misdemeanors, and misdemeanors, restitution includes:

(1) payment of compensation to the victim or the victim's family, and

(2) if the victim is deceased or already has been fully compensated, payment of money to a victim assistance program or other program directed by the court.

See Minn. Stat. 609.10, subd. 2 and 609.125, subd. 2. According to Minnesota law, "[a] victim of a crime has a right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted." Minn. Stat. 611A.04, subd. 1; **State v. Palubicki**, 727 N.W.2d 662, 665 (Minn. 2007) (in which the Minnesota Supreme Court states, in dicta, that under section 611A.04, subdivision 1, "victims of crimes are permitted to request restitution from a defendant if the defendant is convicted").

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

Procedure for Getting Restitution Ordered

Sections 611A.04 and 611A.045 provide detailed procedures for requesting and ordering restitution. First, the court, or its designee, obtains from the victim information determining the amount of restitution owed. This information should be "in affidavit form or by other competent evidence." Minn. Stat. 611A.04, subd. 1(a).

In order for the restitution request to be considered at the sentencing or dispositional hearing, all information regarding the restitution request must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing.

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

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

In **State v. Vanderbeck**, C6-94-1034 (Minn. Ct. App. Jan. 31, 1995), *review denied* (Minn. Mar. 29, 1995) (unpublished opinion), the court of appeals upheld a restitution order where the amount of restitution was determined 31 days after sentencing had been completed. The court stated that although section 611A.04 grants authority to enter a restitution order after sentencing if the victim's loss was not known at the time of sentencing, the statute is directory and does not prohibit the trial court from taking alternative steps toward providing restitution for victims or in addition to imprisonment.

See also **State v. Belfry**, 416 N.W.2d 811, 813 (Minn. Ct. App. 1987) (victims did not waive their claims by failing to appear at the restitution hearing since they had submitted a detailed account of their losses).

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

The judge has the ability to order restitution even if the victim has not requested it. See **State v. Gaiovnik**, A09-190 (Minn. Mar. 9, 2011). See also **Brooks v. State**, A11-464 (Minn. Ct. App. Dec. 5, 2011) (unpublished opinion) (recognizing the district court's separate power to impose restitution as part of a sentence distinct from statutory rights of crime victim to claim restitution, the establishment of crime victim reparations board, and right of prosecuting attorney to seek restitution); **State v. Miller**, A13-0264 (Minn. Ct. App. Feb. 10, 2014) (court has authority sua sponte to order rehearing on restitution and compelling the state to produce new witnesses necessary to make adequate findings to vindicate the victim's statutory right to restitution);

The offender has the right to object to expenses submitted for payment. To challenge restitution, the offender must request a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later. A defendant may not challenge restitution after the 30-day time period has passed. The offender must submit a detailed sworn affidavit setting forth all challenges to the restitution or items of restitution and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims. The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing. Failure to meet the procedural requirements under section 611A.045 for challenging restitution will bar the defendant's claim. See **State v. Bell**, A09-1736 (Minn. Ct. App., Sept. 28, 2010); see also **State v. Thole**, 614 N.W.2d 231, 235 (Minn. 2000); but see **State v. Borg** (A09-1921 (Minn. Ct. App. Jan. 27, 2014) (30-day time limit does not apply if challenge is to legal authority of the court to order restitution and not the specific amounts requested).

Once an offender raises a proper challenge to a restitution order, then the prosecution bears the burden of proving the propriety of the restitution by a preponderance of the evidence. Minn. Stat. 611A.045, subd. 3(a)
The defendant is not entitled to a jury trial to determine the underlying facts on which to base the amount of restitution. See **State v. Maxwell**, A10-1689 (Minn. Ct. App, August 15, 2011) pet. for review filed Sept. 14, 2011 (relying on Minn. Stat. 609.10, subd. 1(a)(5)).

In 2014, section 611A.04, subdivision 4, was amended to provide that defendant's payments to the court be applied to restitution before other fines and fees. (Minn. Session Laws ch. 204, sec. 11, effective July 1, 2014.) Prior to this change, when the court ordered a defendant to pay both a fine and restitution and the defendant did not pay the entire amount, the payment would go to the fines unless the court had specifically ordered that restitution be paid before the fines. **State v. Knutson.** A13-0955 (Minn. Ct. App. April 8, 2013) (court administrator did not have authority to apply defendant's payments to restitution first in absence of express court order to do so). Also if there is more than one victim of a crime, the court must give priority to the victims who are not governmental entities when ordering restitution. See Minn. Stat. 611A.045, subd. 1.

Amount of Restitution

The Minnesota Supreme Court has stated that "[t]he primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." **State v. Palubicki**, 727 N.W.2d 662, 666 (Minn. 2007).

The word "'restitution' connotes restoring or compensating the victim for his loss." **State v. Fader**, 358 N.W.2d 42, 48 (Minn. 1984). Restitution is intended to be compensatory, not punitive. **State. v. Plfepsen**, 590 N.W.2d 759,769 (Minn. 1999).

Victims of crime have the right to request restitution for all expenses that resulted from the crime. These may include, but are not limited to: medical bills, counseling expenses,

transportation, lost wages due to an injury, and stolen or damaged property. Restitution is limited to the recovery of economic damages sustained by the victim and cannot include amounts for pain and suffering. **State vs. Colsch**, 579 N.W.2d 482, 484 (Minn. Ct. App. 1998)

Restitution must be based on a factual determination of the victim's economic injury, and the factual determination must show with reasonable specificity the type of loss and its amount. **State v. Chapman**, 362 N.W.2d 401, 404 (Minn. Ct. App. 1985), *review denied* (Minn. May 1, 1985). The "loss claimed as an item of restitution by a crime victim must have some factual relationship to the crime committed." **State v. Nelson,** A10-1382 (Minn. Ct. App. March 22, 2011); see also **State v. Nelson**, A10-1382 (Minn. Ct. App. March 22, 2011) (losses must be directly related to the crime); **State v. Riggs,** A13-1189 (Minn. Ct. App. April 7, 2014) (court of appears reversed restitution order because district court considered the victim's fault when determining the amount of restitution).

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

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

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

The court is required to consider the offender's ability to pay restitution in establishing the restitution amount, however, no specific statutory obligation for the court to make findings on the offender's ability to pay the amount exists. Minn. Stat. 611A.045, subd. 1(a).
In **State v. Anderson**, 507 N.W.2d 245 (Minn. Ct. App. 1993), *review denied* (Minn. December 22, 1993), the court of appeals upheld a restitution order for $10,227 of lost wages in a sexual assault case. The defendant had committed multiple sexual assaults, but pleaded guilty only to one count of criminal sexual conduct. The trial court ordered restitution to the victim of a sexual assault listed in the original complaint, but not of the offense to which he pleaded guilty. The defendant did not object to restitution at the plea or during sentencing. The court syllabus states, "absent a specific agreement concerning restitution, a plea agreement as to charge and sentence neither precludes restitution nor limits the district court in its consideration of the amount of restitution and the defendant's ability to pay." In dicta, the court suggested that trial courts may order the whole amount of the victim's loss, and, if the defendant is lacking in resources, the offender can seek an adjusted payment schedule accordingly. See **State v. Jola**, 409 N.W.2d 17, 20 (Minn. Ct. App. 1987).

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

If the victim disagrees with the amount of restitution listed in a stipulation between the prosecution and the defense and provides proof of the actual loss, then the trial court is not bound by the stipulated amount. In **State v. Wolf**, 413 N.W.2d 620 (Minn. Ct. App. 1987), the judge ordered the amount indicated in the presentence investigation (PSI), rather than the lower

amount agreed to by the prosecutor and defense attorney. The court of appeals upheld the district court's order because the victim had provided proof of actual loss, had disagreed with the lower stipulated amount, and had not been involved in the negotiations.

In **State v. Miller**, A06-1392 (Minn. Ct, App. June 5, 2007) (unpublished opinion), the district court had, without holding a restitution hearing, ordered the defendant to pay restitution to six persons who were not direct victims of the crimes to which he pleaded guilty. The court of appeals reversed the restitution order, reasoning that restitution may only be ordered for losses that were directly caused by the conduct for which the defendant was convicted or for losses that the defendant agreed to pay as part of the plea agreement. In addition, the court remanded the case back to the district court for a restitution hearing regarding losses for the direct victim because no finding had been made that the victim's losses were directly caused by the appellant's conduct and the factual basis in the record to support the restitution order was insufficient. See also **State v. Cass**, A11-2279, (Minn. Ct. App. Jan.14, 2013) (unpublished) (restitutuion award modified to exclude amounts attributable to the periods before and after the conduct for which the repellant was convicted).

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

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

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

In **State v. Borg**, A09-1921, (Minn. July 31, 2013), the court held that an order amending the restitution portion of a sentence constitutes a "sentence imposed" such that the State may appeal the amended sentencing order within 90 days after entry of the order pursuant to Minn. Rules of Criminal Procedure 28.05, subd. 1(2).

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

laws, the person seeking restitution must have incurred a loss directly caused by the conduct underlying the conviction. In this case, it had not been determined that Woodson was at fault in the accident; even if Woodson had insurance, the insurer would not have been liable. Therefore, the court of appeals held that the other driver was not a "victim" under the restitution statutes because the conduct for which Woodson was convicted—driving without insurance— did not cause the other driver's losses.

A sentencing order must contain any restitution ordered and whether it is joint and several with others. Minn. Rule Crim. Proc. 27.03, subd. 7(3)(v). See **State v. Graves**, 1993 WL 491259 (Minn. Ct. App. Nov. 30, 1993) (unpublished decision) (where more than one person takes part in a criminal act, each person can be held "jointly and severally liable" for the whole amount; one defendant can be held responsible for all of the harm inflicted on the victim); **State v. Miller**, A13-0264 (Minn. Ct. App. Feb. 10, 2014) (court did not abuse discretion in holding defendants jointly and severally liable for restitution where multiple assailants acted together and that their separate but indivisible conduct inflicted various injuries on thier assault victims.)

Who Can Receive Restitution?

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

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

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

Restitution can be paid to a victim, who, prior to 2005 was defined as including a "deceased's surviving spouse or next of kin" in cases where the victim was deceased. Minn. Stat. 611A.01 (b) (2004). In **State v. Jones**, 678 N.W.2d 1, 26 (Minn. 2004), the supreme court applied the common law definition of "next of kin" to the restitution statute as the "nearest living blood relation," and restricted the ability to seek restitution to either the surviving spouse or next of kin, but not both.
In 2005, the legislature broadened the definition of victim by replacing the "surviving spouse or next of kin" terminology with language that allowed restitution to be paid to "the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person." Minn. Stat. 611A.01 (b) (2006); see also **State v. Palubicki**, 727 N.W.2d 662, 665 (Minn. 2007) (citing the 2002 statute because it was the law in effect at the time of the offense, but noting the broadening of the statute by the legislature in 2005).

If a victim dies before or after a request for restitution is made or an order for restitution is issued, the personal representative of the victim's estate may request or enforce an order for restitution on behalf of the victim. If a personal representative is not appointed and no application is pending, an heir of the victim may file an affidavit to request or enforce an order for restitution. Appointment of a personal representative does not affect the right of other victims to request an order for restitution on their behalf. Minn. Stat. 611A.04, subd. 6.

An offender may be ordered to pay restitution to victims other than a natural person, e.g., a church, governmental entity, corporation or business, if it sustained a loss resulting from the crime. See Minn. Stat. 611A.01(b); **State v. Jola,** 409 N.W.2d 17,19 (Minn. Ct. App. 1987) (allowing restitution to be paid to an insurance company and car dealership); and **State v. Wolf**, 413 N.W.2d 620 (Minn. Ct. App. 1987) (allowing restitution to a church that was burglarized).
In **State v. O'Brien**, 459 N.W.2d 131 (Minn. Ct. App. 1990), the victim's parents recovered their losses

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

In **State v. Palubicki**, the court determined that the district court did not abuse its discretion when it ordered a defendant to pay restitution for a homicide victim's adult children's expenses to attend the court proceedings. 727 N.W.2d 662, 667 (Minn. 2007). Compare **State v. Borg**, A09-1921 (Minn. Ct. App. Jan. 27, 2014) (unpublished opinion) (parents of adult criminal sexual conduct victim are not victims under definition in 611A.01(b) and therefore not entitled to restitution). In an unpublished opinion, **State v. Mentzos,** C8-93-2577 (Minn. Ct. App. Aug. 10, 1994), *review denied* (Minn. Sept. 16, 1994) the court upheld a restitution order to pay for a security system for the family of a victim who had been threatened by a former boyfriend.

Restitution may be ordered to be paid to the Minnesota Crime Victims Reparations Board if the board has paid the victim's expenses. See Minn. Stat. 611A.04, subd. 1a. The validity of restitution ordered to a police department is not clear. In **State v. Dillon**, 529 N.W.2d 387 (Minn. Ct. App.1995), *rev'd on other grounds*, 532 N.W.2d 558 (Minn. 1995), the court found that a drug task force was not a "victim" for purposes of restitution.

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

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

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

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

(1) payment of compensation to the victim or the victim's family, and

(2) if the victim is deceased or already has been fully compensated, payment of money to a victim assistance program or other program directed by the court.

Special Restitution Statutes

In addition to the primary restitution statute covering all crimes, several statutes cover specific crimes.
In the case of **identity theft**, Minnesota law requires the court to order the offender to pay restitution of not less than $1,000 to each direct victim of the offense. See

Minn. Stat. 609.527, subd. 4(b). This law presumes that it costs each victim at least $1,000 in time and expenses to repair his or her damaged credit.

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

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

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

A person convicted of **intentionally setting a wildfire** can be ordered to pay restitution as allowed under section 611A.04. Minn. Stat. 609.5641.

If a wireless communications device dealer is required to hold the **wireless communications device** at the direction of law enforcement for purposes of investigation or prosecution, or if the device is seized by law enforcement, the wireless communications device dealer and any other victim is entitled to seek restitution, including any out-of-pocket expenses for storage and lost profit, in any criminal case that may arise from the investigation against the individual who sold the wireless communications device to the wireless communications device dealer. Minn. Stat. 325E.319, subd. 5(g). (Minn. Session Laws ch. 241, sec. 1, effective July 1, 2014.)

What if the Offender Has Not Paid the Restitution?

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

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

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

In **State v. Barrientos**, A12-0150 (Minn. September 25, 2013), the Court made clear that the district court had the authority to extend a term of probation up to the statutory maximum when a probationer fails to pay the full amount of restitution by the end of the originally

imposed probation term, holding that the district court's authority to do so is not limited by Minn. Stat. 609.135, subd. 2(g). See also, **State v. Borg**, A09-1921 (Minn. July 31, 2013) (An order amending the restitution portion of a sentence constitutes a "sentence imposed" such that the State may appeal the amended sentencing order within 90 days after entry of the order.)

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

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

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

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

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

What is the Difference Between Restitution and Reparations?

Restitution is only available if the offender is convicted of a crime and the judge orders it. Restitution can be ordered for all expenses related to the crime, including property losses. Reparations refers to financial assistance from the state government for victims of violent crimes. Victims need to get a claim form from a state agency called the Crime Victims Reparations Board (see section of this manual on reparations for address and phone number). In most situations, victims must file a reparations claim within three years of the injury. The Reparations Board does not pay for property losses. Victims should file a claim with the Reparations Board even though they are also requesting restitution. If the board pays the expenses and the offender also pays restitution for the same expenses, the victim must reimburse the board for the amount it paid.

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

How Does a Civil Law Suit Impact Restitution?

Under Minnesota law, the court cannot use an actual or contemplated civil action involving the alleged crime to deny a victim's right to obtain court-ordered restitution. Minn. Stat. 611A.04, subd. 1(a). See **State v. Wagner**, AIO - 1805 (Minn. Ct. App Apr. 19, 2011) (availability of automobile insurance may not be a basis to deny restitution). Further, the court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. Minn. Stat. 611A.04, subd. 1(c). For offenders on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment. Minn. Stat. 611A.04, subd. 1(c). Any restitution paid by the defendant in the criminal case will be credited against any civil judgment for the same conduct. Minn. Stat. 611A.04, subd. 3.

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

In two 2010 cases, the Minnesota Court of Appeals held that a settlement agreement between the victim and the defendant in a related civil case must be considered when determining the amount of restitution in the criminal case. In **State v. Arends**, A09-2082 (Minn. Ct. App., August 10, 2010), pet. for *review denied* (Minn. October 27, 2010), the court held that a complete and valid settlement of all claims in a civil action between a defendant and a victim of economic loss that relates to the same subject matter as a criminal prosecution precludes the state from seeking restitution for the economic loss on behalf of the victim in the criminal case. In **State v. Ramsay**, A10-28 (Minn. Ct. App., October 19, 2010), the court of appeals found that the district court abused its discretion in refusing to consider the terms of the civil agreement between the defendant and the victim that had suffered economic loss.

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

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

Data Privacy

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