



# Minnesota Crime Victim Rights Information Guide



OFFICE OF JUSTICE PROGRAMS

September 2023

### **Forward**

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

To assist those working with crime victims in Minnesota, the Minnesota Office of Justice Programs produces the Minnesota Crime Victim Rights Information Guide. This guide discusses the rights, protections, and resources available to crime victims, with specific emphasis on the relevant statutes and case law. For easy access to the information, the guide is divided into topic areas and includes links to other relevant information and resources.

The Crime Victim Rights Information Guide, first issued in 1993 by the Minnesota Crime Victim and Witness Advisory Council, resulted from a collaborative effort of many crime victim professionals throughout the state. It has gone through several revisions since then to keep pace with the evolving nature of victim rights. The 2021 edition of the Crime Victim Rights Information Guide reflects the changes from the 2023 legislative session and relevant case law through September 2023.

Like victim rights, this guide is intended to be an evolving document. Please contact the Office of Justice Programs for suggestions on improving the guide.

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

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## Locating Laws and Additional Information

### How to Find Minnesota Statutes Referred to in this Guide

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

### Minnesota Crime Victim Bill of Rights

Chapter [611A](#)

### Other Chapters Affecting Crime Victims

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| <a href="#">13</a>     | Data practices  |
| <a href="#">5B</a>     | Safe at Home program  |
| <a href="#">243</a>    | Corrections   |
| <a href="#">244</a>    | Criminal sentencing, predatory offenders, release   |
| <a href="#">253B</a>   | Civil Commitment Act  |
| <a href="#">260B</a>   | Juvenile delinquency  |
| <a href="#">518B</a>   | Domestic abuse  |
| <a href="#">541</a>    | Limitation of time – commencement of civil actions  |
| <a href="#">595</a>    | Witnesses   |
| <a href="#">609</a>    | Criminal Code   |
| <a href="#">626</a>    | Peace officers (authority, training, reporting); child abuse/maltreatment, vulnerable adult (mandatory reporting) |
| <a href="#">628.26</a> | Statute of limitations – criminal actions   |
| <a href="#">629</a>    | Arrest, bail, notice  |
| <a href="#">631</a>    | Criminal trial, conviction, sentence  |
| <a href="#">638</a>    | Board of Pardons  |

### Helpful Resources

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

[Minnesota Office of Justice Programs Website](#)

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

[VictimLaw Website](#)

[Minnesota Sentencing Guidelines Commission](#)

[Crime Victim Laws in Minnesota: An Overview, Information Brief](#)

[Minnesota Judicial Branch](#)

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## 1. Initial Notification of Rights: Law Enforcement and Prosecutors

Minnesota law requires criminal justice professionals to give victims notice of their rights at the initial stages of the criminal justice process.

### **Notice Given By Peace Officers**

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

The notice must inform a victim of:

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

Minnesota Statutes section 611A.66 specifically requires all law enforcement agencies investigating crimes to provide victims with notice of their right to apply for reimbursement along with a telephone number to call to request an application form. Police cannot be sued for failure to comply with this statute. T

### **Notice Given by Prosecuting Attorney**

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

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

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

## 2. Pretrial Diversion

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

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



### 3. Presentence Investigations and Plea Agreements

Victims of crime and their families have the right to participate and be heard in the criminal justice system. Yet, victims have little opportunity to communicate to judges and other criminal justice personnel regarding how the crime affected them. A presentence investigation, which is required for certain crimes, is one opportunity for the victim to provide information about the impact of the crime and express an opinion about a desirable outcome to criminal justice personnel, in particular, a probation officer.

This section discusses these rights in greater detail.

#### **Plea Agreements**

Most criminal cases result in a plea of guilty by the offender without proceeding to trial. The offender may plead guilty at the omnibus hearing or another pretrial proceedings. Usually the plea of guilty is the result of an agreement between the prosecutor and the defense attorney.

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

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

- (1) The contents of the plea agreement recommendation, including the amount of time recommended for the defendant to serve in jail or prison if the court accepts the agreement; and
- (2) The right to be present at the sentencing hearing and to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.
- (3) the eligibility of the offense for automatic expungement pursuant to section 609A.015.

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

A prosecutor shall make reasonable efforts to provide to a victim the date and time of the hearing during which the plea is to be presented to the court. Minn. Stat. 611A.033

If the defendant is a jailhouse witness in another case and their cooperation results in a benefit in their own criminal case, the victim has a right to be notified. Under section 634.045, a prosecutor must make a reasonable effort to notify a victim if the prosecutor has decided to offer or provide any of the following to a jailhouse witness in exchange for, or as the result of, a jailhouse witness offering or providing testimony against a suspect or defendant:

- (1) reduction or dismissal of charges;
- (2) a plea bargain;
- (3) support for a modification of the amount or conditions of bail; or
- (4) support for a motion to reduce or modify a sentence.

Efforts to notify the victim should include, in order of priority: (1) contacting the victim or a person designated by the victim by telephone; and (2) contacting the victim by mail. If a jailhouse witness is still in custody, the notification attempt shall be made before the jailhouse witness is released from custody.

Whenever a prosecutor notifies a victim of domestic assault, criminal sexual conduct, or harassment or stalking

### 3. Presentence Investigations and Plea Agreements, cont.

under this section, the prosecutor shall also inform the victim of the method and benefits of seeking an order for protection under section 518B.01 or a restraining order under section 609.748 and that the victim may seek an order without paying a fee.

#### **Presentence Investigations**

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

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

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

Under Minnesota Statutes section 611A.037, subdivision 1, the presentence investigation report must include information relating to crime victims, including:

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

The presentence investigation report is not accessible to the public.

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

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

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



### 3. Presentence Investigations and Plea Agreements, cont.

#### **Presentence Domestic Abuse Investigations**

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

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

Minn. Stat. 609.2244, subdivision 1.

#### **Victim Access to Presentence Investigation**

A crime victim does not have a right to access confidential information included in the PSI report. In **State v. Backus**, 503 N.W.2d 508, 510 (Minn. App. 1993), the court held that chapter 611A does not confer a general right of access to the confidential portion of the PSI. A victim may, however, be informed about the court's sentencing options so as to be able to make a meaningful recommendation as to the sentence without seeing the sex offender evaluation or other confidential portion of the report.

## 4. Victim Impact Statements

In addition to the ability to give input into the presentence investigation, victims also have the opportunity to provide feedback and input at the defendant's sentencing or disposition proceeding prior to the court deciding the sentence or disposition. When addressing the court, victims can personalize the crime and express its impact on them and their families, a process that may also aid victims in their emotional recovery.

### Right to Submit Statement at Sentencing

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

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

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

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

A prosecutor shall make reasonable efforts to provide to a victim the date and time of the sentencing hearing during. Minn. Stat. 611A.033

### Elements of a Good Victim Impact Statement

Mothers Against Drunk Driving (MADD) considers the following to be elements of an effective victim impact statement:

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

### U.S. Supreme Court Cases

In **Payne v. Tennessee**, 501 U.S. 808, 111 S.Ct. 2597 (1991), the U.S. Supreme Court ruled that the Eighth Amendment of the U.S. Constitution does not bar admissibility of victim impact evidence during a capital sentencing hearing. A statement regarding the crime's effect on the victim's family and community was allowed. While the death penalty is not available in Minnesota, this case provides information on the Court's reasoning on victim input at various points in the prosecution process.

### Minnesota Court Cases

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

## 4. Victim Impact Statements, cont.

In **State v. Streiff**, A04-2238 (Minn. App. Apr. 12, 2005), the victim impact statement supported a downward durational departure in a felony criminal vehicular operation case. The court recognized the discretion of the court in sentencing, stating that in this decision, “the court must balance competing considerations, including the sentencing guidelines, victim impact statements, constitutional implications, and its own observations.” The court stated that it did not see reason to ignore the victim impact statement when it supports a downward durational departure.

In **State v. Robinson**, C1-02-1957 (Minn. App. Jul. 22, 2003), the judge imposed the presumptive guideline sentence for a criminal sexual conduct conviction rather than the proposed sentence under the plea agreement for a stay of execution. The defendant contended that the prosecution breached the plea agreement when the victim’s mother and both grandmothers presented victim impact statements that objected to the stay of execution. Robinson appealed stating the prosecutor’s presentation of victim-impact statements violated a plea agreement provision. The court of appeals found that Robinson did not provide any evidence that the presentation of the victim impact statements were a dispositive factor in sentencing or that he entered into the plea agreement in reliance on the promise of no victim impact statements.

In an unpublished case, **State v. Feela**, C6-93-102, (Minn. App. Nov. 30, 1993), the court of appeals agreed with the trial court’s decision not to allow the defense attorney to cross-examine the victim regarding her oral victim impact statement given at sentencing. On appeal, the defendant argued that he should have been allowed to challenge the victim’s impact statement. The court of appeals said the “victim impact statement was not testimony subject to cross-examination.”

For a full discussion on issues surrounding the preparation, submission, and delivery of victim impact statements, see [Victim Impact Statements: A Brief for Minnesota Victim Service Professionals](#), prepared by the Office of Justice Programs and the Minnesota Alliance on Crime, posted on the [Office of Justice Programs Website](#).

## 5. Disposition, Declining Charges, and Dismissal

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

### All Criminal Cases

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

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

### Domestic Assault, Criminal Sexual Conduct, or Stalking Declinations and Dismissals

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

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

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

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

### Notice of post conviction rights

At the time the disposition notice is provided, the prosecutor must also notify the victim of their post conviction rights, including those related to expungements, civil commitment proceedings, and appeals. Minn. Stat. 611A.039. (New requirement effective August 1, 2021.)

## 6. Release from Custodial Institutions

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

This section discusses various custodial authorities' responsibilities with respect to notifying the victim of an offender's release, as well as the court's responsibility to notify victims of an upcoming bail hearing. Section 18 describes the automated victim notification systems in Minnesota: VINE (for release from jail facilities) and Minnesota Have (for release from department of corrections facilities).

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

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

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

- (1) the conditions of release, if any;
- (2) the time of release;
- (3) the time, date, and place of the next scheduled court appearance of the arrested or detained person and, where applicable, the victim's right to be present at the court appearance; and
- (4) the location and telephone number of at least one crime victim service provider in the area as designated by the Office of Justice Programs. If the victim is incapacitated, notification shall be to the next of kin. If the victim is a minor, the victim's parent or guardian shall be notified.

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

Crime of violence is defined under Minn. Stat. 629.73, subd. 2.

### **Notice of Release After Arrest or Detention – Victims of Domestic Abuse, Stalking, and Violation of Order for Protection or No Contact Order**

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

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

## 6. Release from Custodial Institutions, cont.

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

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

### **Notice of Bail Hearings**

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

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

### **Post-Conviction Notice of Release**

Under section 611A.06, victims are entitled to notice of the offender's release from imprisonment or incarceration or notice of a reduction in the offender's custody status. To receive release notification for an offender in a Department of Corrections facility, a victim must make a request to the Minnesota Haven electronic notification system or by contacting the department's Victim Assistance Program at 800-657-3830. For more information on Minnesota Haven, contact the Victim Assistance Program.

For release notification for an offender in a county jail, victims should contact the facility directly to find out about its process for making the request. Victims can also request to receive release notification through the VINE system, an automated victim notification system that can provide notifications of a change in custody status through phone, email, or text message.

Victims with new contact information must inform the facility and/or update their VINE registration to ensure that notification can be made of changes in custody status. The court is responsible for advising victims of their right to notice of release. The court or its designee must make a good faith effort to notify each affected victim, or the victim's parent or guardian, of the notice of release provisions. The custodial authority must make a good faith effort to notify the victims who have requested notice. This provision includes release of the offender from imprisonment or incarceration; release on extended furlough and for work release; and release from a juvenile correctional facility.

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



## **6. Release from Custodial Institutions, cont.**

### ***Contents of Notice***

The notice given to a victim of a crime against a person must include the conditions governing the offender's release and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release. Minn. Stat. 611A.06, subd. 2.

### ***Notice of Escape***

If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, or from a jail or DOC facility, the commissioner of corrections or other custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the offender's release within six hours after discovering the escape and shall also make reasonable efforts to notify the victim within 24 hours after the offender is apprehended. Minn. Stat. 611A.06, subd. 3.

### ***Data Privacy***

All identifying information regarding the victim, including the victim's request and the notice provided by the commissioner of corrections or custodial authority, is classified as private data on individuals as defined in section 13.02, subdivision 12, and is accessible only to the victim. Minn. Stat. 611A.06, subd. 4.

### ***Right to Submit Statement at Supervised Release Hearing***

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

### ***Notice of Release of Predatory Offenders***

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

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

Under section 244.052, subdivision 4, with respect to predatory offenders, the law enforcement agency in the area where the sex offender resides, expects to reside, is employed, or is regularly found, shall disclose any information to the public that is relevant and necessary to protect the public and counteract the offender's dangerousness. If the offender is assigned a risk level 1, the law enforcement agency may disclose information

## 6. Release from Custodial Institutions, cont.

to other law enforcement agencies. If the offender is assigned a risk level 2, the law enforcement agency may disclose information to other groups/agencies the offender is likely to encounter, in addition to disclosing information to other law enforcement agencies.

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

Section 243.166, subdivision 1b, specifies the types of offenses the predatory offender must have been convicted of in order for the communication notification requirement to apply.

### **Parole Review Hearings - Murder Cases**

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

*Note: As a result of changes made in the 2023 Legislative Session, parole and supervised released proceedings will come under the authority of the Supervised Release Board, effective July 1, 2024. Minnesota Session Laws 2023, Chapter 52, Article 18.*

### **Supervised Release - Life Sentences**

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

*Note: As a result of changes made in the 2023 Legislative Session, parole and supervised released proceedings will come under the authority of the Supervised Release Board, effective July 1, 2024. Minnesota Session Laws 2023, Chapter 52, Article 18.*

### **Conditional Release Terms - Predatory Offenders**

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

## 6. Release from Custodial Institutions, cont.

### **Early release under the Minnesota Rehabilitation and Reinvestment Act**

The Minnesota Rehabilitation and Reinvestment Act (MRRA), passed in 2023, provides an avenue for persons committed to the Department of Corrections (DOC) to reduce their period of incarceration and supervision. Minn. Stat. 244.40. Under the program, the DOC conducts an assessment and creates an individualized rehabilitation plan that includes identified goals. During the assessment and rehabilitation plan process, the DOC must make reasonable efforts to notify a victim and provide an opportunity for input. Minn. Stat. 244.42. Victim input may include:

1. a summary of victim concerns relative to release;
2. concerns related to victim safety during the committed individual's term of imprisonment; or
3. requests for imposing victim safety protocols as additional conditions of imprisonment or supervised release.

The commissioner must consider all victim input statements when developing an individualized rehabilitation plan and establishing conditions governing confinement or release. Minn. Stat. 244.47

Incarcerated persons can earn earlier release by participating in the rehabilitation prescribed by their individual rehabilitation plan. In addition, once released, persons can shorten their period of community supervision by meeting the goals of their release plan.

### **Juvenile Offenders - Access to Data in order to request notice of release**

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

## 7. Post-conviction proceedings

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

### Appeals

Under Minnesota Statutes section 611A.0395, subdivision 1, the prosecutor must make reasonable and good faith efforts to notify the victim of a pending appeal. The notice efforts must be made within 30 days of the filing of the brief by the party responding to the appeal, and must contain either a copy of the brief or explanation of the contested issues as well as information about the process, scheduled hearings, the victim's right to attend oral arguments, and contact information.

The prosecutor has 15 working days to notify the victim of the final decision on appeal; the notice must include a brief explanation of what effect, if any, the decision has upon the judgment of the trial court. Minn. Stat. 611A.0395, subd. 1(b).

### Sentence Modification

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

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

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

The term "crime of violence" as specified by section 611A.039 has the meaning given in section 624.712, subdivision 5 (designating crimes of violence). Additionally, for the purpose of this section, a crime of violence includes gross misdemeanor violations of section 609.224 (assault in the fifth degree) and non-felony violations of sections 518B.01 (Domestic Abuse Act); 609.2231 (assault in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.748 (harassment restraining order); and 609.749 (stalking).

### Sentence Adjustment

Under legislation passed in 2023, prosecutors have the authority to initiate a sentence adjustment. Minn. Stat. 609.133. Under this authority, prosecutors can look back at past cases and decide whether to ask a judge to shorten a sentence. When the prosecutor initiates a sentence adjustment, the prosecutor must notify the victim of the petition to adjust the sentence, of the victim's right to object, orally or in writing to the proposed sentence adjustment, and their right to be present at and to submit an oral or written statement at the hearing.

The victim has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether adjustment should be granted or denied. The judge shall consider the victim's statement when making a decision.

## 7. Post-conviction proceedings, cont.

### **Pardons**

Victims of offenders seeking pardons have a right to notice of the proceeding. The secretary of the Minnesota Board of Pardons must make reasonable efforts to locate any victim of the crime committed by the applicant seeking a pardon or commutation of sentence. If victims are located, the secretary must mail them notice of the application and the time and place of the hearing. This notice shall specifically inform them of a victim's right to be present at the pardon hearing and to submit an oral or written statement to the board. Minn. Stat. 638.06. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the application for a pardon or commutation should be granted or not. Minn. Stat. 638.04. See **Cole v. Star Tribune**, 581 N.W.2d 364 (Minn. App. 1998) (defendant cannot sue victim's family for defamation for statements submitted to the board of pardon because they occurred in the context of a quasi-judicial setting and were relevant and pertinent).

*Note: As a result of changes made in the 2023 Legislative Session, the pardon process will come under the authority of the newly created Clemency Review Commission. Clemency includes pardons, reprieves from sentencing, and commutation. During the transition period between enactment and July 1, 2024, a pardon, commutation, or reprieve granted during the transition period is governed according to Minnesota Statutes 2022, sections 638.02, subdivisions 2 to 5, and 638.03 to 638.08. Minnesota Session Laws 2023, Chapter 52, Article 8.*

## 8. Protection From Harm

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

### **Right to a Secure Waiting Area**

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

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

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

### **Right to Request Law Enforcement to Withhold Victim’s Identity**

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

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

Under section 171.12, subdivision 7(d), victims who have genuine concerns for their safety may ask the Minnesota Department of Public Safety Driver and Vehicle Services to keep their address private and unavailable to the public. The request can be done through the [Driver’s License Private Residence Address](#) form (PS32202DL-1). For questions, call 651-296-6911.

### **Right to Protection Against Employer Retaliation**

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

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



## 8. Protection From Harm, cont.

### Victim's Right to Terminate Lease

Under Minnesota Statutes section 504B.206, a tenant to a residential lease may terminate a lease agreement without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to: (1) domestic abuse, as is defined under section 518B.01, subd. 2; (2) criminal sexual conduct under sections 609.342 to 609.3451; or (3) sexual extortion under section 609.3458, or (4) harassment under 609.749.

The tenant must provide a signed and dated advance written notice to the landlord

- (1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;
- (2) stating that the tenant needs to terminate the tenancy;
- (3) providing the date by which the tenant will vacate; and
- (4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

The written notice must be delivered before the termination of the tenancy by mail, fax, or in person and be accompanied by a qualifying document. The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons, and disclosure shall not be a precondition of terminating the lease.

Tenants who terminate the lease under this section forfeit their security deposit. Victims may use statements from domestic violence and sexual assault advocates, or statements from other qualified third parties, such as health care and court officials, to certify the need to break a lease.

Landlords are prohibited from evicting tenants based solely on the fact that the tenant is a victim. Minn. Stat. 504B.206.

### Right to a Support Person When Testifying

A minor victim in a case involving child abuse, a crime of violence, assault in the fifth degree, or domestic assault may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial during testimony. Minn. Stat. 631.046, subd. 1. See **State v. Ross**, 451 N.W.2d 231 (Minn. App. 1990) (allowing mother as support person for four-year-old child victim of sexual abuse during the child's testimony at the defendant's trial for criminal sexual conduct was not an abuse of discretion by the trial court); and **State v. George**, C8-90-684, 1990 WL 167826, (Minn. App. Nov. 6, 1990) (statute not limited to only one support person; victim testifying can have several support persons in an open courtroom where no evidence of likely influence on the victim's testimony is shown).

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

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

## 8. Protection From Harm, cont.

### Excluding Spectators from the Courtroom

The trial court may exclude the public from the courtroom during a minor victim's testimony and other parts of a trial in cases of criminal sexual conduct. The judge shall give the parties and members of the public an opportunity to object, and shall specify on the record the reasons for closing all or part of the trial. Minn. Stat. 631.045.

The Minnesota Court of Appeals upheld the application of this statute in **Austin Daily Herald v. Mork**, 507 N.W.2d 854 (Minn. App. 1993), *review denied* (Minn. Dec. 13, 1993). In that case, the trial judge made specific findings that the juvenile victims would suffer embarrassment and fright and be traumatized further if required to testify before a public forum. The appellate court found that an order excluding the public during testimony of juveniles, while admitting the media on condition that they not report names of juvenile victims or information about their juvenile records, was a permissible restriction on access.

In **Buckanaga v. State**, A09-1217 2010 WL 1657601 (Minn. App. Apr. 27, 2010), the district court found adequate findings to support the closure of the courtroom during the minor victim's testimony for third-degree sexual conduct, including a phone call to the victim intended to influence her testimony, the victim's suicidal thoughts, fear for her safety, and that she was suffering from post-traumatic stress disorder.

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

In **Crawford v. Minnesota**, 4998 F.3d 851 (8th Cir. 2007), the defendant appealed his guilty verdict of first-degree criminal sexual conduct arguing that the trial court violated his constitutional right to a public trial by partially closing the court room while the victim testified. The Eight Circuit found the defendant agreed to partial closure of the courtroom while the victim testified, thus affirming the judgment.

In **State v. Bashire**, 606 N.W.2d 449 (Minn. App. 2000), the defendant waived any error resulting from the trial court's failure to make findings to support closure of courtroom during testimony of juvenile victims of alleged sexual assault.

### Notice Given to Party to Child Custody Proceedings

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

### Subpoena of Victim Records

In criminal cases, it is common for there to be attempts to get access to victim records which are privileged and confidential such as education, counseling, and medical records. Under the Rules of Criminal Procedures, a

## 8. Protection From Harm, cont.

subpoena requiring the production of privileged or confidential records about a victim, as defined in Minnesota Statutes section 611A.01(b), may be served on a third party only by court order. A motion for an order must comply with Rule 10.03, subd. 1. Before entering the order, the court may require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object. Minn. Rule Crim. Proc.22.01, subd. 2(c).

### **Speedy Trial Request**

A victim has a right to request that the prosecutor make a demand under rule 11.09 of the Rules of Criminal Procedure that the trial be commenced within 60 days of the demand. The prosecutor must make reasonable efforts to comply with the victim's request. Minn. Stat. 611A.033(a).

In a criminal proceeding in which a vulnerable adult, as defined in section 609.232, subdivision 11, is a victim, the state may move the court for a speedy trial. The court, after consideration of the age and health of the victim, may grant a speedy trial. The motion may be filed and served with the complaint or any time after the complaint is filed and served. Minn. Stat. 611A.033(b).

### **Name Change Data**

If the court determines that a name change application for an individual is made in connection with the individual's participation in a witness and victim protection program, the court shall order that the court records of the name change are not accessible to the public, except that they may be released upon request to a law enforcement agency, probation officer, or corrections agent conducting a lawful investigation. The existence of an application for a name change described in this subdivision may not be disclosed except to a law enforcement agency conducting a lawful investigation. Minn. Stat. 259.10; 13.841, subd. 2.

### **Stolen Cell Phones**

A customer whose cell phone is lost or stolen is not liable for unauthorized cell phone charges. Minn. Stat. 325F.696.

### **Notice to Victims – Petition for Civil Commitment**

The victim has a right to be notified when the county attorney's office has filed a petition to have the offender civilly committed. A county attorney who files a civil commitment petition must make a reasonable effort to provide prompt notice of the filing to any victim of the underlying crime that forms the basis for the civil commitment or was listed as a victim in the petition of commitment. Following the civil commitment proceedings, the county attorney must provide notice of the outcome of that petition to the victim. If the person has been civilly committed, the prosecutor must also notify the victim of the process for requesting notification of a change in status for the committed person from the Department of Human Services. Minn. Stat. 253B.18, subd. 5a (mentally ill and dangerous) and 253D.14, subd. 2 (sexually dangerous persons, sexual psychopathic personalities).

### **Notice to Victims – Release from Civil Commitment**

If the offender is civilly committed, the victim has a right to be notified of the change in status of the person from the department of human services facility. When considering a change in status of the person under civil commitment, the head of the facility must notify the victim that the person may be discharged or released and that the victim has a right to submit a written statement regarding the decision. A change in status includes when the person is being transferred, provisionally discharged, granted pass-eligible status, granted a pass plan, or otherwise temporarily or permanently released from a state-operated treatment facility. Minn. Stat. 253B.18, subdivision 5a(c) and 253D.14, subdivision 2a.

## 8. Protection From Harm, cont.

### **Witness Tampering**

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

In general, witness tampering occurs when someone attempts, or actually does, coerce, prevent, or dissuade a witness from testifying truthfully and from providing truthful information to the law enforcement agency, or retaliates against a witness who does so. There are four degrees of witness tampering: First degree (felony), aggravated first degree (felony), second degree (gross misdemeanor), and third degree (gross misdemeanor).

Tampering with a witness in the first degree involves the use of force or threats to any person or property. Minn. Stat. 609.498, subd. 1. Aggravated tampering in the first degree occurs when there is an credible threat to cause great bodily harm or death. Minn. Stat. 609.498, subd. 1b. Tampering with a witness in the second degree involves the use of coercion. "Coercion" includes threats to damage property, injure a business or profession, expose a private secret, or threaten to cause a criminal charge to be filed. Minn. Stat. 609.498, subd. 2, and 609.27. Tampering with a witness in the third degree involves the use of intimidation to prevent or dissuade a witness from testifying truthfully or cooperating with law enforcement. Minn. Stat. 609.498, subd. 2a. Coercion is not required.

### **Protecting a Homicide Victim's Estate**

Minnesota Statutes section 524.2-803 contains a number of provisions designed to prevent the perpetrator of homicide from benefiting financially from the crime, including collecting insurance and inheriting from the deceased victim. As a result of a 2013 law, in cases where a person has been charged with the felonious and intentional killing of the decedent, a personal representative, special administrator, or other interested person may petition the court for an order preventing the sale, distribution, removal, transfer, or destruction of the decedent's personal property, including jointly-held property. The court has the authority to grant an ex parte order if the court finds that the rights of the decedent's heirs and beneficiaries may be irreparably harmed before a hearing can be held. Minn. Stat. 524.2-803.

## 9. 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 can prove 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.

### Restitution

Restitution is money that the judge orders the offender to pay to reimburse the victim of the crime and/or the Minnesota Crime Victims Reimbursement 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**, 828 N.W.2d 485, A12-0955 (Minn Ct. App. Apr. 8, 2013). 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; and **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").

### Purpose 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. Pflapsen**, 590 N.W.2d 759 (Minn. 1999).

Restitution serves the state's goals of rehabilitation and punishment. **State v. Belfry**, 16 N.W.2d 811, 813 (Minn. 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. See **State v. Martin**, A20-0489 (Minn. App. Feb. 8, 2021), *review denied*, (Minn. App. 28, 2021) (nonprecedential opinion) (three day requirement necessary to provide defendant notice of specific items requested for restitution and their dollar amounts, and opportunity to respond).

## 9. Restitution, cont.

Most counties have the victim complete an affidavit form listing the losses incurred as a result of the crime. The affidavit can be found on the [Minnesota Judicial Branch Website](#). The affidavit does not need to be notarized. Minn. Stat. 358.116.

When determining restitution, the court must consider the amount of economic loss sustained by the victim as a result of the offense, and the offender's ability to pay. Minn. Stat. 11A.05, subd. 1(a). In **State v. Riggs**, 865 N.W.2d 679, 685, the court interpreted this statute as establishing an exclusive list of factors the district court must consider when determining the amount of restitution award.

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

The court does not have to order restitution, particularly if the victim does not provide the necessary information. If information relating to restitution has been presented, the court must state on the record its reason for its decision to grant or deny restitution or partial restitution. See Minn. Stat. 611A.04, subd. 1(c).

In **State v. Vanderbeck**, C6-94-1034 (Minn. 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. 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 judge has the ability to order restitution even if the victim has not requested it. See **State v. Gaiovnik**, 794 N.W.2d 643, A09-190 (Minn. Mar. 9, 2011). See also **Brooks v. State**, A1-464 (Minn. App. Dec. 5, 2011) (unpublished opinion) (recognizing the district court's separate power to impose restitution as part of a sentence distinct from the statutory right of crime victims to claim restitution, the establishment of Crime Victims Reimbursement Board, and the right of the prosecuting attorney to seek restitution); **State v. Miller**, 842 N.W. 2d 747, A13-0264 (Minn. App. Feb. 10, 2014), *review denied* (Minn. Apr. 15, 2014) (the court has the authority sua sponte to order a 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); **State v. Secord**, A21-0472 (Minn. App. Oct. 11, 2021) (nonprecedential) (district court's authority to guard victims' rights extends to its sua sponte raising the issue of defendant's failure to meet his burden of production).

The court is required to consider the offender's ability to pay restitution in establishing the restitution amount. Minn. Stat. 611A.045, subd. 1(a). There is no specific statutory obligation for the court to make findings on the offender's ability to pay the amount, and there is no strict requirement regarding how the district court should address the ability to pay issue. **State v. Alexander**, 855 N.W.2d 340, 344 (Minn. App. 2014) (citing **State v. Miller**, 842 N.W.2d 474, 479 (Minn. App. 2014), *review denied* (Minn. Apr. 15, 2014)). In **State v. Knowles**, A17-0708 2017 WL 6273124 (Minn. App. Dec. 11, 2017), *review denied* (Minn. Feb. 28, 2018), the defendant challenged the restitution order in his conviction of identity theft involving eight or more victims. The court found that the district court did not abuse its discretion because it considered his ability to pay restitution in the presentence investigation.

In **State v. Wigham**, A20-0857, (Minn. Dec. 22, 2021), the court examined the issue of what the district court must do to fulfill its obligation to consider a defendant's ability to as required by Minn. Stat. section 611A.045. The court stated, "While we stop short of holding that the district court must make specific findings regarding the



## 9. Restitution, cont.

defendant's income, resources, and obligations, the statutory requirement that a court 'consider' the defendant's ability to pay means that the court must affirmatively take into account the defendant's ability to pay when awarding and setting the amount of restitution." The court held that the "district court fulfills its statutory duty to consider a defendant's income, resources, and obligations in awarding and setting the amount of restitution when it expressly states, either orally or in writing, that it considered the defendant's ability to pay." Specific findings are not required, however, there needs to be sufficient evidence "about the defendant's income, resources and obligations to allow a district court to consider the defendant's ability to pay the amount of restitution ordered."

Under Minnesota Statutes section 611A.54, the court is required to include a payment schedule or structure in each restitution order. See **State v. Cotton**, A23-0213 (Minn. App. Sep. 5, 2023) (case remanded for failure to include payment schedule) (*pet. rev. filed Sep. 26, 2023*).

### Challenging 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. App. Sept. 12, 2011); see also **State v. Thole**, 614 N.W.2d 231, 235 (Minn. App. 2000); but see **State v. Borg**, A09-1921 (Minn. App. Jan. 27, 2014) (the 30-day time limit does not apply if the challenge is to the 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). See **State v. Sargent**, A19-0050 (Minn. App. Oct. 7, 2019) (unpublished opinion) (once the defendant satisfies the requirements for challenging restitution, the burden of proof falls on the prosecution). The prosecutor does not bear the burden of producing evidence of or proving a defendant's ability to pay restitution. **State v. Cloutier**, 971 N.W.2d 743 (A21-1270, May 17, 2022).

The defendant has a constitutional right to counsel at the restitution hearing. **State v. Braddick**, A21-1174 (Minn. App. Apr. 25, 2022) (nonprecedential).

### Payment of Restitution

Persons owing restitution must submit payment to the court administrator's office, which will disburse the restitution to the victim. The court administrator may not keep a restitution payment for longer than 30 days, except that the court administrator is not required to disburse a restitution payment that is under \$10 unless the payment would fulfill the offender's restitution obligation.

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. 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**, 828 N.W.2d 485, A13-0955 (Minn. App. Apr. 8, 2013) (the court administrator did not have the authority to apply the defendant's payments to restitution first in the 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(b).

## 9. Restitution, cont.

### Determining Restitution

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. 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. App. 1985), *review denied* (Minn. May 1, 1985).

In **State v. Boettcher**, 931 N.W.2d 376, A17-1426 (Minn. 2019), the defendant was charged with burglary and arson. Following a jury trial, the defendant was found guilty of the burglary, but not arson. The district court ordered restitution for the property loss related to the arson, determining that there was a factual relationship to the burglary offense, relying on **State v. Nelson**, 796 N.W.2d 343 (Minn. App. 2011). The court of appeals affirmed; however, on review, the Minnesota Supreme Court stated that the "factual relationship" standard is not appropriate and instead applied a "direct-causation" standard to determine restitution. The supreme court held that "a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant's crime." *Id.* at 318. See also, **State v. Hirman**, non A18-1457 (Nov. 25, 2019) (unpublished opinion); **State v. Esler**, 553 N.W.2d 61 (Minn. App. 1996) (court abused discretion in ordering a defendant convicted of murder to pay restitution to the victim of unrelated separate incident that occurred earlier in the day before the murder); **State v. Yusuf**, A18-1934 (Minn. App. Jun. 10, 2019) (unpublished opinion) (court rejected the argument that foreseeability of the loss was necessary). In

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 280 (Minn. 1996) (the higher amount of ordered restitution must be supported by a preponderance of the evidence present).

In **State v. Currin**, A20-0603 (Minn. May 25, 2022), the court held that when determining the amount of economic loss sustained by the victim as a result of the offense, the district court must consider the value of economic benefits, if any, the defendant conferred on the victim as a result of the offense. The court ruled in **State v. White**, A23-0126 (Minn. Aug. 28, 2023), that insurance proceeds to the victim are not an economic benefit conferred by the defendant and therefore should not be considered in determining the victim economic loss under Minn. Stat. 611A.045. Similarly, in **State v. Miller**, A23-0050 (Minn. App. Aug. 28, 2023) (nonprecedential), the court held that money raised through an online fund raising effort was a gift to the victims which they could spend as they chose and cannot be taken into consideration to reduce the defendant's restitution obligation. In **State v. Cotton**, A23-0213 (Minn. App. Sep. 5, 2023) (*pet. rev. filed Sep. 26, 2023*), the court held that Minn. Stat. section 611A.54 related to gifts and eligibility under the Minnesota Crime Victims Reparations Board (now called the Reimbursement Board) does not apply when the board seeks restitution for payments made by the board for the benefit of the crime victim. The defendant had argued that the proceeds from an online fundraising efforts for the victim should offset the restitution request from the board for burial expenses paid.

### Restitution and plea agreements

A restitution order can include amounts for losses for victims of uncharged crimes or dismissed charges if agreed to by the defendant in a plea agreement. **State v. Kennedy**, 327 N.W.2d 3 (Minn. 1982) (restitution order upheld in case where plea agreement called for defendant to pay restitution for losses of all victims of the criminal scheme, not just those counts to which the defendant pleaded guilty); **State v. Rodriguez**, A21-1539 (Minn. App. Jul. 25, 2022) (nonprecedential) (district court did not abuse its discretion by imposing restitution for an offense

## 9. Restitution, cont.

that was part of the global plea agreement). See also **State v. Baumer**, A22-1047, A22-1051 (Minn. App. Apr. 17, 2023) (holding that Kennedy remains good law) (nonprecedential). See also **State v. Miller**, A06-1392 (Minn. App. Jun. 5, 2007) (A defendant can be ordered to pay restitution to those who are not direct victims if the defendant agrees to do so as part of a plea agreement) (unpublished opinion) (citing **State v. Wallace**, 545 N.W.2d 674, 676-77 (Minn. App. 1996), *review denied* (Minn. May 21, 1996)). See also **State v. Howard**, A19-1314 (Minn. App. Mar. 23, 2020) (unpublished opinion), *review denied* (Minn. June 16, 2020).

### 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 term “victim” includes the family members, guardian, conservator or custodian of a minor, incompetent, incapacitated, or deceased person.

Prior to a change in the law in 2005, a crime victim was defined as only including a “deceased’s surviving spouse or next of kin” in cases where the victim was deceased. Minn. Stat. 611A.01 (b) (2004). The definition of victim was expanded following **State v. Jones**, 678 N.W.2d 1, 26 (Minn. 2004), where the 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. See **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).

For purposes of restitution, a victim also includes:

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

Under sections 609.10 and 609.125 which relate to sentencing, 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.”

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.

In **State v. Christensen**, 901 N.W.2d 648 (Minn. App. 2017), the court determined that a conservator does not come under the definition of victim for purposes of restitution. However, in 2020, the Minnesota legislature expanded the definition of crime victim to include conservator.

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. App. 1987) (allowing restitution to be paid to an insurance company and car dealership); and **State v. Wolf**, 413 N.W.2d 620 (Minn. App. 1987) (allowing restitution to be paid to a church that was burglarized).

## 9. Restitution, cont.

In **Re Welfare of M.R.H.**, 716 N.W.2d 349 (Minn. 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. See **In re Welfare of J.A.D.**, 603 N.W.2d 844 (Minn. App. 1999) (allowing restitution ordered to pay the 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. App. Jan. 27, 2014) (unpublished opinion) (the parents of an adult criminal sexual conduct victim are not victims under the definition in 611A.01(b) and therefore are not entitled to restitution).

In **State v. Dendy**, 520 N.W.2d 411 (Minn. App. 1994), the court of appeals reversed an order for restitution to a landlord for damages caused by police in executing a no-knock warrant to apprehend the defendant, concluding that restitution is limited to damages caused directly by the unlawful conduct.

Restitution may be ordered to be paid to the Minnesota Crime Victims Reimbursement Board if the board paid the victim's expenses. See Minn. Stat. 611A.04, subd. 1a. See **Evans v. State**, 880 N.W.2d 357 (Minn. 2016) (district court's legal authority to award restitution to the Crime Victims Reimbursement Board is plainly established under 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. 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. 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, (Minn. App. 1996), a defendant agreed to pay 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 the school was upheld by the court of appeals. **In re Welfare of D.D.G.**, 532 N.W.2d 279 (Minn. 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. See also **In re Welfare of K.D.R.**, No. C4-01-551, 2001 WL 1491426 (Minn. App. 2001) (restitution awarded to school district included tutoring costs for juvenile K.D.R.).

In **State v. Keehn**, 554 N.W.2d 405 (Minn. App. 1996), *review denied*, (Minn. Dec. 17, 1996), the court upheld a restitution request from the department of human services for payment of psychological evaluations and counseling provided to the child victim following the crime, reasoning that when the state incurs expenses on behalf of crime victims that under other circumstances would be paid for by victims themselves, the state is acting as an insurer of those victims and is itself a victim for purposes of restitution.

In **State v. Subbert**, A20-1348 (Minn. App. July 26, 2021) (nonprecedential), the defendant was convicted of first-degree drug possession. Following the sentencing hearing, the state sought additional restitution for the landlord for expenses related to the clean-up of an apartment where the defendant tenant had a lab for growing hallucinogenic mushrooms. The defendant argued that the landlord's losses were related to the "manufacture" of controlled substances and not related to the "possession" of mushrooms. The court of appeals affirmed the restitution award, concluding that district court properly determined that the landlord's losses were directly caused by, or followed naturally as a consequence of the defendant's possession of hallucinogens.

## 9. Restitution, cont.

### What Can be Ordered as Restitution

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.

In **State v. Anderson**, 507 N.W.2d 245 (Minn. App. 1993), *review denied* (Minn. Dec. 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. 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. App. 2006), *review denied* (Minn. Aug. 15, 2006).

In **State v. Christensen**, A13-1652, (Minn. App. Jul. 21, 2014) (unpublished opinion), the court determined that the restitution requested for loss of value of a house not yet for sale was speculative and did not represent an actual economic loss.

In **State v. Miller**, A06-1392 (Minn. Ct. App. Jun. 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, 2013 (Minn. App. Jan. 14, 2013), *review denied* (Mar. 27, 2013) (the restitution award was modified to exclude amounts attributable to the periods before and after the conduct for which the appellant was convicted).

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

In **State v. Palubicki**, 727 N.W.2d 662 (Minn. 2007), the court upheld the restitution order to the murder victim’s adult children for expenses arising from their voluntary attendance at the murder trial.

In **re Welfare of J.A.D.**, 603 N.W.2d 844 (Minn. App. 1999), the court upheld the order that the juvenile offender pay restitution to the victim’s mother for expenses she incurred in lost wages and for transporting the victim to the police station as part of the police investigation.



## 9. Restitution, cont.

In an unpublished opinion, **State v. Mentzos**, C8-93-2577 (Minn. 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. See also, **State v. Greenbush**, A20-0432 (Minn. App. Nov. 23, 2020) (unpublished) (restitution order for security system upheld), and **State v. Maxwell**, 802 N.W.2d 849 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011 (restitution was awarded for credit-shield and repair-protection services)).

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 a juvenile matter involving a stolen vehicle, **In the Matter of the Welfare of: A.I.Q.** (A17-1901 (Minn. App. Jul. 9, 2018) (unpublished opinion), the court of appeals upheld the restitution award that included the value of items contained in the vehicle.

In **State v. Meredyk**, 754 N.W.2d 596 (Minn. 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." *Id.* at 604.

In **State v. Woodson**, A06-2049 (Minn. App. Jan. 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.

### Victim's Objection to Restitution in Plea Agreement

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. App. 1987), the judge ordered the amount indicated in the presentence

## 9. Restitution, cont.

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.

### Contributory Fault and Mitigation

In **State v. Riggs**, 865 N.W.2d 679, A13-1189 (Minn. Jul. 1, 2015), the court held that the district court erred in considering the victim's fault when determining the amount of restitution, stating that Minnesota Statutes section 611A.045, subdivision 1, provides an exclusive list of factors for determining the amount of restitution to award.

In **State v. Yusuf**, A18-1934 (Minn. App. Jun. 10, 2019) (unpublished opinion), the court rejected the argument that the victim had a duty to mitigate loss. In **State v. Greenbush**, A20-0432 (Minn. App. Nov. 23, 2020) (unpublished opinion), the defendant argued that he should not have to pay out-of-network costs for therapy that is not available within the insured victim's network. The court stated that the restitution does not require the victim to seek a particular therapy nor does it require the victim to ease the cost imposed on the offender.

### Joint and Several

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. App. Nov. 30, 1993) (unpublished opinion) (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**, 842 N.W.2d 474, A13-0264 (Minn. App. Feb. 10, 2014), *review denied* (Minn. Apr. 15, 2014) (the court did not abuse its discretion in holding the defendants jointly and severally liable for restitution where multiple assailants acted together and their separate but indivisible conduct inflicted various injuries on their assault victims); **State v. Johnson**, 851 N.W.2d 60 (Minn. 2014) (persons who help others commit crimes are just as responsible for the crime as those who commit them, and, accordingly, the district court has the authority to hold each jointly and severally liable for restitution).

### Procedural Issues Related to Restitution

In **State v. Willis**, 898 N.W.2d 642, A16-0275 (Minn. Jul. 12, 2017), the Minnesota Supreme Court held that the Minnesota Rules of Evidence apply to restitution hearings held under Minnesota Statutes section 611A.045, subdivision 3(b). Following this case, the Minnesota Rules of Evidence were amended to provide an exception to the foundation requirements for evidence in restitution hearings in order to "ease the burden on victims presenting receipts for expenses, while also ensure fair and accurate restitution awards." Minn. R. Evid. 1101 (2019 committee comment). The foundation for admission of documentary evidence offered may be provided by affidavit or statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, in lieu of testimony. Minn. R. Evid. 1101(c).

For restitution hearings held under Minnesota Statutes section 611A.045, subdivision 3, paragraph (b), these rules apply except that the foundation for admission of documentary evidence offered under Rule 803(6) may be provided by affidavit or statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, in lieu of testimony. Minn. R. Evid. 1101(c).

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**, 802 N.W.2d 849, A10-1689 (Minn. App. Aug. 15, 2011) *review denied* (Oct. 26, 2011) (relying on Minn. Stat. 609.10, subd. 1(a)(5)).



## 9. Restitution, cont.

In **State v. Borg**, 834 N.W.2d 194, A09-1921, (Minn. Jul. 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 Minnesota Rules of Criminal Procedure 28.05, subdivision 1(2).

In **the Matter of the Welfare of: I.N.A., Child**, 902 N.W.2d 635 A17-0053, (Minn. App. Sept. 5, 2017), *review denied* (Minn. Aug 15, 2006), the court concluded that restitution may be ordered by the district court in situations where the case is continued without a finding of delinquency pursuant to Minnesota Statutes section 260B.198, subdivision 7.

### Post conviction relief and exonerations

Following the 2019 decision by the Minnesota Supreme Court that held the coercion statute unconstitutional, a defendant who had been convicted of this offense in 2009 sought post conviction relief. Her conviction was vacated, however, her request for a refund of the restitution paid was denied. On appeal, the Minnesota Supreme Court held that under the Minnesota Incarceration and Exoneration Remedies Act, an exonerated person is entitled to reimbursement for restitution ordered as part of the sentence. The court concluded that in a postconviction proceeding where the conviction is invalidated, a district court has the authority to order the state to refund restitution that the defendant has paid. **Byington v. State**, A20-1441 (Minn. Oct. 26, 2022).

### Restitution and Offenders Going to Prison

A case decided by the Minnesota Court of Appeals related to restitution reaffirms the victim’s right to receive restitution and provides clear guidance on restitution in cases where the offender is sentenced to prison. In **State v. Davis**, 907 N.W.2d 220, A17-1108 (Minn. App. Jan. 16, 2018), *review denied* (Minn. Apr. 17, 2018), the district court had revoked a restitution order entirely based on the defendant’s argument about his inability to pay, stating that defendant’s “potential earning capacity in prison will not enable him to make payments against the restitution while also affording other necessities in prison.” The court of appeals found that the district court had abused its discretion in revoking the restitution order by taking into consideration only the defendant’s ability to pay and failing to consider the victim’s appropriately asserted amount of economic loss. The court reviewed the legislative history of the restitution statute, which indicates that two factors must be considered in determining restitution—a victim’s need and an offender’s ability to pay. The court concluded that “while an offender’s ability to pay is relevant and appropriate for a court’s consideration when ordering restitution, an offender’s inability to pay cannot extinguish a victim’s right to restitution when that victim has experienced economic loss from that offender’s crime.” In this case, the offender presented no evidence to substantiate his claim of an inability to afford his basic necessities while incarcerated should he be forced to pay restitution. The court acknowledged various tools that can be employed to collect restitution from an offender while in prison, including statutory provisions allowing deductions from prison compensation and the creation of installment plans. The court stated: “Defendant’s incarceration, in and of itself, is an insufficient basis to deny restitution to a victim.” This case was reversed and remanded back to district court to reconsider the matter in light of the victim’s right to restitution.

In **State v. Anderson**, 507 N.W.2d 245 (Minn. App. 1993), the defendant argued it would not be realistic for him to pay restitution given he will be in prison for seven years and has no financial resources or assets. The court of appeals held that the defendant’s failure to object to restitution during the plea hearing or sentencing constituted a waiver of challenge, and the amount was not excessive.

## 9. Restitution, cont.

### Special Restitution Statutes

In addition to Minnesota Statutes section 611A.04, 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. See **State v. Crowder**, A15-0529 (Minn. App. Aug. 31, 2015).

In **State v. Rey**, 905 N.W.2d 490, A16-0198 (Minn. Jan. 3, 2018), the court found the mandatory minimum restitution ordered as part of the defendant's sentence under section 609.527 (**identity theft**) did not violate the defendant's procedural and substantive due process rights under the constitution.

In **Anderson v. State**, 794 N.W.2d 137 (Minn. App. 2011), the defendant convicted of **identity theft** argued that the direct victims have to submit loss affidavits and he has the right to challenge them. The court of appeals held that "because statutory law specifically demands a minimum of \$1,000 restitution for identity theft victims, the process is independent of general restitution statutes that provide for the reporting of victim losses and permit the defendant to challenge claimed accounts." *Id.* at 138.

In **State v. Grant**, A15-1880 (Minn. App. Oct. 31, 2016), *review denied* (Minn. Jan. 17, 2017), the defendant was ordered to pay \$1,000 to each of the 22 **identity theft** victims. The defendant argued that since some of the victims did not request restitution or stated they did not want it, the district court erred in awarding restitution to all of them. The court affirmed the district court's order following the mandated restitution order under the statute.

In **State v. Moua**, 874 N.W.2d 812 (Minn. App. 2016), the defendant was convicted of one count of **identity theft** and was ordered to pay restitution to 15 individuals who suffered economic loss or took remedial action as a result of the theft. The court of appeals held that the restitution provision of the identity theft statute did not violate the defendant's due process rights and the victims, whose private information was stolen, were entitled to restitution. It also held "where a defendant criminally possesses, uses, or transfers an individual's name and private identifying information, that individual has sustained loss or harm and is thus a direct victim who is entitled to the mandatory minimum restitution payment. *Id.* at 818-19. All direct victims were to be awarded restitution.

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 public safety 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. 2b.

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.

## 9. Restitution, cont.

As part of the charge against a person arrested for **killing, injuring, or possessing a wild animal** in violation of the game and fish laws, the prosecuting attorney must include a demand that restitution be made to the state for the value of the wild animal killed, injured, or possessed. Minn. Stat. 97A.341, and Minn. Admin. Rule 6133.

A person convicted of **intentionally setting a wildfire** can be ordered to pay restitution as allowed under section 611A.04. Minn. Stat. 609.5641, subd. 3.

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).

### **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.

Minn. Stat. 609.135, subd. 1a.

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. 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. Barrientos**, 837 N.W.2d 294, A12-0150 (Minn. Sept. 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 Minnesota Statutes section 609.135, subdivision 2(g). See also, **State v. Borg**, 834 N.W.2d 194, A09-1921 (Minn. Jul. 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).

### **Auto-referral to "Collections"**

If the offender does not set up a payment plan within a specified time after sentencing and has not made any restitution payments or fails to pay according to a payment schedule that has been established, the restitution order will be sent to the Minnesota Department of Revenue, which acts as the "collection agency" for all unpaid government debt. The department can set up payment plans with the defendant and use other tools such as revenue recapture.

## 9. Restitution, cont.

### **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 and supervision period has expired and is not an automatic process. 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](http://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 restitution is paid. 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 Minnesota Statutes 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.

### **What is the Difference Between Restitution and Reimbursement?**

Restitution is only available if the offender is convicted of a crime and the judge orders it. It can be ordered for all expenses related to the crime, including property losses. Reimbursement refers to financial assistance from the state government for victims of violent crimes. It does not include property losses. In most situations, victims must file a claim within three years of the injury to the Minnesota Crime Victims Reimbursement Board. The board does not pay for property losses. Victims can file a claim with the reimbursement 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 may have trouble collecting restitution from the offender or may not be eligible for reimbursement, so it is often a good idea to pursue both at the same time.

### **How Does a Civil Lawsuit 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. App. Apr. 19, 2011) (unpublished opinion), (the availability of insurance proceeds that may be available 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.

## 9. Restitution, cont.

The existence of a settlement agreement between the defendant and the victim may impact the victim's ability to request restitution. 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**, 786 N.W.2d 885, A09-2082 (Minn. App. Aug. 10, 2010), *review denied* (Minn. Oct. 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**, 789 N.W.2d 513, A10-28 (Minn. App. Oct. 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 who had suffered economic loss. See also **State v. Shannon**, A10-2027 (Minn. App. Jun. 13, 2011), *review denied* (Minn. Aug. 24, 2011), in which the court reversed the restitution order to two victim banks that had entered into an agreement with the defendant to accept partial compensation in exchange for a release of their claims against the defendant.

In the case **In the Matter of the Welfare of M.R.H.**, 716 N.W.2d 349, A05-929 (Minn. App. Jun. 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. However, the victim's parents also incurred out-of-pocket loss as a result of the crime. The victim's parents were neither parties to the lawsuit nor to the settlement agreement, and there was no 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.

### **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, subd. 3. The U.S. 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.

### **Access to Offender Information for Purposes of Collecting Restitution**

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), and 13.85, subd. 5.

### **Abatement *ab initio* and Restitution**

The concept of abatement *ab initio* arises when a defendant dies during an appeal. In **State v. Burrell**, 737 N.W.2d 459, A11-1517 (Minn. Oct. 2, 2013), the supreme court held that a prosecution should abate *ab initio* when the defendant dies during an appeal of right from a final judgment of conviction in which restitution is not at issue. In such a situation, the court will vacate the defendant's convictions. Minnesota has not yet addressed the situation where a defendant dies prior to the conclusion of his appeal on a conviction that includes restitution.

## 10. Minnesota Crime Victim Reimbursement Board

The Minnesota Crime Victims Reparations Board was established in 1974 to assist crime victims in Minnesota with their financial losses and to restore at least a portion of the victim's economic losses resulting from the crime. In 2023, the program was renamed the Minnesota Crime Victims Reimbursement Board. The Minnesota Crime Victims Reimbursement Board is a program of the Minnesota Office of Justice Programs.

### Overview

The Minnesota Crime Victims Reimbursement Board helps victims and their families ease the financial burden they face as a result of a violent crime and to assist in their recovery. The board provides financial assistance to reimburse victims for their non-property losses suffered as a direct result of the crime that are not covered by another source of funding, such as health or automobile insurance. Covered expenses include, but are not limited to, medical and dental care, prescriptions, ambulance service, counseling, chemical dependency treatment, transportation costs, funeral and burial services, lost wages, and survivor benefits.

Victims submit an application to the reimbursement program that is processed to determine eligibility and coverage. If there is a question about the applicant's eligibility, the application is forwarded to the board for review. Once their claim is approved, claimants can seek compensation for crime-related losses already incurred and submit claims for future losses. Claim specialists with the program facilitate this process, often directly paying bills to service providers on the claimant's behalf at a reduced rate.

The claimant must be a victim of a crime that occurred in Minnesota or a Minnesota resident traveling in a country without a financial compensation program (all 50 states in the U.S. have a financial compensation program, as do many countries). Claimants may also be a family member or dependent of a victim, estate of a deceased victim, a person purchasing products or services for a victim, or the victim's guardian, guardian ad litem, conservator, or authorized agent. Total benefits paid may not exceed \$50,000.

The reimbursement program is available to a victim who suffered injury or death as a direct result of a crime, as well as persons who made a good faith effort to prevent a crime or apprehend a person suspected of engaging in a crime.

To be eligible, the crime must have been reported to the law enforcement within 30 days, and an application must have been submitted within three years of the crime date, with some exceptions for victims of child abuse or sexual assault. The victim must cooperate fully with the law enforcement investigation and the prosecution of the offender, and contributory misconduct by the victim can result in a claim denial or substantial reduction in their claim award. There is an appeals process for victims who are dissatisfied with the board's actions and wish the board to reconsider their claim. If they are still dissatisfied, they can proceed to an administrative hearing conducted by an impartial administrative law judge at the Minnesota Office of Administrative Hearings.

It is not necessary that the offender be prosecuted or convicted for a victim to qualify for reimbursement.

Restitution in a criminal case is another way that victims can be compensated for their losses. Receiving reimbursement does not prevent a victim from seeking restitution from the offender for crime-related expenses that have not been or will not be paid by reimbursement. The board files for restitution to recoup its expenditures in many of the cases for which it has provided reimbursement and also recovers funds that have been paid out from civil lawsuits involving the victim.

The board receives its funding from a number of sources. The primary sources of funding are from the state's general fund and a U.S. Department of Justice, Office for Victims of Crime grant.

For detailed information about eligibility requirements and exceptions to the general rules, benefits, the application process, and the appeals process for the reimbursement program, please see:



## 11. Emergency Funds

Emergency funds are available to crime victims to meet their emergency needs in the wake of a crime. In addition, many crime victim-serving programs have funds allocated to help victims with the immediate needs to recover from a crime.

### **Emergency Funds**

The Emergency Fund Grant Program was established by the legislature in 1996. The distribution model for this program has changed over the years, but the core purpose of the grant funds is to meet the emergency needs of crime victims. Under Minnesota Statutes section 611A.675, emergency assistance includes, but is not limited to, the following expenses:

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

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

Victims in need of financial assistance for expenses related to their victimization should contact either the local victim services program (for example, a domestic abuse program), or contact the [General Crime Victim Services Program of Cornerstone](#) at 866-385-2699.

Victims of a violent crime with expenses other than those listed above should be referred to the Minnesota Crime Victims Reimbursement Board.



## 12. Sexual Assault

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

### **Notice of Decision to Decline Prosecution or Dismiss Charges**

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

### **Statute of limitations**

In 2021, the legislature eliminate the statute of limitations for criminal sexual conduct offenses, section 609.322, and section 609.342 to 609.344. The section became effective August 1, 2021, and applies to violations committed on or after that date and to crimes committed before that date if the limitations period for the crime did not expire before August 1, 2021.

### **Forensic Sexual Assault Examination - Payment for Exam**

Under Minnesota Statutes section 609.35, "[t]he cost of a sexual assault evidentiary exam conducted for the purpose of evidence collection shall be paid by the state."

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

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

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

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

Section 609.35 applies to those exams related to an assault that took place in Minnesota. The state is responsible for paying for the exam even if the exam took place outside of Minnesota.

### **Hospital Notices to Victims**

Under section 611A.20, a hospital shall give a written notice about sexually transmitted diseases to a person receiving medical services in the hospital who reports or evidences a sexual assault or other unwanted sexual contact or sexual penetration. When appropriate, the notice must be given to the parent or guardian of the victim. A sample notice has been developed by the Departments of Public Safety, Corrections, and Health and distributed to hospitals. Copies are available directly from the Department of Health.

In addition, hospitals and other health care providers must provide a notice to sexual assault victims containing information about their crime victim rights, the entity responsible for payment of forensic sexual assault exam,

## 12. Sexual Assault, cont.

civil protective order options, and important supportive resources. Hospitals must make a good faith effort to provide this notice prior to a medical forensic examination, providing that the patient's emergent medical needs are first addressed according to the provisions of EMTALA (Emergency Medical Treatment & Labor Act). Minn. Stat. 144.6586. The model notice is available in multiple languages on the [Office of Justice Programs Website](#).

### **Sexual Assault Examination Kits**

A sexual assault examination kit will only be tested if the case has been reported to law enforcement and the victim has given consent to have the kit tested. When this happens, the kit is called an "unrestricted kit," meaning the victim has placed no restriction on it being tested. If the victim has not given consent, the kit is called a "restricted kit." The law enforcement agency must submit unrestricted kits for testing to the Minnesota Bureau of Criminal Apprehension (BCA) within 60 days of receiving it. Minn. Stat. 299C.106, subds. 2-3. Only unrestricted kits will be tested.

All restricted kits will be submitted to the BCA and be stored there for at least 30 months from the date the bureau receives it. Minn. Stat. 299C.106, subd. 3.

Victims have a right to information about the status of their sexual assault examination kit. Upon written request, victims can find out about (1) the date that a sexual assault examination kit was submitted to a forensic laboratory and the date that the agency received notice of the results of that testing; and (2) whether a DNA profile was obtained from the testing. The agency may refuse the request if the release of that data will interfere with the investigation. Minn. Stat. 611A.27, subd. 1.

Effective July 1, 2021, the department of public safety must maintain a website with a searchable database providing sexual assault victims with information on the status of their individual sexual assault examination kit. The superintendent must strictly control access to the database to protect the privacy of the victims' data. Minn. Stat. 299C.106, subd. 3b.

### **Emergency Care**

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

The standard of care for all hospitals and other health care providers also dictates that both female and male victims must: (1) be provided factually accurate and unbiased written and oral medical information about prophylactic antibiotics for treatment of sexually transmitted diseases; (2) be provided information about the option of being provided these antibiotics at the hospital; and (3) be given these antibiotics at the hospital to upon request, provided it is not medically contraindicated and is ordered by the legal prescriber. Minn. Stat. 145.4712.

### **Prohibition on Polygraph Examination**

Under Minnesota Statutes section 611A.26, law enforcement agencies and prosecutors are prohibited from requiring a victim of a criminal sexual conduct offense to submit to a polygraph examination in order to pursue an investigation. Further, a law enforcement agency or prosecutor may not ask that a victim of a criminal sexual conduct offense submit to a polygraph examination as part of the investigation, charging, or prosecution of such an offense unless the victim has been referred to and had the opportunity to exercise the option of consulting

## 12. Sexual Assault, cont.

with a sexual assault counselor. In addition, in a situation where the victim makes a request to take a polygraph examination, the law enforcement agency may conduct the examination only with the victim's written, informed consent.

### **Immunity from Prosecution for Victims and Persons Seeking Assistance**

Under Minnesota Statutes section 604A.06, a person acting in good faith who contacts a 911 operator or first responder to report that a sexual assault victim is in need of assistance may have immunity from prosecution for certain drug charges and underage consumption if assistance is sought for an immediate health or safety concern, the person remains on the scene, and the person provides their name and contact information. Similarly, a victim seeking assistance qualifies for immunity from prosecution for certain drug offenses and underage consumption if the evidence for those charges was obtained as a result of a request for assistance related to the assault. (New law in effect August 1, 2021.)

### **Data Relating to Identity of Victim**

Under section 609.3471, subd. 4., data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.322 (solicitation, inducement, and promotion of prostitution; sex trafficking), 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3453 (criminal sexual predatory conduct) that specifically identifies a victim who is a minor shall not be accessible to the public, except by order of the court. Nothing in this section authorizes denial of access to any other data contained in the records or reports, including the identity of the defendant.

Under Minnesota Statutes section 13.82, subdivision 17(b), law enforcement agencies will withhold public access to law enforcement data when it would reveal the identity of a victim of criminal sexual conduct or sex trafficking.

### **Communications with Sexual Assault Counselors**

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

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

### **Data Practices and Sexual Assault Agencies**

Sexual assault agencies that receive government funding are excluded from the provisions of the Minnesota Government Data Practices Act. Minn. Stat. 13.823. Notwithstanding this provision, personal history information and information from which the identity or location of any victim can be determined are private data protected by Minnesota Statutes sections 13.822 and 611A.46.

## 12. Sexual Assault, cont.

### Right to a Supportive Person in Court

Under Minnesota Statutes section 631.046, subdivision 2, a prosecuting witness in any case involving criminal sexual conduct, as defined in sections 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), and 609.345 (criminal sexual conduct in the fourth degree), may choose to be accompanied by a supportive person, whether or not a witness, at the omnibus or other pretrial hearing.

### Rape Shield Law

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

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

- (1) When consent of the victim is a defense in the case,
  - (a) evidence of the victim's previous sexual conduct shows a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue, relevant and material to the issue of consent; and
  - (b) evidence of the victim's previous sexual conduct with the accused; or
- (2) When the prosecution's case includes evidence of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct is admissible solely to show the source of the semen, pregnancy, or disease.

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

In order to introduce evidence concerning the previous sexual conduct of a victim, the defense must make a motion at least three business days prior to trial, unless good cause is shown for introducing it later. Minn. Stat. 609.347, subd. 4.

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

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

## 12. Sexual Assault, cont.

### Rape Shield Law Cases

Acknowledging that the rape shield law permits evidence of a victim's prior sexual conduct to establish a common plan or scheme when consent is an issue, the court held such evidence was properly excluded when there was no evidence the victim had previously fabricated sexual assault charges. **State v. Enger**, 539 N.W.2d 259 (Minn. App. 1995), *review denied* (Minn. Dec. 20, 1995).

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

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

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

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

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

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

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

In **State v. Crims**, 540 N.W.2d 860 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996), an hour after the jury in a sexual conduct trial retired, the foreperson passed a note to the court asking, "If someone says no during

## 12. Sexual Assault, cont.

the act of sexual intercourse, under the law is it rape if the other person continues the act after the other person asks him to stop?” The court of appeals held it was not reversible error for the trial court to refuse to refer the jury to the initial instructions to resolve its confusion when, in fact, the jury was able to find the answer in those instructions, and did. The court further held that rape includes the forcible continuance of initially-consensual sexual relations. See also Minn. Stat. 609.341, subd. 12.

Evidence of prior false accusation is admissible unless its potential for unfair prejudice substantially outweighs its probative value. **State v. Caswell**, 320 N.W.2d 417, 419 (Minn. 1982). Prior to admission, the trial court must first make a determination outside the presence of the jury that a reasonable probability of falsity exists. **State v. Goldenstein**, 505 N.W.2d 332, 340 (Minn. App. 1993) *review denied*, (Minn. Oct. 19, 1993).

### Expert Testimony

In **State v. Obeta**, 796 N.W.2d 282, A10-1349 (Minn. Mar. 24, 2011), the Minnesota Supreme Court joined the majority of other states in ruling that the district court has the discretion to admit expert-opinion evidence on the conduct exhibited by sexual assault victims. The court held that in a criminal sexual conduct case in which the defendant argues that the sexual conduct was consensual, the district court has discretion to admit expert-opinion evidence on the typicality of delayed reporting, lack of physical injuries, and submissive conduct by sexual-assault victims when the district court concludes that such evidence is helpful to the jury and the opinion has foundational reliability.

### Immunity from prosecution for persons seeking assistance

Under section 604A.06, persons seeking assistance for a victim of sexual assault can be protected from prosecution for certain drug and under aged drinking offenses. Similarly, a sexual assault victim who is need of assistance has immunity from prosecution for some drug offenses and underage drinking when evidence for the charge or prosecution was obtained as a result of the request for assistance related to the sexual assault.

### Confidential HIV Testing

Minnesota law allows for a victim to request that the prosecutor make a motion for an offender convicted of criminal sexual conduct or a violent crime to be tested for the presence of the human immunodeficiency virus (HIV) antibody under certain circumstances.

Under Minnesota Statutes section 611A.19, upon the request or with the consent of the victim, the prosecutor shall make a motion in camera (i.e., in the judge’s chambers) and the sentencing court shall order an adult convicted of or a juvenile adjudicated delinquent for violating a criminal sexual conduct law (section 609.342, 609.343, 609.344, or 609.345), sexual extortion (609.3458), or any other violent crime (as defined in section 609.1095) to submit to testing to determine the presence of HIV antibody under certain circumstances.

The crime needs to have involved sexual penetration, however slight, as defined in section 609.341, subdivision 12, or evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender’s semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit HIV.

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



## 12. Sexual Assault, cont.

The results are considered private data as defined in section 13.02, subdivision 12, when maintained by a person subject to chapter 13. The results are available on request to the victim, or if the victim is a minor, to the victim's parent or guardian, and positive test results shall be reported to the commissioner of health. Unless the subject of the test is an inmate at a state correctional facility, any test results given to a victim or victim's parent or guardian shall be provided by a health professional who is trained to provide counseling regarding HIV testing. If the subject of the test is an inmate at a state correctional facility, test results shall be given by the Department of Corrections' medical director to the victim's health care provider, who shall give the result to the victim or victim's parent or guardian. Data regarding the test administration and results are not accessible to any other person for any purpose and shall not be maintained in any record of the court or court services or any other record.

### **Victim's Right to Terminate Lease**

Under Minnesota Statutes section 504B.206, a tenant to a residential lease may terminate a lease agreement without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to: (1) domestic abuse, as is defined under section 518B.01, subd. 2; (2) criminal sexual conduct under sections 609.342 to 609.3451; (3) sexual extortion under section 609.3458, or (4) harassment, under section 609.749.

The tenant must provide a signed and dated advance written notice to the landlord

- (1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;
- (2) stating that the tenant needs to terminate the tenancy;
- (3) providing the date by which the tenant will vacate; and
- (4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

The written notice must be delivered before the termination of the tenancy by mail, fax, or in person and be accompanied by a qualifying document. The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons, and disclosure shall not be a precondition of terminating the lease.

Tenants who terminate the lease under this section forfeit their security deposit. Victims may use statements from domestic violence and sexual assault advocates, or statements from other qualified third parties, such as health care and court officials, to certify the need to break a lease.

Landlords are prohibited from evicting tenants based solely on the fact that the tenant is a victim. Minn. Stat. 504B.206.

### **Employment Provisions**

Victims of domestic abuse, stalking, and sexual assault may apply for unemployment insurance when the reason for quitting the job or job misconduct is related to the abuse. An employee may also use the exception when a family member is a victim. Minn. Stat. 268.095, subd. 1. An employee may use their sick leave or "safety leave" to address issues affecting either themselves or relatives because of sexual assault, domestic abuse, or stalking. Minn. Stat. 181.9413 (2013).



## **12. Sexual Assault, cont.**

### **Insurance Coverage for Victims Protected**

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

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

## 13. Domestic Abuse, Stalking, and Harassment

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

### Domestic Abuse

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

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

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

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

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

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

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

### Qualified Domestic Violence-related Offense and Enhancements

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

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

- violation of a domestic abuse no contact order, order for protection, or harassment restraining order (Minn. Stat. 518B.01, subd. 22; 518B.01, subd. 14; 609.748, subd. 6), 629.75);
- 617.261 (nonconsensual dissemination of private sexual images);
- first- through fifth-degree assault (609.221; 609.222; 609.223; 609.2231; and 609.224);
- domestic assault (609.2242);

## 13. Domestic Abuse, Stalking, and Harassment, cont.

- female genital mutilation (609.2245);
- domestic assault by strangulation (609.2247);
- first- through fourth-degree criminal sexual conduct (609.342; 609.343; 609.344; and 609.345);
- malicious punishment of a child (609.377);
- threats of violence (609.713);
- stalking (609.749);
- interference with an emergency call (609.78, subd. 2);
- similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

Minn. Stat. 609.02, subd. 16.

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

### **Domestic Assault by Strangulation**

Under Minnesota Statutes section 609.2247, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years. The statute defines “strangulation” as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.”

### **Law Enforcement Assistance to Domestic Abuse Victims**

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

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

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

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

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

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

A peace officer has the ability to make a warrantless probable cause arrest within 72 hours of domestic abuse

## 13. Domestic Abuse, Stalking, and Harassment, cont.

even if the assault did not take place in the presence of the officer. Minn. Stat. 629.75, subd. 3.

### **Medical Treatment – Domestic Abuse Cases**

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

### **Notice of Release from Custody**

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

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

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

Upon a written or electronic request, the department of corrections must provide the five-digit zip code of the offender released from a facility to victims of a offenders convicted of a qualified domestic violence offense. Minn. Stat. 13.84, subd. 6(a)(2).

### **Presentence Domestic Abuse Investigations**

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

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

Minn. Stat. 609.2244.

### **Order for Protection**

An order for protection (OFP) is a court order forbidding a specific family or household member (the respondent) from engaging in abusive conduct and having contact with the person requesting the order (the petitioner). An

## 13. Domestic Abuse, Stalking, and Harassment, cont.

OFP may be requested when the danger of domestic abuse is immediate and present. Any family or household member, or a guardian or household member, or reputable adult age 25 or older on behalf of a minor family or household member may seek an OFP. Minn. Stat. 518B.01, subd. 4.

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

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

- (1) the respondent has violated a prior or existing order for protection on two or more occasions; or
- (2) the petitioner has had two or more orders for protection in effect against the same respondent.

An order issued under this provision may restrain the abusing party from committing acts of domestic abuse or prohibit the abusing party from having any contact with the petitioner, whether in person, by telephone, mail or electronic mail or messaging, through electronic devices, through a third party, or by any other means. Minn. Stat. 518B.01.

### Relief Available

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

- (1) restrain the abusing party from committing acts of domestic abuse;
- (2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) exclude the abusing party from a reasonable area surrounding the petitioner’s residence or place of employment;
- (4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award;
- (5) award temporary child and spousal support;
- (6) award temporary possession of property;
- (7) prohibit contact by telephone, mail, email, or other electronic means;
- (8) award possession of pets and companion animals and restrain abusing party from harming them.

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

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

## 13. Domestic Abuse, Stalking, and Harassment, cont.

### Advocacy Assistance During Domestic Abuse Proceedings

An order of the Minnesota Supreme Court dated February 5, 1991, allows for the participation of domestic abuse advocates in domestic abuse-related hearings:

- Domestic abuse advocates are allowed to sit at counsel table, confer with the victim, and, at the judge's discretion, address the court.
- In a criminal trial court proceedings, domestic abuse advocates shall be allowed to accompany the victim, confer with the victim and, at sentencing, at the judge's discretion, be heard by the judge.
- Court administrators shall allow domestic abuse advocates to assist victims of domestic violence in the preparation of petitions for protection orders.
- When assisting victims as specified by this order, domestic abuse advocates are not to engage in the unauthorized practice of law.

### Victim's Right to Terminate Lease

Under Minnesota Statutes section 504B.206, a tenant to a residential lease may terminate a lease agreement without penalty or liability if the tenant or another authorized occupant fears imminent violence after being subjected to: (1) domestic abuse, as defined under section 518B.01, subd. 2; (2) criminal sexual conduct under sections 609.342 to 609.3451; or (3) harassment under section 609.749.

The tenant must provide a signed and dated advance written notice to the landlord:

- (1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;
- (2) stating that the tenant needs to terminate the tenancy;
- (3) providing the date by which the tenant will vacate; and
- (4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

The written notice must be delivered before the termination of the tenancy by mail, fax, or in person and be accompanied by a qualifying document.

The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons, and disclosure shall not be a precondition of terminating the lease.

Tenants who terminate the lease under this section forfeit their security deposit. Victims may use statements from domestic violence and sexual assault advocates, or statements from other qualified third parties, such as health care and court officials, to certify the need to break a lease.

Victims living in public or subsidized housing cannot be evicted because of domestic violence, stalking, dating violence, or sexual assault against them or a member of their household. Victims can't be evicted for calling 911. Violence Against Women Reauthorization Act (VAWA) of 2013, Pub. L. 113-4 (March 2013).

## **13. Domestic Abuse, Stalking, and Harassment, cont.**

### **Employment Provisions**

Victims of domestic abuse, stalking, and sexual assault may apply for unemployment insurance when the reason for quitting the job or job misconduct is related to the abuse. An employee may also use the exception when a family member is a victim. Minn. Stat. 268.095, subd. 1.

An employee may use their sick leave or “safety leave,” to address issues affecting either themselves or relatives because of sexual assault, domestic abuse, or stalking. Minn. Stat. 181.9413.

### **Domestic Abuse Counseling Provisions**

If the offender or abusing party participating in a domestic abuse counseling program is reported back to the court or is terminated from the program, the program shall notify the victim of the circumstances unless the victim requests otherwise. Minn. Stat. 518B.02, subd. 2(e).

If the offender or abusing party participating in a domestic abuse counseling program poses a risk to self or others, the domestic abuse counseling program shall report this information to the court, the probation or corrections officer, and the victim. Minn. Stat. 518B.02, subd. 2(d).

### **Communications with Domestic Abuse Advocates**

A domestic abuse advocate may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. In addition, domestic abuse advocates must comply with their mandated child abuse reporting obligations under Minnesota Statutes sections 626.556 and 626.557. A “domestic abuse advocate” is defined as an employee or supervised volunteer from a community-based battered women’s shelter and domestic abuse program eligible to receive grants under section 611A.32 that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, prosecutor’s office, or by a city, county, or state agency. Minn Stat. 595.02, subd. 1(k).

### **Data Practices and Domestic Abuse Agencies**

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

Personal history information and information from which the identity or location of any victim can be determined are private data protected by Minnesota Statutes sections 611A.32, subdivision 5; 611A.371, subdivision 3; and 611A.46.

### **Mental Health Assessment and Treatment**

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



## 13. Domestic Abuse, Stalking, and Harassment, cont.

### Harassment Restraining Orders

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

A person who is a victim of harassment may seek a harassment restraining order (HRO) from the district court. The parent, guardian, or step-parent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. An application for relief under the statute may be filed in the county of residence of either party or in the county in which the harassment occurred. There is no residency requirements. The court administrator or victim assistance program can assist victims with completing the proper form.

There are substantial filing fees for HROs, however, these fees can be waived for the petitioner if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2, 3, 4, or 5 (stalking crimes, aggravated violations, second or subsequent violations, felony or pattern of stalking conduct), or sections 609.343 to 609.3451 (criminal sexual conduct in the first through fifth degree).

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

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

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

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

### Domestic Abuse No Contact Orders

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

A DANCO may be issued as a pretrial order before final disposition of the underlying criminal case or as a post-conviction probationary order. A domestic abuse no contact order is independent of any condition of pretrial

## 13. Domestic Abuse, Stalking, and Harassment, cont.

release or probation imposed on the defendant. Minn. Stat. 629.75, subd. 1(b).

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

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

### **Mutual Orders (OFPs or HROs)**

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

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

### **Statewide Tracking of Protective Orders**

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

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

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

When filing a petition for a protective order, petitioners can request to be notified by email when the proof of service has been filed.

### **Violation of an OFP or HRO**

A copy of the order is sent by the court to remain on file with local law enforcement. It is also important for petitioners to keep a copy of the order with them, in their home, in their car, or at their workplace where it may be available in case of the need for law enforcement intervention. The law states that the law enforcement officers shall arrest the respondent when they have probable cause to believe the respondent is violating the order. In such a case, the party violating the order may face a criminal charge or be held in contempt of court in the civil case for violating the court order. The victim may request a hearing on the contempt of court issue by filing an affidavit with the court. Minn. Stat. 518B.01, subd. 14.

## 13. Domestic Abuse, Stalking, and Harassment, cont.

### Notice of Decision Not to Prosecute

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

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

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

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

### Protection Against Employer Retaliation

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

### Requesting Protection of Certain Information

Victims who have grave concerns for their safety or the safety of their family may ask the Minnesota Department of Public Safety Driver and Vehicle Services to keep their name and address private and unavailable to the public. Victims must submit a request in writing to the department, and furnish an alternative, valid mailing address where they agree to receive any legal notices that would ordinarily be delivered or mailed to their home. The request can be done through the Private Data Request form (PS33202-12). For questions, call 651-201-7775.

### Firearms

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

If the court determines that a person convicted of a stalking or harassment crime under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited. Additionally, the court may prohibit the offender from possessing any type of firearm for any period longer than three years. Minn. Stat. 609.749, subd. 8. Violation of the court’s prohibition against possessing a pistol is a gross misdemeanor.

## **13. Domestic Abuse, Stalking, and Harassment, cont.**

### **Safe at Home**

Victims of domestic violence, sexual assault, stalking, and others who fear for their safety can enroll in the Safe at Home program, which provides participants with a substitute address for all private and public records. To participate in the Safe at Home program, a person must apply with the assistance of an accredited application assistant. To find an accredited application assistant in your area, go to the Safe at Home page on the [Secretary of State Website](#). Minn. Stat. Chapter 5B.

## 14. Expungement

Offenders have the ability to petition the court to have their criminal records expunged, which means the criminal conviction is removed from their records.

Minnesota has long had a statutory right for crime victims to get notice of a petition for expungement.

A 2014 change in the expungement laws significantly expanded the types of offenses eligible for an expungement, however, it made only minor adjustments to this statutory right of victims.

To receive notification of a petition for an expungement, a victim must make a written request to the prosecutor with jurisdiction over the offense to be notified of any expungement petition. Minn. Stat. 611A.06. The prosecutor's office must make a good faith effort to notify the victim of a petition for expungement. There is no time requirement for when this request should be made.

Sections 611A.06 and 609A.03 require the notice to be mailed to the requesting victim. Under section 611A.06, the prosecutor complies with notification by mailing a copy of an expungement petition to the address the victim has most recently provided in writing. Under section 609A.03, the prosecutor must serve by mail the petition for expungement and a proposed expungement order on any victims of the offense.

The prosecutor is required to provide the victim a copy of the following:

- A copy of the expungement petition;
- The proposed expungement order; and
- The notice of the right to be present and submit an oral or written statement at the expungement hearing.

Minn. Stat. 609A.03, subs. 3(b) and 3(c); 611A.06.

A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether the expungement should be granted or denied. The judge must consider the victim's statement when making a decision. Minn. Stat. 609A.03, subd. 4.

In making a determination of whether to expunge a criminal record, the court must consider the recommendations of the victim and whether the victim of the underlying crime was a minor. In addition, the court must consider the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record, if granted. Minn. Stat. 609A.03, subd. 5.

Under section 609A.025, a prosecutor can make an agreement with an offender for expungement of the record without a petition or a court hearing. Before agreeing to the sealing of a record in this circumstance, the prosecutor must make a good faith effort to notify any identifiable victim of the offense of the intended agreement and the opportunity to object to the agreement. This provision does not include the requirement that the victim make a request to the prosecutor in order for notification to happen.

## 15. Motor Vehicle Theft

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

### **Notice of Vehicle Recovery**

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

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

### **Towing and Storage Fees**

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

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

### **Retrieval of Contents**

The registered owner of car who is eligible for legal services, relief based on need, or is who homeless has an unencumbered right to retrieve any and all contents without charge and regardless of whether the registered owner pays incurred charges or fees, transfers title, or reclaims the vehicle. Minn. Stat. 168B.07, subd. 3.

### **Emergency Assistance**

Emergency assistance awards may be available to help victims of motor vehicle theft pay for these towing and storage fees. This assistance is available through the General Crime Victim Services Program (a program of Cornerstone).

Assistance from the fund can only be granted to victims who provide proof of insurance stating that security had been provided for the vehicle at the time the vehicle was stolen. An award paid to a victim shall compensate the victim for actual costs incurred but shall not exceed \$300. Minn Stat. 611A.675.

### **Dismissal of Traffic Citations**

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



## 16. Identity Theft

Victims of identity theft have specific rights under both state and federal law.

Under Minnesota law, a local law enforcement agency must take a report of identity theft even if the suspected perpetrator is located and/or the identity theft occurred in another jurisdiction. The law enforcement agency is required to provide the victim a copy of the report, which may be helpful for the victim to provide to creditors who want proof of the crime. The law enforcement agency can begin an investigation or refer the case to another jurisdiction if the suspected crime was committed in a different jurisdiction. Minn. Stat. 609.527.

In cases where the crime of identity theft is charged, victims are entitled to a mandatory restitution award of \$1,000. In addition, victims have a right to get free copies of court documents to aid in clearing up their personal credit and criminal histories without accumulating more costs. See Minn. Stat. 609.527, subd. 4.

For more information on preventing and responding to identity theft, go to the [Identity Theft web page](#) on the Office of Justice Programs Website.

## 17. Victims/Witnesses and Court Proceedings

The rights, protections, and provisions related to witnesses in a criminal proceeding, including crime victims, are discussed in this section.

### **Notification of hearings**

Victims have a right to be notified of plea and sentencing hearings. In addition, A prosecutor shall make reasonable efforts to provide advance notice of any change in the schedule of the court proceedings to a victim who has been subpoenaed or requested to testify. Minn. Stat. 611A.033

### **Right to a Separate Waiting Area in the Courthouse**

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

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

### **Right to Have a Support Person**

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

### **Minor Prosecuting Witnesses**

Under Minnesota Statutes section 631.046, subdivision 1, a minor prosecuting witness in a case involving child abuse, a crime of violence, assault in the fifth degree, or domestic assault may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial during testimony.

If the support person identified is also a prosecuting witness, the prosecution must file a motion presenting evidence that the support person’s attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person’s attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

### **Witnesses in Criminal Sexual Conduct Cases**

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

### **Witnesses in Juvenile Cases**

Under Minnesota Statutes section 260B.163, subdivision 3, a victim testifying in a delinquency proceeding may choose to have a supportive person (who is not scheduled to be a witness in the proceeding) present during the

## 17. Victims/Witnesses and Court Proceedings, cont.

testimony of the victim.

### **Minor Witnesses Before a Grand Jury**

Under Minnesota Rule of Criminal Procedure 18.03, a minor witness may be accompanied by a parent, guardian or other supportive person while testifying before a grand jury.

### **Closed-circuit Televised Testimony**

Minnesota Statutes section 595.02, subdivision 4(c) allows, under certain circumstances, for the testimony of a child less than 12-years-old who is a victim of criminal sexual conduct or crime of violence to be taken in a room other than the courtroom and televised at the same time by closed-circuit equipment.

### **Excluding Spectators from the Courtroom**

The trial court may exclude the public from the courtroom during a minor victim's testimony and other parts of a trial during a cases involving criminal sexual conduct. Minn. Stat. 631.045. The judge shall give the prosecutor, defendant, and members of the public the opportunity to object to the closure before a closure order. The judge shall specify the reasons for closure in an order that closes all or part of the trial.

The Minnesota Court of Appeals upheld the application of this statute in **Austin Daily Herald v. Mork**, 507 N.W.2d 854 (Minn. App. 1993), *review denied* (Minn. Dec. 13, 1993). In that case, the trial judge made specific findings that the juvenile victims would suffer embarrassment and fright and be traumatized further if required to testify before a public forum. The appellate court found that an order excluding the public during testimony of juveniles, while admitting the media on condition that they not report names of juvenile victims or information about their juvenile records, was a permissible restriction on access.

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

### **Witness Fees**

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

Fees paid to witnesses include the following:

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

## 17. Victims/Witnesses and Court Proceedings, cont.

### Witness Tampering

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

In general, witness tampering occurs when someone attempts, or actually does, coerce, prevent, or dissuade a witness from testifying truthfully and from providing truthful information to a law enforcement agency, or retaliates against a witness who does so. There are four degrees of witness tampering: First degree (felony), aggravated first degree (felony), second degree (gross misdemeanor), and third degree (gross misdemeanor).

Tampering with a witness in the first degree involves the use of force or threats to any person or property. Minn. Stat. 609.498, subd. 1.

Aggravated tampering in the first degree occurs when there is a credible threat to cause great bodily harm or death. Minn. Stat. 609.948, subd. 1b.

Tampering with a witness in the second degree involves the use of coercion. "Coercion" includes threats to damage property, injure a business or profession, expose a private secret, or threaten to cause a criminal charge to be filed. Minn. Stat. 609.498, subd. 2, and 609.27.

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

### Competency

Under Minnesota Statutes section 595.02, subdivision 1(n), a child under 10 years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts about which the child is examined. A child describing any act or event may use language appropriate for a child of that age. Under Minnesota law, the defendant has a right to be present at a competency hearing. Minn. Rules of Crim. Proc. 26.03, subd. 1; and **State v. Robinson**, 476 N.W.2d 896 (Minn. App. 1991), *review granted* (Minn. Dec. 23, 1991).

There is no express age at which a person is presumed to be incompetent to testify. Minn. Stat. 595.06. A child of a very young age can be found to be a competent witness. **State v. Brovold**, 477 N.W.2d 775 (Minn. App. 1991), *review denied* (Minn. Jan. 17, 1992) (in which a three year old was found to be competent to testify). According to Minnesota Statutes section 595.02 1(k), and 1(l), the court has the discretion to determine the child's competency as a witness, and this is determined on a case by case basis. *Id.* 776.

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

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

Determination of a person's competency as a witness is within the sound discretion of the trial court and is ordinarily made by such preliminary examination of the proposed witness as may be deemed necessary by the

## 17. Victims/Witnesses and Court Proceedings, cont.

court. If it appears from the examination that the witness understands the obligation of an oath and is capable of correctly narrating facts to which his testimony relates, the witness is competent in fact and should be permitted to testify.

### Protected Communications

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

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

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

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

### Cameras in the Courtroom

Following a pilot project starting in 2015 that provided for a process related to cameras in the courtroom, the Minnesota Supreme Court in 2018 amended the Minnesota General Rules of Practice to allow audio and video coverage of certain court proceedings.

1. A judge may authorize cameras in certain civil proceedings, with certain conditions, without the consent of all the parties. Visual or audio coverage is not permitted in proceedings related to child custody, marriage dissolution, juveniles, child protection proceedings, paternity proceedings, civil commitment, and orders for protection.
2. A judge may authorize cameras in certain criminal proceedings prior to conviction with the consent of all the parties in writing prior to the commencement of trial. A witness can object to visual and audio recording of their testimony.
3. After a criminal conviction, a judge must allow, absent good cause, visual and audio recording of the proceedings, with some exceptions.
4. Cameras are not allowed in the following:
  - a. Proceedings in problem-solving courts, including drug courts, mental health courts, and DWI courts.
  - b. Cases involving charges that come under the list of “qualified domestic violence-related offenses” (Minn. Stat. 609.02, subd. 16), and
  - c. Cases involving charges of criminal sexual conduct (Minn. Stat. 609.293-.352).
4. There can be no audio or video coverage when a jury is present.

No visual or audio coverage is permitted of a victim giving a victim impact statement, or their proxy, unless the victim has affirmatively acknowledged and agreed to the coverage in writing, before testifying.

The rule states that, absent good cause, the court must allow audio or video coverage after a guilty plea is entered or a guilty verdict is returned. In determining whether good cause exists to prohibit coverage, the judge must consider: (1) the privacy, safety, and well-being of the participants or other interested person; (2) the likelihood

## 17. Victims/Witnesses and Court Proceedings, cont.

that coverage will detract from the dignity of the proceeding; (3) the physical facilities of the court; and, (4) the fair administration of justice. Minn. General Rules of Practice 4.02(e).

For further guidance, see [Cameras in the Courtroom: A Briefing for Victim Services Professionals](#) (March 2023).

### **Failure to Obey a Subpoena and Contempt of Court**

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

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

**Misdemeanor Contempt:** Minnesota Statutes section 588.20, subdivision 2 makes committing a contempt of court in any of the following ways a misdemeanor:

- disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;
- behavior of like character in the presence of a referee, while actually engaged in a trial or hearing, pursuant to an order of court, or in the presence of a jury while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law;
- breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of a court, jury, or referee;
- willful disobedience to the lawful process or other mandate of a court other than the conduct constituting felony contempt;
- resistance willfully offered to its lawful process or other mandate other than the conduct constituting felony contempt;
- contumacious (willful disobedience of a court order) and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory;
- publication of a false or grossly inaccurate report of its proceedings; or
- willful failure to pay court-ordered child support when the obligor has the ability to pay.

In a juvenile delinquency proceeding, if a witness, including the victim, personally served with a summons or subpoena, fails to appear, without reasonable cause, "the person may be proceeded against for contempt of court or the court may issue a warrant for the person's arrest, or both." Minn. Stat. 260B.154. This is also the case if the court has reason to believe the person is avoiding personal service, or if any custodial parent or guardian fails to accompany a child to a hearing as required under 260B.163, subd. 8.



## 18. Victim Notification Services: VINE and Minnesota Haven

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

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

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

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

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

### **VINE – County Facilities**

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

#### ***Custody Status***

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

#### ***Notification***

Individuals can register with VINE to receive automatic telephone or email notification (or both) upon a change in the offender's custody status. Registered persons are notified upon the transfer, release, escape, or death of an inmate. When VINE receives a change in inmate status from the county, the service automatically calls all persons who requested phone notification. Calls continue for 48 hours or until a successful notification is verified with the registered person's Personal Identification Number (PIN). Persons who have requested email notification will be sent an email to the address provided.

#### ***Using VINE***

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

## 18. Victim Notification Services: VINE and Minnesota Haven, cont.

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

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

[www.vinelink.com](http://www.vinelink.com)

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

### **Minnesota Haven – DOC Facilities**

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

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

The DOC Victim Assistance Program can assist with creating an account for those individuals without Internet access by contact the DOC Victim Assistance Program: 800-657-3830 or [Victim Assistance Program](#).

## 19. Overview of the Court System

This section provides a brief overview of the court system. For more information, see the [Minnesota Judicial Branch website](#).

### **State Court System**

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

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

There are more than 289 judges serving the state’s district courts. For administrative purposes, the district courts are organized into 10 judicial districts. Each district is managed by a chief judge and assistant chief judge, as well as by a district administrator.

At the state level, the Minnesota Court of Appeals reconsiders decisions of the district courts if one of the parties is unhappy with the result and files a timely appeal. The court of appeals is an error-correcting court; it does not retry cases. The 19 court of appeals judges are divided into three-judge panels and travel to cities throughout Minnesota to hear cases. A panel reviews the district court record to see if any errors were committed in the original court proceedings. If serious errors are found, the court can reverse the decision of the district court, or send the case back for a new trial or other proceeding.

The highest state court is the Minnesota Supreme Court. This court of seven judges, who are called justices, hears appeals from the court of appeals, the Workers’ Compensation Court of Appeals, and the Tax Court.

All first-degree murder convictions are reviewed by the Minnesota Supreme Court. Disputes about legislative elections also go directly to the supreme court. The state supreme court has discretion to determine which cases it will hear. This court reviews matters on certiorari, meaning it selects cases to set state-wide precedent, to clarify important legal issues, to resolve statutory conflicts, or to answer constitutional questions.

For more information about the Minnesota Judicial Branch, go to [www.mncourts.gov](http://www.mncourts.gov).

### **Federal Court System**

The federal court system also has a presence in Minnesota, just as it does in every state. The federal courts are separate from the state courts. In the federal system, the federal district court—which in Minnesota operates in Minneapolis, St. Paul, Duluth and Fergus Falls—is the trial court where people file their federal claims. Seven judges, all appointed for life by the president, serve on the United States District Court for the District of Minnesota.

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

For more information about the federal judicial system, go to [www.uscourts.gov](http://www.uscourts.gov).

## 19. Overview of the Court System, cont.

### Tribal Courts

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

### Types of Cases

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

#### Civil

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

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

#### Criminal

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

There are three major classifications of crimes: felonies, gross misdemeanors, and misdemeanors. The more serious crimes are called felonies. A felony is a crime for which a sentence of imprisonment for more than one year may be imposed. Examples of felonies include murder, manslaughter, kidnapping, robbery, and assaulting a firefighter or emergency medical personnel.

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

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

## **19. Overview of the Court System, cont.**

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

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

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

## 20. Juvenile Court

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

### Rights of victims of juvenile offenders

#### Scope of Victim Rights

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

#### Notice Given by the Juvenile Court

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

#### Access to Juvenile Hearings

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

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

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

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

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

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



## 19. Overview of the Court System, cont.

### Information about case and juvenile

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

The court may order juvenile court records to be made available to certain persons providing supervision and custody of the child and to the public. The court must find that release of the information is in the best interests of the child, in the interests of public safety, or is necessary for the function of the juvenile court. Minn. Juv. Delinq. R. 30.02, subd. 3(B).

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

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

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

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

### About Juvenile Court

#### Jurisdiction

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

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

#### Certification

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

## 20. Juvenile Court, cont.

### **Presumption in Favor of Certification**

There is a presumption in favor of certification if:

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

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

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

### **Non-presumptive Certification**

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

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

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

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

If the court decides not to certify the juvenile after a certification hearing, the court shall designate the proceeding an extended jurisdiction juvenile case and include in writing the reasons why retention of the case in juvenile court serves public safety.

### **Extended Jurisdiction Juvenile (EJJ) Prosecutions**

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

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

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

When the prosecutor requests an EJJ prosecution, the court must hold a hearing to consider the request. The

## 20. Juvenile Court, cont.

prosecution must show by clear and convincing evidence that designating the case an EJJ proceeding serves public safety. A child who is the subject of an EJJ prosecution has the right to a trial by jury and effective assistance of counsel.

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

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

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

### **Records/Data Privacy**

Juvenile court records are not open to public inspection except those related to extended juvenile jurisdiction where there are felony level charges and the juvenile was at least 16 years old at the time of the offense. Minn. Stat. 260B.163, subd. 1(c)(2004); Minn. R. Juv. Del. Procedure 2.01.

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

Juvenile records are retained by the court until the offender reaches the age of 28.

## 21. Civil Lawsuits

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

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

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

In addition to obtaining compensation for actual costs, crime victims may be able to obtain punitive damages in certain cases. The law regarding punitive damages requires that the person who owns the premise showed a "deliberate disregard for the rights or safety of others." Minn. Stat. 549.20, subd. 1.

For example, in a case involving a sexual assault that occurred in an apartment complex, the court allowed a crime victim to request punitive damages. The victim was assaulted in her apartment by a maintenance person employed at the complex who got into her apartment with a master key. The victim was able to show that the apartment owners knew the assailant was potentially dangerous and did not follow their own security policy regarding access to apartment keys. This case resulted in a large settlement for the victim.

### **Insurance Policies**

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

### **Parental Liability for Damage Done by Minor Child**

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

### **Differences between Criminal and Civil Cases**

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

## 21. Civil Lawsuits, cont.

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

In civil cases, victims must hire their own attorney. This differs from the criminal system where the prosecutor represents the state at trial and does so at no cost to the victim. The Minnesota State Bar Association will provide attorney referrals. ([www.mnfindalawyer.com](http://www.mnfindalawyer.com).) The Hennepin County Bar Association also has a Lawyer Referral and Information Service, which can be accessed either by calling 612-752-6666 or online at [www.hcba.org](http://www.hcba.org).

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

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

If a claim for damages is less than \$15,000, an affordable alternative to a civil lawsuit is to file a claim in conciliation court (sometimes referred to as small claims court). The goal of the conciliation court is to provide litigants with a forum to resolve a civil dispute without the need of an attorney. Minn. Stat. 491A.01. Courtroom procedures are loosely applied, and decisions are relatively quick. More information and forms needed for Minnesota conciliation courts can be found at the Minnesota Judicial Branch Website, [www.mncourts.gov](http://www.mncourts.gov). In addition, many courthouses in Minnesota have self-help centers or information on this process.

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

### **How Does a Civil Lawsuit 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*, A10 - 1805 (Minn. 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.**, 716 N.W.2d 349, A05-929 (Minn. App. Jun. 13, 2006), *review denied*, (Minn. Aug. 15, 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

## 21. Civil Lawsuits, cont.

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**, 786 N.W.2d 885, A09-2082 (Minn. App. Aug. 10, 2010), *review denied* (Minn. Oct. 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**, 789 N.W.2d 513, A10-28 (Minn. App. Oct. 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 who had suffered economic loss.

### **Representing Victims in a Civil Case When Criminal Case Pending**

Attorneys representing victims who are currently involved in a criminal prosecution must be mindful of how their representation might impact communications to the victim from the prosecutor. Under the rules of professional conduct, prosecutors must not communicate with a party regarding the subject of the representation unless the prosecutor has the consent of the victim's lawyer or is authorized to do so by law or a court order. Minnesota Rule of Professional Conduct 4.2. Because of this rule, a prosecutor may send all notifications and communications regarding the criminal matter to the attorney. A civil attorney representing the victim can give the prosecutor permission to send notifications and communications directly to the victim.

### **Offenders Suing Victims**

Offenders are barred from recovering civil damages for injuries sustained while engaged in criminal conduct. Under Minnesota Statutes section 611A.08, subdivision 2,:

A perpetrator assumes the risk of loss, injury, or death resulting from or arising out of a course of criminal conduct involving a violent crime, as defined in this section, engaged in by the perpetrator or an accomplice, as defined in section 609.05, and the crime victim is immune from and not liable for any civil damages as a result of acts or omissions of the victim if the victim used reasonable force as authorized in section 609.06 or 609.065.

### **Parental Liability for Damage Done by a Minor Child**

Parents and guardians of a minor who willfully or maliciously causes injury to any person or damage may be subject to a civil lawsuit. Under Minnesota Statutes section 540.18, they are jointly and severally liable for such acts by the minor to an amount not exceeding \$1,000. This provision does not relieve the minor child from personal liability for such injury or damage.

### **Suing for Failure to Comply With Crime Victim Rights**

The only case addressing the issue of suing in civil court for failure to comply with crime victim rights is **Bruegger v. Faribault County Sheriff's Dep't**, 486 N.W.2d 463 (Minn. App. 1992), affirmed, **Bruegger v. Faribault County Sheriff's Dep't**, 497 N.W.2d 260 (Minn. 1993). There, the court of appeals ruled that the failure of law enforcement to inform a crime victim of his or her right to reparations does not provide a basis for a negligence action.

## 22. Statute of Limitations

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

### **Criminal Cases**

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

- murder or any crime resulting in the death of the victim;
- kidnapping (Minn. Stat. 609.25);
- labor trafficking of a person under the age of 18 (Minn. Stat. 609.282; and
- criminal sexual conduct in the first through third degree and sex trafficking when physical evidence has been collected and preserved that is capable of being tested for its DNA characteristics.

Minn. Stat. 628.26 26(a) through (f).

Other crimes have statutes of limitations ranging from three years to nine years. Typically, criminal complaints for a majority of criminal acts must be filed within three years of the offense. But, there are some exceptions, such as:

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

### **How the Statute Applies**

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

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

### **Civil Lawsuits**

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



## 23. Sentencing Guidelines

Minnesota has established a set of sentencing guidelines that identify presumptive sentences for felony offenses. The sentencing guidelines are updated at least annually by the [Minnesota Sentencing Guidelines Commission](#).

The material provided in the following sections was adapted from the [Minnesota Sentencing Guidelines and Commentary](#) manual. Persons with questions about the guidelines may contact the guidelines office: [sentencing.guidelines@state.mn.us](mailto:sentencing.guidelines@state.mn.us) or 651-296-0144.

### Overview of the Minnesota Sentencing Guidelines

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

The guidelines represent the general goals of the criminal justice system, while they also specifically presume what the appropriate sentence should be for an individual offender in felony cases, given the offender's conviction offense and criminal record. The judge pronounces the guidelines sentence or may depart from this sentence if the circumstances of the case are substantial and compelling.

The judge must state the reasons for departure and both the prosecution and the defense may appeal the pronounced sentence. Regardless of whether the judge follows the guidelines, the sentence pronounced is fixed, and there is no parole board to grant any early release from prison. When an offender receives an executed (prison) sentence, the sentence pronounced by the court consists of two parts: a term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The amount of time the offender actually serves in prison may be extended by the commissioner of corrections if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender serving the entire executed sentence in prison.

### Presumptive Sentence

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

### Sentencing Grids

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

#### Offense Severity

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

## 23. Sentencing Guidelines, cont.

law the sentence is mandatory imprisonment for life.

Offenses listed within each level of severity are deemed to be generally equivalent in severity. The severity level for each felony offense is governed by the Offense Severity Reference Table. Some offenses are designated as unranked offenses in the Offense Severity Reference Table. When unranked offenses are being sentenced, sentencing judges shall exercise their discretion by assigning an appropriate severity level for that offense and specify on the record the reasons a particular level was assigned.

For the most up-to-date offense severity reference table and sentencing guideline grid see the [Minnesota Sentencing Guidelines Website](#).

### **Criminal History Score**

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

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

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

Some misdemeanor or gross misdemeanor crimes are counted in the score, and in some circumstances, felony offenses committed by juvenile offenders committed after the offenders turned 14 years of age are counted, however, at a reduced weight.

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

For a full explanation of how the score is calculated see the [Minnesota Sentencing Guidelines](#).

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

### **Using the Sentencing Grid**

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

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

If the offense falls in the shaded portion of the grid, the presumptive sentence is "stayed" and the offender may be given jail time up to a year and be put on probation with conditions specified by the judge. There are a few exceptions where commitment is the presumptive disposition even though the offense may fall in the shaded half of the grid. Offenses that carry a presumptive commitment sentence include: third-degree controlled substance

## 23. Sentencing Guidelines, cont.

crimes when the offender has a prior felony drug conviction; burglary of an occupied dwelling when the offender has a prior burglary conviction, felony DWI with a previous conviction for felony DWI; second and subsequent criminal sexual conduct offenses, and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., second-degree assault).

### **Stayed Sentences**

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

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

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

### **Mandatory Sentences**

Some crimes have mandatory sentences associated with them where the presumptive sentence is outside the standard sentencing guidelines, for example, first degree murder and certain sex offenses,

### **Concurrent/Consecutive Sentences**

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

### **Departures**

Judges may depart from the presumptive sentence if there are substantial and compelling circumstances. Departures may be made regarding the duration the disposition or duration of the sentence, or both. They can result in a sentence that is regarded as more severe than the presumptive sentence, or less severe. Judges must provide written reasons to justify a departure. Factors that a judge may not consider include race, sex, employment, social factors, and the exercise of constitutional rights by the defendant.

For more information on departures and factors that may be used as reasons for a departure, see the [Minnesota Sentencing Guidelines Website](#).

## 24. Access to Court Proceedings

An individual's ability to attend a court proceeding differs by type of proceeding and the status of the person who is attempting to attend the proceeding. The following is a summary of the Minnesota laws and rules related to the ability to attend various court proceedings.

### **Criminal Matters**

In general, criminal court hearings are open to the public, a principle made clear by the U.S. Supreme Court. See *Richmond Newspapers, Inc. v. Virginia*, 488 U.S. 555, 580 (1980); and **Press-Enterprise v. Superior Court of California**, 464 U.S. 501 (1984).

### **Excluding Persons from the Courtroom**

Even with the presumption of openness in our courts, a judge has the ability to close a court proceeding. To deny access to criminal trial proceedings, the U.S. Supreme Court has ruled that states must show that the denial is necessitated by a "compelling state interest" and that the denial is narrowly tailored to serve that interest. **Globe Newspaper Co. v. Superior Court**, 457 U.S. 596 (1982).

Minnesota's Rules of Criminal Procedure state that the court can exclude the public from portions of a criminal trial held outside the presence of an unsequestered jury when there is a substantial likelihood the matters discussed, if disseminated, may interfere with a fair trial by an impartial jury. Minn. Rules of Criminal Procedure 26.03, subd. 6.

In addition, Minnesota identifies some situations where persons may be excluded from a criminal proceeding. For example, minors who are not witnesses or who do not have an interest in the criminal proceeding may not be present at trial. Minn. Stat. 631.04. A judge also has the ability to exclude spectators from the courtroom in child pornography cases and criminal sexual conduct cases involving a minor victim. Minn. Stat. 631.045.

### **Family Court Cases**

In general, family court proceedings, including order for protection (OFP) hearings, are open to the public. Minnesota Rule of Family Court Procedure 364.07 states: "All hearings are open to the public, except as otherwise provided in these rules or by statute. For good cause shown, a child support magistrate may exclude members of the public from attending a hearing." Examples of good cause might include if a child is testifying, if there are safety concerns, or if the observer causes a disruption or interferes with the proceeding.

### **CHIPS Cases In Juvenile Court**

In July 2002, following a three-year open-court pilot project, the Minnesota Supreme Court opened all child in need of protection (CHIPS) proceedings to the public. The court still has the discretion to close a proceeding for good cause.

### **Delinquency Cases In Juvenile Court**

In general, the public cannot attend juvenile delinquency proceedings unless they have a direct interest in the case or in the work of the court. Minn. Stat. 260B.163, subd. 1(c); Minn. R. Juv. Del. Proc. 2.01 and 18.05(1)(A). A victim of the crime is expressly mentioned in the statute as a person with a direct interest in the case.

Hearings are open to the public in delinquency or extended jurisdiction juvenile proceedings where the child was at least 16 years of age at the time of the offense and is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult. Minn. Stat. 260B.163, subd. 1(c); Minn. Rules Juv. Del. Proc. 18.05(1)(A).

## 24. Access to Court Proceedings, cont.

In a delinquency proceeding, the court may temporarily exclude any person except counsel and the guardian ad litem appointed in the delinquency proceeding when it is in the best interests of the child to do so. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. Minn. Rules Juv. Del. Proc. 2.02.

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

### **Civil Commitment Cases**

The public may attend civil commitment hearings; however, the court has the ability to exclude individuals from the hearing who are not necessary for the conduct of the proceedings. The court cannot exclude those requested to be present by the proposed patient. Minn. Stat. 253B.08, subds. 2-3.

### **Special Considerations For Victims And Witnesses**

In general, victims and witnesses are members of the public and therefore have the right to attend court proceedings as described above, with certain exceptions. For example, witnesses may be sequestered or excluded from the proceedings in which they will be called to testify. See Minnesota Rules of Court 11.11 and 26.03, subd. 7; Minnesota Rules of Evidence 615.

Although victims, as members of the public, may attend criminal proceedings, Minnesota law specifically gives victims rights to be present at the plea presentation hearing and the sentencing hearing. Minn. Stat. 611A.03, subdivision 1. In addition, victims have a statutory right to participate in the prosecution process. Minn. Stat. 611A.02, subdivision 2(b)(5).

Victims of crimes committed by a juvenile have the same rights as those cases in which the offender is an adult. Minn. Stat. 611A.015. In addition, Minnesota law specifically provides that the victim of a child's delinquent act may attend any delinquency proceeding. Minn. Stat. 260B.163, subd. 1(c). The court may exclude the victim from a proceeding if the victim will also be a witness, and may exclude the victim during portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public. A victim in a juvenile proceeding has a right to have a support person present during the victim's testimony. Minn. Stat. 260B.163, subd. 3.

A prosecuting witness under the age of 18 has a right to a support person in child abuse, violent crime, fifth degree assault, and domestic assault cases during the testimony of that prosecuting witness. Minn. Stat. 631.046, subd. 1. A prosecuting witness in criminal sexual conduct cases may be accompanied by a supportive person to the omnibus hearing or other pretrial hearings. Minn. Stat. 631.046, subd. 2.

### **Family Members And Victim Advocates**

Family members of a minor, incapacitated, incompetent, or deceased victim are considered "victims" and in that role have the same rights of access to the courts as described in the previous sections. Minn. Stat. 611A.01, subd. 1(b).

Although "family member" is not defined, this section indicates that if it would be impracticable to have all family members accorded all of the rights under chapter 611A (including attending a hearing), a prosecutor can establish a reasonable procedure to give effect to the rights under chapter 611A, however, it cannot limit the number of victim impact statements submitted to the court.

## **24. Access to Court Proceedings, cont.**

Community-based victim advocates are members of the public. The rules and laws related to access to court proceedings described above apply to them in that status, unless specifically provided for otherwise. Victim advocates who are part of a prosecutor's office are able to attend both open and closed proceedings as a member of that office.

## 25. Access to Law Enforcement Data

A common step for many victims following a crime is to try to obtain a copy of the law enforcement report related to the incident. Often, victims face difficulties in this effort, such as being told the report cannot be released, getting only a brief report, or getting a report with information blocked out.

The laws related to access to government data are complicated. The following is some basic information for crime victims about obtaining a copy of an incident report from a law enforcement agency. This section was derived from the handout [How Do I Get a Copy of My Police Report?](#), which is available on the Office of Justice Programs Website.

### **Getting a copy of a law enforcement report**

In most instances, any member of the public can go to the main office of the county sheriff or city police department to make a request for an incident report. Many agencies have information about this process posted within their office or on their website or have a brochure available. For larger departments, the records department handles such requests.

In any case, processing requests for incident reports is a routine activity for all law enforcement agencies, and a standard procedure should be in place.

It is a good idea to call the records department or the agency's non-emergency number with any questions about the process before going to the agency.

The person making the request should ask: (1) when the report will be ready, (2) how much it will cost, and (3) what method of payment is acceptable. If no exact figure can be determined, the requester should ask for an approximate amount.

If it is unclear whether or not the report can be released, the requester should ask when and who to call to verify its status before making a trip to the agency. If the report will not be released, the agency should be asked to explain the reasons. Agencies are required to provide the statutory authority that gives them the legal basis to refuse the request. Minn. Stat. 13.03, subd. 3(f).

### **A “report” is law enforcement data**

When individuals request a copy of a “police report” or “incident report” or “investigative report” from a law enforcement agency, they are asking for law enforcement data. An individual's ability to request and obtain law enforcement data is governed by the Minnesota Government Data Practices Act. The portion of the Minnesota Government Data Practices Act governing comprehensive law enforcement data is Minnesota Statutes section 13.82.

In general, if the data are public, the law enforcement agency is required to provide a copy or allow inspection. If the data are not public (including confidential data), the law enforcement agency cannot by law provide a copy.

### **Public vs. confidential law enforcement data**

Law enforcement data that are always public include: arrest data, request for service data, transcripts of 911 recordings, and basic information about the law enforcement agency's response to an incident. Minn. Stat. 13.82, subds. 2, 3, 4, and 6.

Law enforcement data that are considered confidential are criminal investigative data on an active investigation—that is, the data collected by the law enforcement agency in order to prepare a case against a suspect. The



## 25. Access to Law Enforcement Data, cont.

investigative report is confidential while the investigation is active, however, once an investigation is inactive, the investigative report is public. Minn. Stat. 13.82, subd. 7.

### **Releasing a report depends on status of investigation**

#### *Investigation Ongoing*

If the law enforcement agency is still investigating the crime, members of the public will not be able to get a copy of the report. They can, however, get what is often referred to as the public portion of the report containing data about the case that are classified as public.

#### *Investigation Complete and Case Closed*

If the case is closed and no charges will be filed, then the case is inactive and the data are public. Members of the public should be able to get a copy of the report. The law enforcement agency, however, may still restrict access to all or parts of the report in order to protect another ongoing investigation or to protect the identity of victims, witnesses, or others.

#### *Investigation Complete and Matter Referred to Prosecutor's Office*

If the prosecutor's office is still reviewing the investigative file to determine if charges will be filed, the case is still active. The report is confidential, and members of the public are not able to get a copy.

If the prosecutor's office has decided not to pursue the case, the investigation is considered inactive, and the data in the report are public. Members of the public should be able to get a copy of the report (subject to the restrictions noted above).

If the prosecutor's office has filed charges, any investigative data contained in charging documents presented to the court are public.

### **Getting a copy of the report even if the law enforcement data is confidential**

A victim or victim's legal representative (such as a parent) can make a written request to the prosecutor's office to release investigative data collected by the law enforcement agency that is confidential. The prosecutor's office may refuse the request if it believes that it will interfere with the investigation or that the request is prompted by a desire on the part of the requester to engage in unlawful activities. Minn. Stat. 13.82, subd. 13.

### **Specific provisions that apply to different incidents or crimes**

There are some specific provisions that apply to certain situations:

**Domestic abuse:** A victim of domestic abuse can request a copy of a domestic abuse report from a law enforcement agency at no cost. Minn. Stat. 13.82, subd. 5.

**Juveniles:** If the offender is a juvenile, the investigative report is not public, even if the investigation is inactive. A victim or victim's legal representative (such as a parent) in a juvenile case can make a written request to the prosecutor's office to release investigative data collected by the law enforcement agency. Again, the prosecutor's office may refuse the request if it believes that it will interfere with the investigation or that the request is prompted by a desire on the part of the requester to engage in unlawful activities. Minn. Stat. 260B.171, subd. 5(h).

**Traffic reports:** Some information related to a traffic accident is regarded as public and some is not. Response and incident data related to a traffic accident are public data (including information about arrests made, driver information, pursuits, resistance encountered, and the alcohol concentration of each driver). Minn. Stat. 13.82,

## 25. Access to Law Enforcement Data, cont.

subd. 6.

In cases of accidents resulting in bodily injury, death, or property damage of \$1,000 or more, law enforcement agencies prepare and submit a written traffic accident report to the commissioner of public safety. This report is not public; however, a person involved in the accident can request a copy of the report. Minn. Stat. 169.09, subd. 13(a)(1). See also the Traffic Accident Data handout available on the [Data Practices Office Website](#).

### **Cost of a copy of the report**

A law enforcement agency may charge fees for copies of an incident report; however, state law restricts what those fees can be. If the person requesting the report is not the subject of the data, the request is for public data, and the report is for 100 or fewer black-and-white pages, the law enforcement agency can only charge up to 25 cents for each page copied (50 cents for a two-sided copy). See Minn. Stat. 13.03, subd. 3(c).

In situations where the report is greater than 100 pages or involves color copies, photographs, electronic media, etc., the agency may require the person requesting the report to pay the actual costs. This may, but does not necessarily, include staff time to process the request as well as the cost of materials and mailing.

No fee can be charged if the requester only asks to inspect the report. Minn. Stat. 13.03, subd. 3(a). An individual can take handwritten notes or photographs of the data during this inspection.

For more information about the amount a government entity can charge for copy costs of requested data, please see the [copy cost information](#) posted on the [Data Practices Office Website](#).

Crime victim requesting the report: A victim, as the subject of the data, can only be charged the actual cost to copy the requested data and not any search and retrieval costs. (In most situations, this should be less than the \$.25/page charged to the public.) Minn. Stat. 13.04, subd. 3.

### **Redacted reports - information is blocked out**

A law enforcement agency can block out information on a report to protect the identity of individuals, such as undercover law enforcement officers, informants, witnesses, and mandated child abuse reporters. Also, the information about victims in criminal sexual conduct, sexual extortion, and trafficking cases is not public and will be blocked out.

Minn. Stat. 13.82, subd. 17.

### **Request by victim to have names blocked out on a report given to the public**

Yes. Victims and witnesses can request that they not be identified publicly by the law enforcement agency. However, the agency can deny the request if it reasonably determines that revealing the identity would not threaten the personal safety or property of the individual. Minn. Stat. 13.82, subd. 17(d), and 611A.02, subd. 2(b)(2).

A law enforcement agency automatically withholds public access to data that would reveal the identity of a victim of criminal sexual conduct or sex trafficking. Minn. Stat. 13.82, subd. 17(b).

### **Steps to take if there are problems getting a copy of the report**

The requester should consider going through the “chain of command.” They should ask to speak to the head of the unit in charge of records. In smaller jurisdictions, the requester should ask to speak to the police chief or sheriff.

## 25. Access to Law Enforcement Data, cont.

Each city and county will have a person specifically designated to handle issues related to requests for information. Victims and other members of the public who have problems obtaining law enforcement data can ask for the name of the data practices compliance official and speak to that person directly. This most likely will be someone in the city or county attorney's office or the city or county administration office.

Individuals who feel that the agency's response to their request for data is in violation of the Minnesota Government Data Practices Act can ask for guidance or request a formal advisory opinion from the [Data Practices Office](#), Minnesota Department of Administration: 651-296-6733 or 800-657-3721. Advisory opinions are nonbinding on the agency, but are given deference in court.

In addition, an individual who feels that a government entity has violated the provisions of the Act may seek an order to compel compliance from the Office of Administrative Hearings. Minn. Stat. 13.08, subd. 4.

## 26. Crime Victim Justice Unit

The Crime Victim Justice Unit, formerly known as the Office of Crime Victims Ombudsman, is a victim rights compliance office that works to ensure that crime victims in Minnesota are treated appropriately and their statutory rights are upheld. The CVJU investigates decisions, acts, and other matters of the criminal justice system to promote the highest attainable standards of competency, efficiency, and justice for crime victims.

The legislature created the Office of Crime Victim Ombudsman (OCVO) in 1985 with the mission to investigate complaints of statutory victim rights violations and victim mistreatment. In 2003, the OCVO's responsibilities were assumed by the Crime Victim Justice Unit (CVJU), a unit of the Office of Justice Programs in the Minnesota Department of Public Safety. Since that time, the CVJU has sought to uphold the rights of crime victims and ensure the fair treatment of victims in the criminal justice process.

The Crime Victim Oversight Act, Minnesota Statutes sections 611A.72 to 611A.74, authorizes the commissioner of public safety to investigate decisions, acts, and other matters of the criminal justice system so as to promote the highest attainable standards of competence, efficiency, and justice for crime victims and witnesses in the criminal justice system. The commissioner delegates that responsibility to the CVJU.

As its vision, the CVJU strives to achieve just, fair, and equitable treatment of crime victims and witnesses by providing a process to question the actions of criminal justice agencies and victim assistance programs within the State of Minnesota. The actions of the CVJU are guided by impartiality, confidentiality, and respect for all parties.

The CVJU works to:

- (1) Ensure compliance with crime victim rights legislation;
- (2) Prevent mistreatment of crime victims by criminal justice agencies;
- (3) Provide information and referrals to victims and criminal justice professionals;
- (4) Amend practices that are unjust, discriminatory, oppressive or unfair;
- (5) Improve attitudes of criminal justice employees toward crime victims;
- (6) Increase public awareness regarding the rights of crime victims;
- (7) Encourage crime victims to assert their rights; and
- (8) Provide crime victims a forum to question the actions of criminal justice agencies and victim assistance programs.

Although the CVJU is charged with investigating governmental and crime victim program actions, it does not advocate for victims. Instead, the CVJU is an advocate for fairness within the criminal justice system.

The CVJU remains neutral in relation to the involved parties. The duty of this office lies not with the crime victim or the criminal justice professional, but with justice and the fair evaluation of facts. It is easy to feel that an agency has been unjust, but a thorough investigation by the CVJU may determine that the agency's decision meets every test of administrative fairness. On the other hand, once the CVJU has determined that a criminal justice professional has been unfair or a victim's rights have been violated, the CVJU will address the issues and make recommendations to improve the agency's response to victims.

Victims or witnesses who feel that their crime victim rights have been violated or who feel that they have been mistreated should contact the CVJU. In addition, victims, witnesses, and criminal justice professionals needing information can call for clarification and referrals. Explanations of the complexities of the criminal justice system are also routinely provided.

### **Assisting Crime Victims**

Callers may be provided information to enable them to resolve their issues independent of outside interference or they may be referred to a more appropriate resource. If more assistance is needed, callers may have their issues

## 26. Crime Victim Justice Unit, cont.

resolved informally with the assistance of an investigator, or if the investigator or caller feels the issue requires a formal investigation, the caller will be provided with a complaint form that will initiate the investigative process.

### **Investigations**

The CVJU investigates complaints of victim mistreatment and violations of statutory victim rights under Minnesota Statutes chapter 611A and other provisions. Mistreatment occurs when a public body fails to act in accordance with its mission or responsibilities. It includes situations in which there is unreasonable delay, rude or improper treatment of victims, refusal to take a report of a crime, inadequate investigation, failure to follow the law or the agency's own policies, and the abuse of discretion.

The CVJU also looks into complaints that the victim's rights have been violated. For example, the CVJU looks at such violations as the failure to provide:

- notice to victims at various stages of the process;
- opportunities for victims to participate in the prosecution process;
- notice of release of an inmate; or
- financial compensation for losses related to the crime.

The investigative process may include interviewing persons who can furnish relevant information as well as reviewing pertinent court files, records, statutes, and agency policies, procedures, standards, and practices. CVJU file data is confidential during the investigative process and becomes private data once a case has been closed or becomes inactive. If a complaint is not justified, the subject agency and all parties to the complaint will be informed. If a complaint is justified, the CVJU can make recommendations to the subject agency for corrective action. Although the agency has no legal obligation to comply with the CVJU's recommendations, the agency is statutorily obligated to inform the CVJU of the action taken or the reasons for not complying with the recommendation. The CVJU findings report and the agency response are provided to the victim.

For the past several decades, victim rights have expanded and strengthened as the Minnesota legislature continues to address the needs of victims in the criminal justice system. The CVJU is dedicated to victim needs and will continue to uphold the rights of victims and ensure they are treated in a fair manner.

Go to the [Office of Justice Programs Website](#) for more information on the Crime Victim Justice Unit.