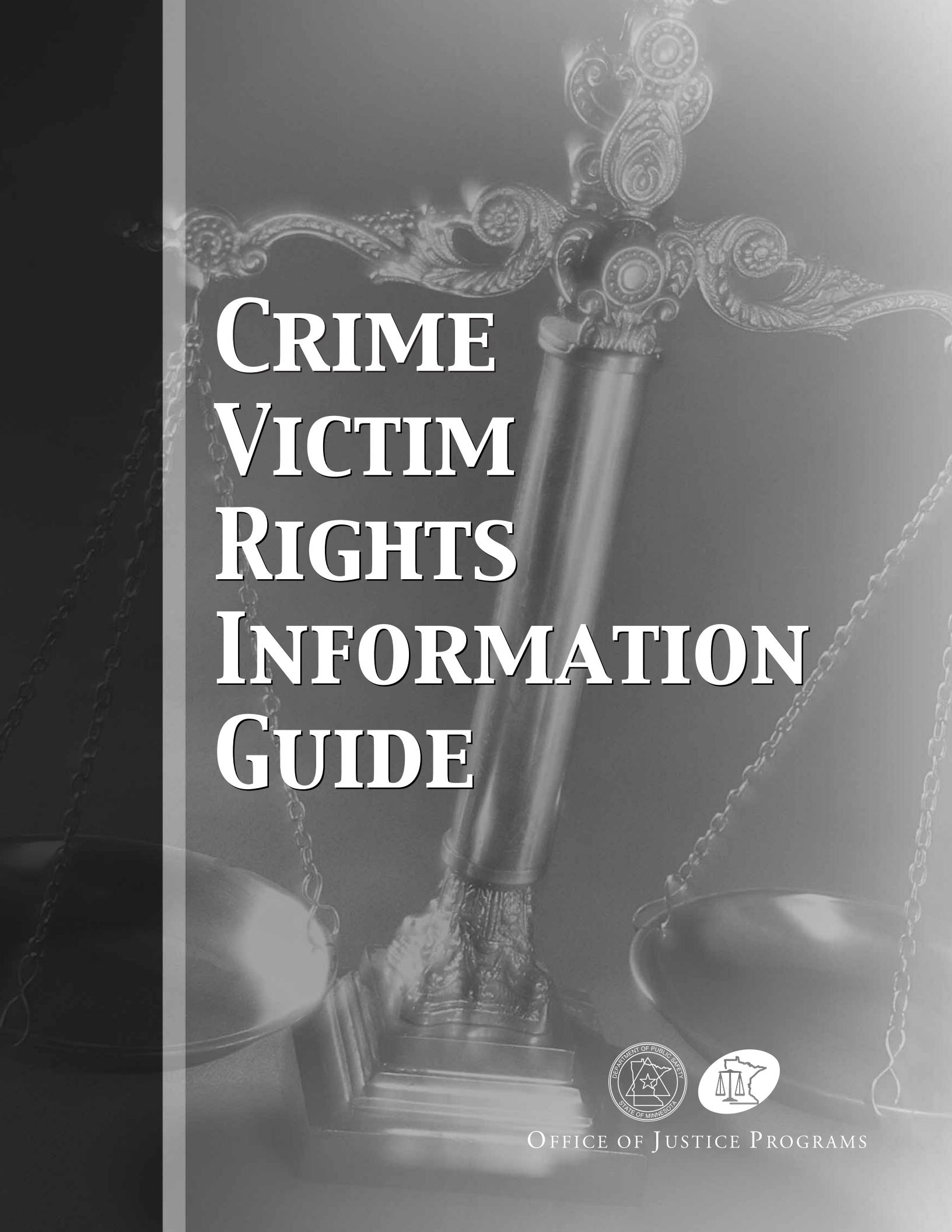

Crime Victim Rights Information Guide

Office of Justice Programs

Forward

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

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

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

Part 1 Topic Summary

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

Part 2 Reparations

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

Part 3 Minnesota Statutes Chapter 611A

This section includes the full text of the Crime Victim's Bill of Rights.

Part 4 Statutes/Rules

The section includes other Minnesota statutes and rules relevant to crime victim rights.

Part 5 Model forms and letters

This section includes sample victim forms and letters that can be used by prosecutors.

The *Crime Victim Rights Information Guide,* first issued in 1993 by the Minnesota Crime Victim and Witness Advisory Council, was a result of a collaborative effort of many crime victim professionals throughout the state. It has gone through several revisions since then, taking into account the evolving nature of victim rights. The 2008 edition of the *Crime Victim Rights Information Guide* reflects the changes from the 2008 legislative session and relevant case law through May 2008.

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

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

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

May 2008

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PART 1 – TOPIC SUMMARIES

1. Notice of Rights

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

Notice Given By Peace Officers

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

(1) the victim's right to apply for reparations to recover losses, not including property losses, resulting from a violent crime and the telephone number to call to request an application;

(2) the victim's right to request that the law enforcement agency withhold public access to data revealing the victim's identity under section 13.82, subdivision 17(d);

(3) the additional rights of domestic abuse victims as described in section 629.341;

(4) information on the nearest crime victim assistance program or resource; and

(5) the victim's rights, if an offender is charged, to be informed of and participate in the prosecution process, including the right to request restitution.

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

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

Notice Given by Prosecuting Attorney

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

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

(1) the victim's legal guardian or guardian ad litem; or

(2) the three victims the prosecuting attorney believes to have suffered the most, if there are more than three victims of the offense.

Notice Given by Probation Officer

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

(1) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel;

(2) the victim's right to request restitution pursuant to section 611A.04;

(3) the time and place of the sentencing or juvenile court disposition and the victim's right to be present; and

(4) the victim's right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement.

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 from the Office of Justice Programs Crime Victim Services.

Part 1 – Topic Summaries

1. Notice of Rights

Notice Given by Courts

Under section 611A.0385, the court must notify each affected victim of the right to be notified of the offender's release, expungement provisions under section 611A.06, and how to request such notification from the Commissioner of Corrections. A sample notice form is contained in Part 5.

Notice Given by Commissioner of Corrections

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

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

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

2. Notice of Release

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

Victims have the right to be notified before the offender is to be released. This is a very important right for victims who may need to take steps to protect their safety after an offender's release. There are separate provisions in Minnesota law regarding notice of release of the offender from arrest or detention and notice of release of the offender after completion of a term of incarceration. There are also provisions for notice of a reduction in the offender's custody status and for notice of escape of an offender.

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

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

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

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

(1) the conditions of release, if any;

(2) the time of release;

(3) the time, date, and place of the next scheduled court appearance of the arrested or detained person and, where applicable, the victim's right to be present at the court appearance; and

(4) the location and telephone number of the area sexual assault program as designated by the Commissioner of Corrections.

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

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

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

Release Notice to Victims of Domestic Abuse

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

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury or assault; or

2. Notice of Release

(3) terroristic threats, within the meaning of section 609.713, subd. 1; criminal sexual conduct, within the meaning of sections 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subd. 2.

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

(1) the conditions of release, if any;

(2) the time of release;

(3) the time, date, and place of the next scheduled court appearance of the arrested person and the victim's right to be present at the court appearance; and

(4) if the arrested person is charged with domestic abuse, the location and telephone number of the area battered women's shelter as designated by the Department of Corrections.

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

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

Notice of Release from Imprisonment or Incarceration

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. **However, the victim must send a written request for this notice to the commissioner of corrections or to the head of the facility having custody of the offender. Also, if the victim's address or telephone number changes they must inform the security facility in writing of the new address or telephone number.** A sample notice form is included in Part 5 of this manual.

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 victim. This provision includes release of the offender from imprisonment or incarceration, release on extended furlough and for work release; release from a juvenile correctional facility; release from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency, or commitment under sections 253B.18 (mentally ill and dangerous to the public) or 253B.185 (sexual psychopathic personality or sexually dangerous); or a reduction in custody status.

The good faith effort to notify the victim must occur prior to the release, or reduction in custody status. For a victim of a felony crime against the person for which 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. (Felony crime against a person includes those listed in section 611A.031.)

Contents of Notice. The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release. The commissioner or other custodial authority complies with this section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the commissioner or authority in writing.

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

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

2. Notice of Release

Notice of Bail Hearings

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

(1) the date and approximate time of review;

(2) the location where the review will occur;

(3) the name and telephone number of a person that can be contacted for additional information; and

(4) a statement that the victim and the victim's family may attend the review.

Notice of Release of Sex Offenders

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

Notice shall also be sent to the victim of the crime or a deceased victim's next of kin, if the victim or next of kin request notice in writing, any witnesses who testified against the inmate or any person specified in writing by the prosecuting attorney. While notice to victims under section 244.053 does not limit a victim's right to request notice of release under section 611A.06, the Department of Corrections is utilizing the same notification request form for both victim notification under Minnesota Statutes sections 243.053 and 611A.06. The notice must inform the victim or a deceased victim's next of kin of the right to request and receive information about the offender authorized for disclosure under the community notification provisions of section 244.052.

Under section 244.052, subdivision 4, the law enforcement agency in the area where the sex offender resides, expects to reside, is employed, or is regularly found, shall disclose any information to the public that is relevant and necessary to protect the public and counteract the offender's dangerousness. If the offender is assigned a risk level 1, the law enforcement agency may disclose information to other law enforcement agencies. If the offender is assigned a risk level 2, the law enforcement agency may disclose information to other groups/agencies the offender is likely to encounter, in addition to disclosing information to other law enforcement agencies. For risk level 3 offenders, the law enforcement agency may disclose information to other members of the community whom the offender is likely to encounter. Also, law enforcement is prohibited from providing notice to groups or community members if the offender is being placed or resides in a licensed residential facility.

For an offender to be subject to community notification under section 244.052, the offender must have been convicted under one of the following Minnesota statutes: 609.185, (a) (2) (murder in the first degree while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence); 609.25 (kidnapping); 609.255, subd. 2 (false imprisonment of someone else's child); 609.322 (solicitation, inducement and promotion of prostitution); 609.324 (other prostitution crimes); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451, subd. 3 (felony level criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct); 609.3455, subd. 3a (mandatory sentence for certain engrained offenders); 609.352 (solicitation of children to engage in sexual conduct); 617.246 (use of minors in sexual performance); 617.247 (possession of pornographic work involving minors); 253B.185 (civil commitment as a sexual psychopathic personality or sexually dangerous person); 526.10 (1992) (former statute governing civil commitment for an indeterminant time); or a comparable offense in another state or a comparable federal offense. See Minn. Stat. 243.166, subd. 1b (2006) (providing detail of when registration is required).

Access to Data

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

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

3. Notice Regarding Pretrial Diversion/Notice of Plea Agreements

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

Pretrial 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, subd. 1 (burglary in the first degree); 609.687 (adulteration); 609.713 (terroristic threats); and 609.749 (harassment; stalking).

Plea Negotiation

Most criminal cases result in a plea of guilty by the offender. The offender may plead guilty at the omnibus hearing or any later time prior to trial. Usually the plea of guilty is the result of an agreement between the prosecutor and the defense attorney. Plea agreements are subject to the judge's approval, (i.e., the judge does not have to accept the plea agreement).

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

(1) The contents of the plea agreement recommendation, including the amount of time recommended for the defendant to serve in jail or prison if the court accepts the agreement; and

(2) The right to be present at the sentencing hearing and to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.

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

4. Notice of Final Disposition

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

Domestic Assault, Criminal Sexual Conduct, or Harassment/Stalking

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

(1) contacting the victim or a person designated by the victim by telephone; and

(2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

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

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

All Criminal Cases

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

Note: A prosecutor may contact crime victims in advance of the final case disposition, either orally or in writing, and notify them of the victim's right to request information on the final disposition of the case. The prosecutor is then only required to provide the notice to those victims who have indicated in advance their desire to be notified of the final case disposition.

5. Notice of Appeal/Notice of Sentence Modification

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

Notice of Appeals

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

Notice Prior to Sentence Modification

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

(1) the date and approximate time of the review;

(2) the location where the review will occur;

(3) the name and telephone number of a person to contact for additional information; and

(4) a statement that the victim and victim's family may provide input to the court concerning the sentence modification.

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

The term "crime of violence" as specified by section 611A.039 has the meaning given in section 624.712, subd. 5 (designating crimes of violence as felony convictions of the following offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.229 (crimes committed for the benefit of a gang); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.486 (commission of crime while wearing or possessing a bullet-resistant vest); 609.52 (involving theft of a firearm, theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or authorized agent of the owner, theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, and theft involving the theft of a controlled substance, an explosive, or an incendiary device); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subds. 1, 2, or 3 (burglary in the first through third degrees); 609.66, subd. 1e (drive-by shooting); 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun); 609.71 (riot); 609.713 (terroristic threats); 609.749 (harassment and stalking); 609.855, subd. 5 (shooting at a public transit vehicle or facility); and chapter 152 (drugs, controlled substances); and an attempt to commit any of these offenses).

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

6. Presentence Investigations and Victim Impact Statements

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

Victims of crime and their families have the right to participate and to be heard in the criminal justice system. Yet, victims have little opportunity to communicate to judges and other criminal justice system personnel regarding how the crime affected them. A victim impact statement provides the victim with an opportunity to address the court prior to sentencing. This opportunity allows victims to personalize the crime and express the impact it has had on them and their families. This process may also aid victims in their emotional recovery.

Presentence Investigation

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

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

(1) a summary of the damages or harm and any other problems generated by the criminal occurrence;

(2) a concise statement of what disposition the victim deems appropriate for the defendant or juvenile court respondent, including reasons given, if any, by the victim in support of the victim's opinion; and

(3) an attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

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

> [A] copy of the PSI report shall be, if written, provided to counsel for all parties before sentence. The written report shall not disclose confidential sources of information unless the court otherwise directs.
>
> On the request of the prosecuting attorney or the defendant's attorney a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs. If the presentence report is given orally the defendant or the defendant's attorney shall be permitted to hear the report.

Notice to Victim. Under section 611A.37, subd. 2, the officer conducting the presentence or predispositional investigation shall make reasonable and good faith efforts to contact the victim of that crime and to provide that victim with the following information:

(1) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel;

(2) the victim's right to request restitution pursuant to section 611A.04;

(3) the time and place of the sentencing or juvenile court disposition and the victim's right to be present; and

(4) the victim's right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement. To assist the victim in making a recommendation under clause, the officer shall provide the victim with information about the court's options for sentencing and other dispositions.

Presentence Domestic Abuse Investigations

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

(1) a defendant is convicted of an offense described in section 518B.01, subdivision 2 (domestic abuse);

(2) a defendant is arrested for committing an offense described in section 518B.01, subdivision 2, but is convicted of another offense arising out of the same circumstances surrounding the arrest; or

(3) a defendant is convicted of a violation against a family or household member of:

(a) an order for protection under section 518B.01;

(b) a harassment restraining order under section 609.748;

(c) obscene or harassing telephone calls under section 609.79, subdivision 1); or

(d) terroristic threats under section 609.713, subdivision 1. Minn. Stat. 609.2244.

6. Presentence Investigations and Victim Impact Statements

Victim Access to PSI

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

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

Right to Submit Statement at Sentencing

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

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

(1) a summary of the harm or trauma suffered by the victim as a result of the crime;

(2) a summary of the economic loss or damage suffered by the victim as a result of the crime; and

(3) a victim's reaction to the proposed sentence or disposition.

Elements of a Good Victim Impact Statement

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

(1) can be read aloud in 3 to 5 minutes;

(2) does not repeat "evidence" already presented at trial;

(3) focuses on what the crime means to the victim emotionally, physically, spiritually and/or financially;

(4) is simple and descriptive; and

(5) communicates how the victim's life is different due to the crime.

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

U.S. Supreme Court Cases

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

Minnesota Court Cases

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

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

Right to Submit Statement at Parole Hearing or Supervised Release Hearing

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

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

7. Protection from Harm

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

Right to a Secure Waiting Area

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

Right to Request Confidentiality of Victim Information

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

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

Right to Request Driver and Vehicle Services (DVS) Keep Victim's Address Private: Under section 171.12, subd. 7d, victims who have genuine concerns for their safety may ask the Minnesota Department of Public Safety Driver and Vehicle Services, to keep their address private and unavailable to the public. There is a request form available at *www.mndriveinfo.org.*

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, subds. 1, 2.

Employers are also prohibited from retaliating against an employee who takes reasonable time off from work to attend order for protection, harassment, 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, subdivision 23; 609.748, subdivision 10.

Right to a Support Person When Testifying

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

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.

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Closure of the Courtroom for Minor Victim's Testimony

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

Right to Notice of Release from Custody

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

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

Notice of Release from Custody – Pre-trial

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

Under Minnesota law, before the person arrested or juvenile detained is released, the agency having custody of the person or its designee must make a reasonable and good faith effort to inform orally the alleged victim, local law enforcement agencies known to be involved in the case, if different from the agency having custody, and, at the victim's request, any local battered women's and domestic abuse programs or sexual assault programs of:

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

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

Notice of Release from Custody – Post Conviction

The department of corrections or custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, including release on extended furlough and for work release; released from a juvenile correctional facility, release from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency. The victim must mail to the commissioner of corrections or to the head of the facility in which the offender is confined a written request for this notice.

The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release. The commissioner or other custodial authority complies with this section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the commissioner or authority in writing.

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

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Notice of Escape

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

Notice of Impending Release – Certain Sex Offenders

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

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

Notice to Victims – Release from Civil Commitment

Under section 253B.18, subdivision 5a, if the victim wishes to be notified of the offender's possible release from a treatment facility, the victim must make a written request to the county attorney in the county where the conviction occurred. The county attorney who receives the victim's written request for notification must forward the request to the commissioner of human services. The department of human services must communicate the victim's request to the specific treatment facility. The victim has a right to submit a written statement regarding the decision to discharge or release.

Medical Treatment – Domestic Abuse Cases

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

Witness Tampering

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

(a) intentionally preventing or dissuading or intentionally attempting to prevent or dissuade a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) intentionally coercing or attempting to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(c) intentionally causing injury or threatening to cause injury to any person or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry or within a year following the actor's release from incarceration, whichever is later;

(d) intentionally preventing or dissuading or attempting to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime;

(e) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities;

(f) intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information or within a year of the actor's release from incarceration, whichever is later.

8. Restitution

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

Restitution

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

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

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

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

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

Procedure for Getting Restitution Ordered

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

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

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

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

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

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

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

In an unpublished opinion, **State v. Vanderbeck,** C6-94-1034 (Minn. Ct. App. Jan. 31, 1995), *review denied* (Minn. Mar. 29, 1995), 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.

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Amount of Restitution

The Minnesota Supreme Court has stated that "[t]he primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." **State v. Palubicki,** 727 N.W.2d 662, 666 (Minn. 2007). The word "'restitution' connotes restoring or compensating the victim for his loss." **State v. Fader,** 358 N.W.2d 42, 48 (Minn. 1984).

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 their damaged credit.

In all other cases, victims of crime have the right to request restitution for all expenses which resulted from the crime. This may include, but is not limited to: medical bills, counseling expenses, transportation, lost wages due to an injury, and stolen or damaged property. The losses must be directly related to the crime. Restitution must be based on a factual determination of the victim's economic injury and the factual determination must be shown with reasonable specificity the type and amount of the loss. **State v. Chapman,** 362 N.W.2d 401, 404 (Minn. Ct. App. 1985), *review denied* (Minn. May 1, 1985); see also **State v. Fader,** 358 N.W.2d 42, 48 (Minn. 1984) (discussing the rehabilitative versus the compensatory aim of restitution), and **State v. Thole,** 614 N.W.2d 231(Minn. 2000).

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

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

The court of appeals has indicated in a few decisions that restitution orders issued by the trial court will be upheld as long as there is a payment schedule, even though the orders involve amounts not admitted to in the plea, and even though the defendant does not have the ability to pay the whole amount.

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

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

In an unpublished decision, **State v. Graves,** 1993 WL 491259 (Minn. Ct. App. Nov. 30, 1993), the defendant and a friend had committed a burglary and caused damage in the amount of $1,643. The defendant argued that he did not cause the damage and received only $55 of the stolen loot. However, the court of appeals upheld the restitution order for the whole amount. The court said 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.

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

In State v. Maidi, 537 N.W.2d 280 (Minn. 1995), the Minnesota Supreme Court upheld the trial court's discretion

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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. Pearson,** 637 N.W.2d 845 (Minn. 2002), the Minnesota Supreme Court held that a district court did not abuse its discretion by following a sentencing circle's recommended sanction that included a stay of adjudication when the state agreed as part of the plea agreement that the case would be sent to a sentencing circle for a recommended disposition.

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, that 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.

Restitution can still be ordered for any uncompensated loss, even though the victim signed releases in civil actions or bankruptcy court before and after the criminal case was charged. Under section 611A.04, "an actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court ordered restitution." Restitution serves a rehabilitative purpose. See **State v. Belfry,** 416 N.W.2d 811, 813 (Minn. Ct. App. 1987) (court said that the victims did not waive their claims by failing to appear at the restitution hearing, since they had submitted a detailed account of their losses).

In **State vs. Colsch,** 579 N.W.2d 482, 484 (Minn. Ct. App. 1998), the court of appeals held that restitution is limited to the recovery of economic damages sustained by the victim and cannot include amounts for pain and suffering.

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

In a recent federal case, **United States v. Cienfuegos,** 462 F.3d 1160 (9th Cir. Ariz. 2006), the federal circuit court considered the issue of whether restitution can be ordered to the victim's estate for future loss of income under the Mandatory Victims Restitution Act (MVRA). In 2003, Cienfuegos intentionally drove his car into a crowd of people killing the victim. Cienfuegos pleaded guilty to assault and involuntary manslaughter. The plea agreement included restitution, with the total amount to be determined by the court at the time of sentencing. The government sought restitution for funeral expenses and for the victim's life-time future lost income, which a certified public accountant estimated to be $1.85 million dollars. The district court denied the request for future lost income stating that the complexities associated with determining future lost income belonged in a civil action, rather than in the criminal case. However, on appeal, the circuit court held that restitution for lost income may be ordered under the MVRA as long as it is not based upon speculation, but is reasonably calculable. The court reversed and remanded back to the district court to redetermine the amount of restitution.

Who Can Receive Restitution?

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

(i) a corporation that incurs loss or harm as a result of a crime,

(ii) a government entity that incurs loss or harm as a result of a crime, and

(iii) any other entity authorized to receive restitution under sections 609.10 [sentences available] or 609.125 [sentences for misdemeanor or gross misdemeanor].

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

Restitution can be paid to a victim, who, prior to 2005 was defined as including a "deceased's surviving spouse or next of kin" in cases where the victim was deceased. Minn. Stat. 611A.01 (b) (2004). In **State v. Jones,** 678 N.W.2d 1, 26

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(Minn. 2004), the supreme court applied the common law definition of "next of kin" to the restitution statute as the "nearest living blood relation," and restricted the ability to seek restitution to either the surviving spouse or next of kin, but not both.

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

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 they sustained a loss resulting from the crime. See Minn. Stat. 611A.01(b); **State v. Jola,** 409 N.W.2d 17,19 (Minn. Ct. App. 1987) (allowing restitution to be paid to an insurance company and car dealership); and **State v. Wolf,** 413 N.W.2d 620 (Minn. Ct. App. 1987) (allowing restitution to a church that was burglarized).

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

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

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

The validity of restitution ordered to a police department is not clear. In **State v. Dillon,** 529 N.W.2d 387 (Minn. Ct. App. 1995), *rev'd on other grounds,* 532 N.W.2d 558 (Minn. 1995), the court found that a drug task force was not a "victim" for purposes of restitution. In a similar unpublished opinion, the court of appeals reversed an order of restitution to the St. Paul Police Department because a police agency was not a "victim" under Minnesota Statutes section 611A.04, subdivision 1(a) (1994). **State v. Soto,** C3-95-577 (Minn. Ct. App. Feb. 6, 1996), *aff'd on other grounds,* 562 N.W.2d 299 (Minn. 1997). However, in **State v. Wallace,** 545 N.W.2d 674, 676 (Minn. Ct. App. 1996), a defendant agreed to payment of restitution to a drug task force as a part of a voluntary plea bargain agreement, and the court of appeals upheld that restitution agreement.

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

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

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

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

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

8. Restitution

What if the Offender Has Not Paid the Restitution?

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

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

(2) extend the offender's probation for an additional year to allow more time for payment (Minn. Stat. 609.135, subd. 1a);

(3) send the offender to jail or prison;

(4) allow the offender to complete the probation period without paying restitution; or

(5) enter a civil judgment against the offender for the remaining amount of restitution owed.

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

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

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

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

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

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

What is the Difference Between Restitution and Reparations?

Restitution is only available if the offender is convicted of a crime and the judge orders it. Restitution can be ordered for all expenses related to the crime, including property losses. Reparations refers to financial assistance from the state government

8. Restitution

for victims of violent crimes. Victims need to get a claim form from a state agency called the Crime Victims Reparations Board (see section of this manual on reparations for address and phone number). In most situations, victims must file a reparations claim within three years of the injury. The Reparations Board does not pay for property losses. Victims should file a claim with the Reparations Board even though they are also requesting restitution. If the board pays the expenses and the offender also pays restitution for the same expenses, the victim must reimburse the board for the amount it paid.

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

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

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

Data Privacy

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

9. Sexual Assault Cases

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

Notice of Decision to Decline Prosecution or Dismiss Charges

Effective July 1, 2006, section 611A.0315 was supplemented to require prosecutors to 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. 2006 Minn. Laws ch. 260, art. 3, 23, at 761.

Costs of Medical Examination

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

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

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

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

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

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

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

A contact list for Minnesota counties, identifying which person or department is responsible for processing payments related to sexual assault evidentiary exams, is posted at *www.ojp.state.mn.us/MCCVS/FinancialHelp/SAcontacts.pdf*.

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

Prohibition on Polygraph Examination

Under Minnesota Statutes section 611A.26, law enforcement agencies and prosecutors are prohibited from requiring a victim of a criminal sexual conduct offense to submit to a polygraph examination in order to pursue an investigation. Further, a law enforcement agency or prosecutor may not ask that a victim of a criminal sexual conduct offense submit to a polygraph examination as part of the investigation, charging, or prosecution of such offense unless the victim has been referred to, and had the opportunity to exercise the option of consulting with a sexual assault counselor. In addition, in a situation where the victim makes a request to take a polygraph examination, the law enforcement agency may conduct the examination only with the victim's written, informed consent. (Effective July 1, 2008)

Communications with Sexual Assault Counselors

Under Minnesota Statutes section 595.02, subdivision 1(k), sexual assault counselors may not be allowed to disclose 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

9. Sexual Assault Cases

Minnesota Statutes sections 626.556 and 626.557. A "sexual assault counselor" is defined as a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

Right to Supportive Person

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

Data Relating to Identity

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

Rape Shield Law

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

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

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

   (b) evidence of the victim's previous sexual conduct with the accused; or

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

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

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

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

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

Cases

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

9. Sexual Assault Cases

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

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

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

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

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

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

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

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

10. HIV Testing

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

Testing of Violent Offenders for HIV

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

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

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

Notice to Victims about Sexually Transmitted Diseases

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

A sample notice has been developed by the Departments of Public Safety, Corrections and Health and distributed to hospitals. Copies are available directly from the Department of Health or at *www.health.state.mn.us/divs/idepc/dtopics/stds/infoaboutstds.html.*

Insurance Coverage for Victims Protected

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

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

11. Domestic Abuse/Harassment/Stalking

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

Domestic Abuse

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

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

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

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

(1) spouses and former spouses;

(2) parents and children;

(3) persons related by blood;

(4) persons who are presently residing together or who have resided together in the past;

(5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

(6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) persons involved in a significant romantic or sexual relationship.

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

(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or

(2) intentionally inflicts or attempts to inflict bodily harm upon another.

Qualified Domestic Violence-related Offense and Enhancements

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

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

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

Minn. Stat. 609.02, subd. 16.

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

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

11. Domestic Abuse/Harassment/Stalking

Law Enforcement Assistance to Domestic Abuse Victims

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

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

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

> If you are the victim of domestic violence, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an order for protection from domestic abuse. The order could include the following:
>
> (1) an order restraining the abuser from further acts of abuse;
>
> (2) an order directing the abuser to leave your household;
>
> (3) an order preventing the abuser from entering your residence, school, business, or place of employment;
>
> (4) an order awarding you or the other parent custody of or parenting time with your minor child or children; or
>
> (5) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.

This notice must include the resource listing, including telephone number, for the area battered women's shelter.

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

Notice of Release from Custody

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

(1) the conditions of release, if any;

(2) the time of release;

(3) the time, date, and place of the next scheduled court appearance of the arrested person and the victim's right to be present at the court appearance; and

(4) if the person arrested is charged with domestic abuse, the location and telephone number of the area battered women's shelter.

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

Presentence Domestic Abuse Investigations

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

(1) a defendant is convicted of an offense described in section 518B.01, subdivision 2 (domestic abuse);

(2) a defendant is arrested for committing an offense described in section 518B.01, subdivision 2, but is convicted of another offense arising out of the same circumstances surrounding the arrest; or

(3) a defendant is convicted of a violation against a family or household member of:

(a) an order for protection under section 518B.01;

(b) a harassment restraining order under section 609.748;

(c) obscene or harassing telephone calls under section 609.79, subdivision 1); or

(d) terroristic threats under section 609.713, subdivision 1.

Minn. Stat. 609.2244.

Order for Protection

An order for protection (OFP) is a court order forbidding a specific family or household member (the respondent) from having contact with the person requesting the order (the petitioner). An OFP may be requested when the danger of domestic abuse is immediate and present. Any family or household

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member, or a guardian or household member, or reputable adult age 25 or older on behalf of a minor family or household member may seek an OFP.

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

In most cases the petitioner first obtains a temporary order (also called an "ex parte" OFP) which is effective until a court hearing can be held. At the hearing, both parties have the opportunity to be heard, and the court determines if the temporary order should be extended for up to one year.

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

(1) restrain the abusing party from committing acts of domestic abuse;

(2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

(3) exclude the abusing party from a reasonable area surrounding the petitioner's residence or place of employment;

(4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award;

(5) award temporary child support.

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

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

Domestic Abuse Victim's Right to Terminate Lease

A tenant to a residential lease who is a victim of domestic abuse and fears imminent domestic abuse against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement without penalty or liability as provided in Minnesota Statutes section 504B.206. See H.F. No. 829, art. 4, section 3, Conference Committee Report, 85th Legislative Session (Minn. 2007-2008) (effective July 1, 2007).

The tenant must:

(1) Provide advance written notice to the landlord stating that:
   (a) The tenant fears imminent domestic abuse from a person named in an order for protection or no contact order;
   (b) The tenant needs to terminate the tenancy; and
   (c) The specific date the tenancy will terminate.

(2) The written notice must be delivered before the termination of the tenancy by mail, fax, or in person, and be accompanied by a copy of the order for protection or no contact order.

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

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

Communications with Domestic Abuse Advocates

A domestic abuse advocate may not be compelled to disclose 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, emer-

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gency 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. (Effective July 1, 2008; SF 3441, Conference Committee Report, 85th Legislative Session (Minn. 2007-08).)

Relief granted by the order for protection may be for a period of up to 50 years, if the court finds:

(1) the respondent has violated a prior or existing order for protection on two or more occasions; or

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

(Effective July 1, 2008; S.F. 3492, Conference Committee Report, 85th Legislative Session (Minn. 2007-08).)

Harrassment/Stalking

There are two different definitions of harassment under Minnesota law. Under Minnesota Statutes section 609.748, which allows a victim to get a harassment restraining order, harassment is defined as including 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 (2006).

Harassment or stalking is also a crime under section 609.749. Under this law, harassment is defined as engaging in intentional conduct which:

(1) the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and

(2) causes this reaction on the part of the victim.

Minn. Stat. 609.749, subd. 1.

The state is not required to prove the actor's specific intent to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated; the actor only needs to have "reason to know [that the actions] would cause the victim under the circumstances to feel terrorized or to fear bodily harm," and the action must "cause this reaction on the part of the victim." Minn. Stat. 609.749, subd. 5.

If the case can be proved, the law provides gross misdemeanor and felony penalties for harassment or stalking.

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

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

(2) stalks, follows, monitors, or pursues another, whether in person or through technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, or other objects; or

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

Minn. Stat. 609.749, subd. 2(a).

Telephone harassment may be prosecuted either at the place where the call is made or where it is received or, in the case of wireless or electronic communication, where the actor or victim resides. Harassment through the mail may be prosecuted either where the mail is deposited or where it is received. Minn. Stat. 609.749, subd. 2(b).

Aggravated Violations

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

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(1) commits harassing conduct listed above because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin;

(2) commits any offense described above by falsely impersonating another;

(3) commits any offense described above and possesses a dangerous weapon at the time of the offense;

(4) commits harassment with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(5) commits any offense described above against a victim under the age of 18, if the actor is more than 36 months older than the victim.

Minn. Stat. 609.749, subd. 3(a). Violations of the above are punishable by 5 years in prison and a fine of up to $10,000. Minn. Stat. 609.749, subd. 3.

Under section 609.749, subdivision 3(b), a person who is more than 36 months older than the victim, and who commits an offense with sexual or aggressive intent against a victim under the age of 18 is guilty of a felony with imprisonment for up to ten years and a fine of up to $20,000.

Second or Subsequent Violations; Felony

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

A person who commits a harassment or stalking offense within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony (punishable by up to ten years in prison and a fine of up to $20,0000). Minn. Stat. 609.749, subd. 4(b).

Pattern of Harassing Conduct

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

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

(a) this section;

(b) terroristic threats under section 609.713;

(c) assault in the fifth degree under section 609.224;

(d) domestic assault under section 609.2242;

(e) violation of an order for protection under section 518B.01, subdivision 14;

(f) violation of a restraining order under section 609.748, subdivision 6;

(g) trespass under section 609.605, subdivision 1(b)(3), (4), and (7);

(h) obscene or harassing telephone calls under section 609.79;

(i) harassment via letter, telegram, or package under section 609.795;

(j) burglary under section 609.582;

(k) damage to property under section 609.595;

(l) criminal defamation under section 609.765; or

(m) criminal sexual conduct in the first to fifth degree under sections 609.342 to 609.3451.

Minn. Stat. 609.749, subd. 5(b).

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

Mental Health Assessment and Treatment

When a person is convicted of a felony harassment 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 the conviction. Minn. Stat. 609.749, subd. 6(a).

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Harassment Restraining Orders

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

The filing fees for a restraining order are waived for the petitioner if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2 or 3 (harassment and stalking crimes; aggravated violations), or sections 609.342 to 609.3451 (criminal sexual assault in the first through fifth degree).

Normally, an "ex parte," or temporary HRO is granted if danger is claimed to be immediate and present. The temporary HRO must be personally served on the respondent (usually by a law enforcement officer), and becomes effective upon personal service. Upon request of either party, a hearing shall be set to review the temporary HRO. If no hearing is requested, the temporary HRO can become effective for a time period 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 the respondent if they have read the request for the restraining order and have a response. The judge then listens to both the petitioner and respondent. If the judge decides to issue a HRO, it may be issued for a period of time up to two years. If a referee presides at the hearing, the HRO becomes effective upon the referee's signature. Minn Stat. 609.748, subd. 5

The language of the HRO should be clear so that the order 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 reasons 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.

No Contact Orders

Under section 518B.01, subdivision 22, a no contact order can be issued in a criminal proceedings related to violations of protection orders, violations of domestic abuse no contact orders, and harassment or stalking charges under section 609.749 when committed against a family or household member.

Mutual Orders (OFPs or HROs)

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

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

Statewide Tracking of Protective Orders

When an OFP is issued, the court must enter the information into the court OFP system which is accessible to court personnel. Selected information from this system is automatically transferred to another system called the Criminal Justice Information System (CJIS) Hot Files, which is accessible to law enforcement. The court administrator is also responsible for forwarding a copy of an OFP to the local law enforcement agency within 24 hours of the order being granted. Minn. Stat. 578B.01, subd.13.

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

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

Violation of an OFP or HRO

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

Notice of Decision Not to Prosecute

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

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

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

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

Protection Against Employer Retaliation

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

Requesting Protection of Certain Information

Victims who have grave concerns for their safety or the safety of their family may ask the Department of Public Safety Driver and Vehicle Services to keep their name and address private and unavailable to the public. Victims must submit a request in writing to the department, and must furnish an alternative, valid mailing address where they agree to receive any legal notices, which would ordinarily be delivered or mailed to their home. A form can be obtained to submit this request at 651-296-6911 or on-line at *www.dps.state.mn.us/dvs.* The form (PS32202-11) is called a "Private Data Request."

Firearms

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

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

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

Safe at Home

Victims of domestic violence, sexual assault, stalking, and others who fear for their safety can enroll in the Safe at Home program, which provides participants with a substitute address for all private and public records. Participants are issued a Safe at Home identification card and can use the substitute address for all purposes, including state identification cards and drivers' licenses. Minn. Stat. 5B. Safe at Home applications are available through the Minnesota Secretary of State office: *www.sos.state.mn.us/home/index.asp?page=859*.

Cases

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

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

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

In **State v. Persons,** 528 N.W.2d 278 (Minn. Ct. App. 1995), a harassment restraining order had been issued against the defendant in the city of St. Joseph. The victims of the harassment lived in St. Joseph. Later the defendant went on a trip to St. Cloud with a group of people, including one of the victims. He was arrested in St. Cloud for violating the restraining order. The prosecutor for St. Joseph prosecuted the case. The court of appeals stated that misdemeanor violations of state law must be prosecuted by the attorney of the city where the violation occurred. The case should have been prosecuted by the St. Cloud city attorney, because that is where the violation happened.

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

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

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

12. Motor Vehicle Theft

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

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

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

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

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

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

- No award may be granted to a victim that fails to provide proof of insurance stating that security had been provided for the vehicle at the time the vehicle was stolen; and
- An award paid to a victim shall compensate the victim for actual costs incurred but shall not exceed $300.

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.

13. Witnesses

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

Witness Fees

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

Fees paid to witnesses include the following:

(1) Twenty dollars per day ($20/day) to a witness for attending any action or proceeding in any court of record or before any officer, person, or board authorized to take the examination of the witness. Minn. Stat. 357.22.

(2) Mileage reimbursement in the amount of twenty-eight 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 sixty dollars per day ($60/day) for reasonable expenses actually incurred for meals, loss of wages, and child care. This applies to witnesses for the state, and witnesses attending on behalf of any defendant represented by a public defender, in either adult or juvenile proceedings. Minn. Stat. 357.24, 357.241.

Right to a Separate Waiting Area in the Courthouse

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

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

Right to Have a Support Person

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

Minor Prosecuting Witnesses

Minnesota Statutes section 631.046, subdivision 1 states that:

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

Witnesses in Criminal Sexual Conduct Cases

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

Closure of the Courtroom

The trial court may exclude the public from the courtroom during a minor victim's testimony regarding sex crimes committed against them. Minn. Stat. 631.045. According to the statute, the judge shall give the prosecutor, defendant, and members of the public the opportunity to object to the closure before a closure order. The judge shall specify the reasons for closure in an order closing all or part of the trial.

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

13. Witnesses

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

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

Witness Tampering

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

(a) intentionally preventing or dissuading or intentionally attempting to prevent or dissuade a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) intentionally coercing or attempting to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(c) intentionally causing injury or threatening to cause injury to any person or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry or within a year following the actor's release from incarceration, whichever is later;

(d) intentionally preventing or dissuading or attempting to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime;

(e) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities;

(f) intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information or within a year of the actor's release from incarceration, whichever is later.

Competency

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

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

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

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

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

13. Witnesses

Failure to Obey a Subpoena and Contempt of Court

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

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

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

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

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

Out of Court Statements

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

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

Admission of out of court statements is and has long been possible. For over 20 years, the controlling standard for admitting statements that unavailable witnesses made to other persons was that of **Ohio v. Roberts,** 448 U.S. 56, 100 S. Ct. 2531 (1980). According to the *Roberts* Court, if a witness was unavailable, that witness's testimony could be admitted through a third person if it bore an "adequate indicia of reliability" falling within a "firmly rooted hearsay exception" or had "particularized guarantees of trustworthiness." Id. at 66, 100 S. Ct. at 2539.

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

The first type of testimonial statement is ex parte in-court testimony, or its functional equivalent (such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine or similar pretrial statements that declarants would reasonably expect to be used prosecutorially). The second type is an extrajudicial statement, contained in formalized testimonial materials (such as affidavits, depositions, prior testimony, or confessions). The third type is a statement that was

13. Witnesses

made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. As a corollary to the final category, the Court added that "[s]tatements taken by police officers in the course of interrogations" are similarly testimonial. Id. at 52, 124 S. Ct. at 1364.

Cases to Which *Crawford* Does Not Apply

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

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

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

Cases to which *Crawford* does apply

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

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

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

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

In *Davis,* the victim had just been assaulted and the victim told the 911 operator that Davis used his fists to beat her and that he had just left her residence moments earlier. In *Hammon,* the police were at the residence, questioning the victim about an assault. Neither victim testified at trial.

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

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

Retroactive application of *Crawford*

In **Danforth v. Minnesota,** 718 N.W. 2nd 451, No.06-8273 (February 20, 2008), a U.S. Supreme Court case that originated out of Minnesota, the Court addressed the issue of the retroactive application of the Court's ruling in the Crawford case. The appellant, Danforth, was convicted of criminal sexual conduct in Minnesota in 1996. The child victim was found incompetent to testify at the trial. Instead, a videotaped interview of the victim was admitted into evidence. After the Crawford decision changed the rules governing admissibility of taped statements, Danforth, in his second petition for postconviction relief, sought retroactive

13. Witnesses

application of the new ruling. The Minnesota Supreme Court held that the appellant was not entitled to have the Crawford ruling applied retroactively, stating that state courts could not give broader application of retroactivity than that given by the U.S. Supreme Court. The U.S. Supreme Court reversed the Minnesota decision and held that state courts may give broader retroactive effect to new rules of criminal procedure than is required under federal law. The Court said the fundamental interest in federalism outweighed concerns about uniformity.

Minnesota Case Law under *Crawford*

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

In **State v. Wright,** A03-1197 (Minn. January 25, 2007), the defendant, Wright, was convicted of assaulting his girlfriend and her sister. The girlfriend and sister were deemed unavailable to testify in the trial, so the court allowed into evidence tapes and transcripts of calls the women made to the 911 operator, as well as their statements to police officers during an on-scene investigation. In 2005, the Minnesota Supreme Court affirmed the conviction, concluding that statements made to the 911 operator were not testimonial, and were therefore admissible. The court also held that the statements made to police were not testimonial because the officers were making a preliminary determination of what happened and whether there was immediate danger. Wright appealed to the United States Supreme Court. The Supreme Court granted the petition, vacated the Minnesota Supreme Court decision, and remanded the case for further consideration in light of **Davis v. Washington.** On remand, the Minnesota Supreme Court affirmed its previous decision that all the statements made to the 911 operator were non-testimonial and therefore admissible. However, the court held that the women's statements to the police during the on-scene investigation were not admissible. The police interviews occurred at the victim's apartment after the emergency had ended and Wright was in police custody. The interviews were conducted to establish facts that were relevant to the future prosecution. Therefore, it was an error for the district court to admit those statements at the trial. The court also concluded that the error was not harmless because the statements were highly persuasive and featured prominently in the state's closing argument. The court also addressed the issue of whether the defendant had forfeited his rights by engaging in wrongful conduct intended to procure the witnesses' unavailability. An advocate testified that one of the victims was fearful and that Wright had threatened her in a telephone call made from jail. The advocate's testimony was brief and the victim's statements were contradictory, so the court was unable to decide the forfeiture issue. The court remanded the case for an evidentiary hearing to give the state an opportunity to establish that Wright forfeited his confrontation claim. If the state cannot prove that forfeiture occurred, then Wright is entitled to a new trial that does not include the on-scene statements made to police.

In **State v. Washington,** 725 N.W.2d 125 (Minn. Ct. App. 2006), *review denied* (Minn. Mar. 20, 2007), the court of appeals held that it was not a *Crawford* violation for the trial court to admit a 911 tape and statements made by a victim during an on-site interview. The victim called 911 and stated that she had been assaulted by the appellant, and it also appeared that the caller was being assaulted again during the call. The caller also stated that the appellant ran out the back door and would likely be driving. The court of appeals held that the 911 statements were non-testimonial under *Crawford,* because they closely parallel the *Davis* standard, which states that when a purpose of interrogation is to enable police to meet an ongoing emergency, the statements are non-testimonial. Id. at 132. The court also found that the onsite interview, under these particular circumstances, departed from the facts of *Davis.* In *Davis,* the assailant was in another room while the complainant filled out a battery affidavit. This case differed because the assailant was still at large and posed an ongoing threat. Hence, the circumstances "objectively indicate that the primary purpose of the interrogation was not to establish or prove past offense potentially relevant to later criminal prosecution, but to enable the police to meet an ongoing emergency." Id. at 133. The court refers to the scenario as an "emergent situtation."

In **State v. Scachetti,** 711 N.W.2d 508, 515-16 (Minn. 2006), the Minnesota Supreme Court held that the pediatric nurse practitioner who assessed a 3-year-old sexual abuse victim was not a government questioner or acting as an agent of the government, and thus the child's statements were not testimonial in nature. Admission of these statements at trial in which the child was unavailable to testify was not barred by the Confrontation Clause. Moreover, the Court stated that even if the nurse was acting in concert with or as an agent of the government, the victim's statements to the nurse would still not be testimonial. Id. at 515.

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

14. Emergency Funds

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

Emergency Funds

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

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

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

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

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

To apply for reimbursement, a crime victim should contact the victim assistance program close to where they live. If their local program is out of funding for the year, they may contact another program. A listing of victim assistance programs and their current emergency fund balances is located on the OJP website: *www.ojp.state.mn.us.*

Effective July 1, 2007, the legislature expanded the list of emergency assistance examples to specifically include "reimbursement of towing and storage incurred due to impoundment of a recovered stolen vehicle." H.F. No. 829, art. 4, sec. 8 (2007). This addition and some statutory restrictions are discussed below.

15. VINE® Minnesota

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

What is the VINE Service?

Victim Information and Notification Everyday (VINE) is a fully automated, information and notification service. Registered users will be immediately notified upon a change in an offender's status. VINE can relay important custody or arrest information in a matter of minutes, anywhere in the US, via telephone. Users can access information about an offender's custody status in "real time," 24 hours a day.

How Does VINE Work?

A centralized, national call center located in Louisville, Kentucky, constantly monitors inmate activity through an interface with the on-site booking system or other existing record-keeping system. Updated county inmate records are automatically sent to the call center every 15 minutes. State inmate's records are sent to the call center every 24 hours.

Callers dial a toll-free VINE number (1-877-MN-4-VINE) to check the custody status of an offender and to register with VINE to receive automatic telephone notification upon a change in the custody status of the offender. When a change in inmate status is received, VINE automatically calls all registered persons.

Calls continue for 48 hours or until a successful notification is verified with the registered person's Personal Identification Number (PIN).

What Does a VINE Query or Notification Call Provide?

Standard information available through the VINE service includes: inmate custody status and location, criminal charge information, sentence expiration date, and referral information for law enforcement and victim service provider organizations. Notifications are placed to registered persons upon the transfer, release, escape or death of an inmate.

VINE is available in English or Spanish. Assistance in other languages is available through the AT&T translation service.

Live operators are available at the Appriss Call Center 24 hours a day, everyday.

VINE Minnesota

VINE Minnesota is an automated telephone notification system providing crime victims with jail information 24 hours a day, seven days a week. Victims and the public can also register for automated notification upon an offender's custody status change, such as release, transfer, and escape.

Launched initially in Scott County in 1998, VINE Minnesota is now a statewide system with nearly all Minnesota counties participating. For current information on which counties participate in the VINE Minnesota system, please call the Minnesota Office of Justice Programs at 651-201-7300 or visit the OJP website at *www.dps.state.mn.us/OJP.*

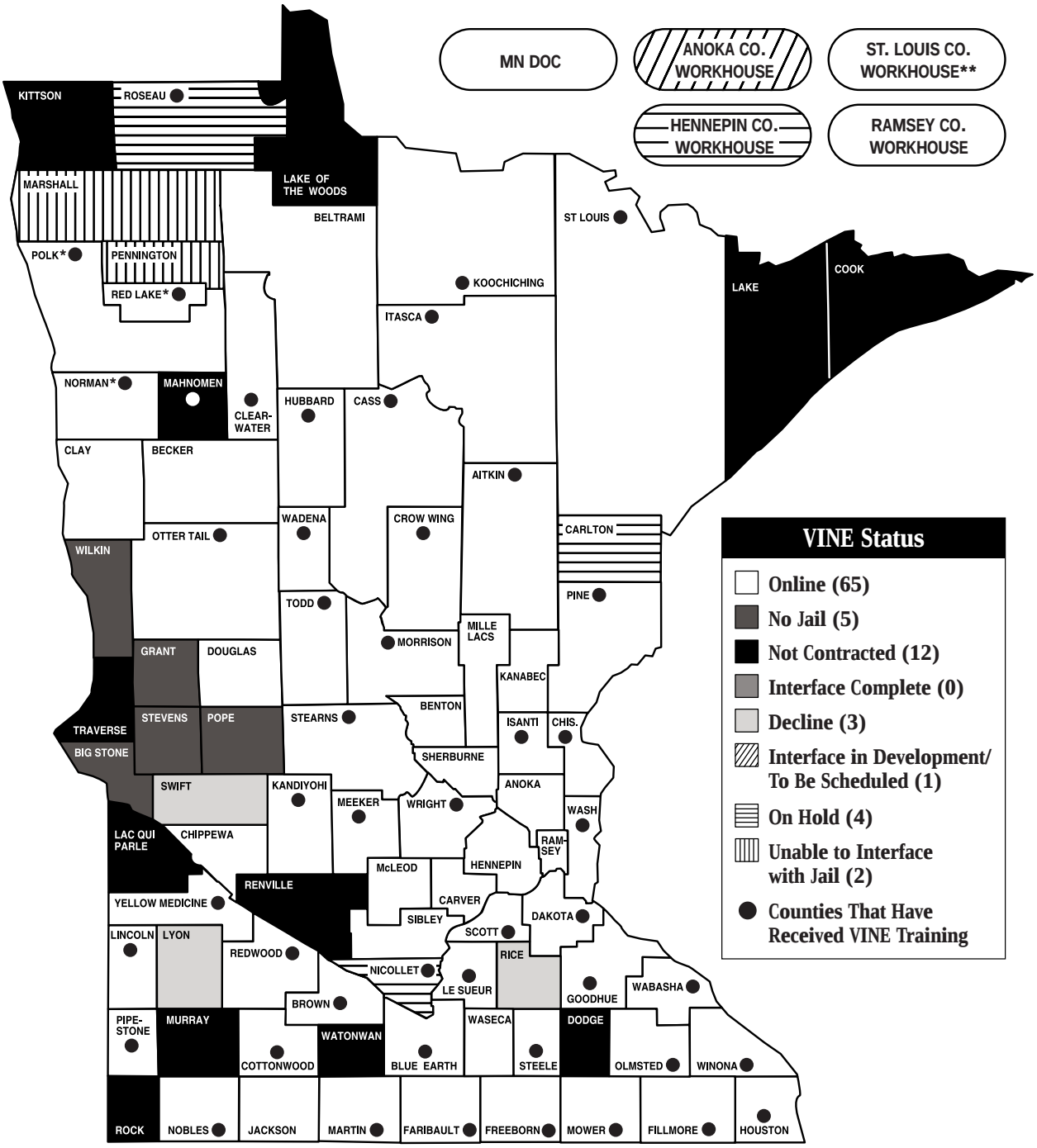
Crime victims and their families can register for VINE Minnesota by calling

1-877-MN-4-VINE (1-877-664-8463) or on-line at *www.vinelink.com.*

Disclaimer: Do not depend solely on the VINE service for your protection. If you feel that you may be at risk, take precautions as if the offender has already been released.

15. VINE® Minnesota

Minnesota VINE Implementation Status



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

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

16. A Guide to the Court System

The State Court System

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

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

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

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

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

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

The Federal Court System

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

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

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

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

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

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

Special Courts Not in the Judicial Branch

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

Tax Court

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

16. A Guide to the Court System

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

Workers' Compensation Court of Appeals

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

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

Tribal Courts

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

For more information on tribal courts in Minnesota, see the National Tribal Justice Resource Center website located at *www.tribalresourcecenter.org.*

16. A Guide to the Court System

How the Minnesota Court System is Structured

Court

Civil Actions
Criminal Actions
Family
Juvenile
Probate (dealing with wills)
Violations of City Ordinances
Appeals from Conciliation Court[1]

Conciliation Division (civil disputes up to $7,500)

Court of Appeals

Appeals from:
Administrative agency decisions except Tax Court and Workers' Compensation
All trial court decisions except first-degree murder
Decisions of Commissioner of Economic Security

Original Actions:
Writs of mandamus or prohibition which order a trial judge or public official to a specified act, such as permitting media coverage of a hearing

Minnesota Supreme Court

Appeals from:
Court of Appeals Decisions
Trial court decisions if Supreme Court chooses to bypass the Court of Appeals
Tax Court and Workers' Compensation Court of Appeals Decisions

Original Actions:
All first-degree murder convictions
Writs of prohibition,[2] habeas corpus[3] and mandamus[4]
Legislative election disputes

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

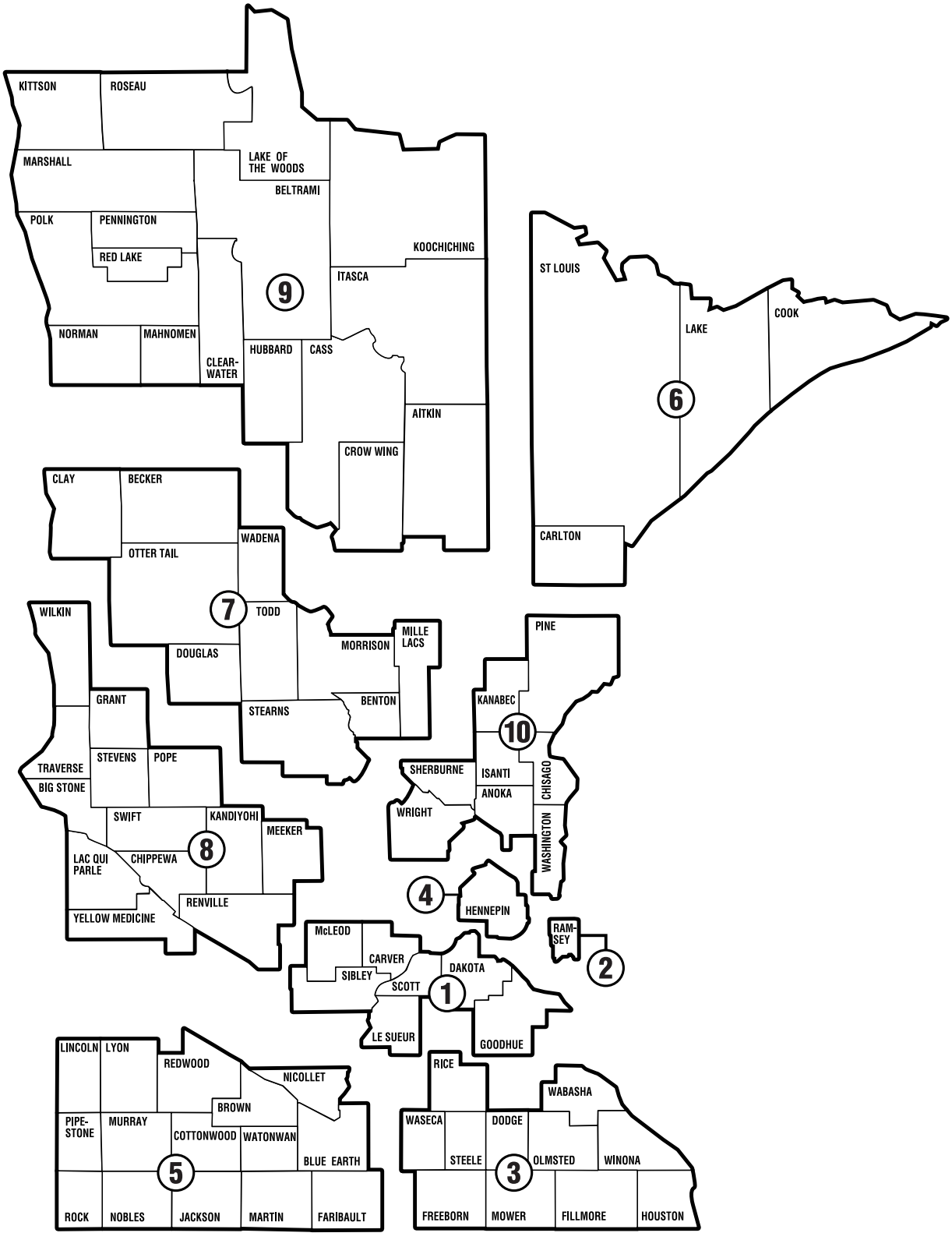
[2] Writ of Prohibition — Asks that a governmental body or official be prevented from doing something that might cause harm.

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

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

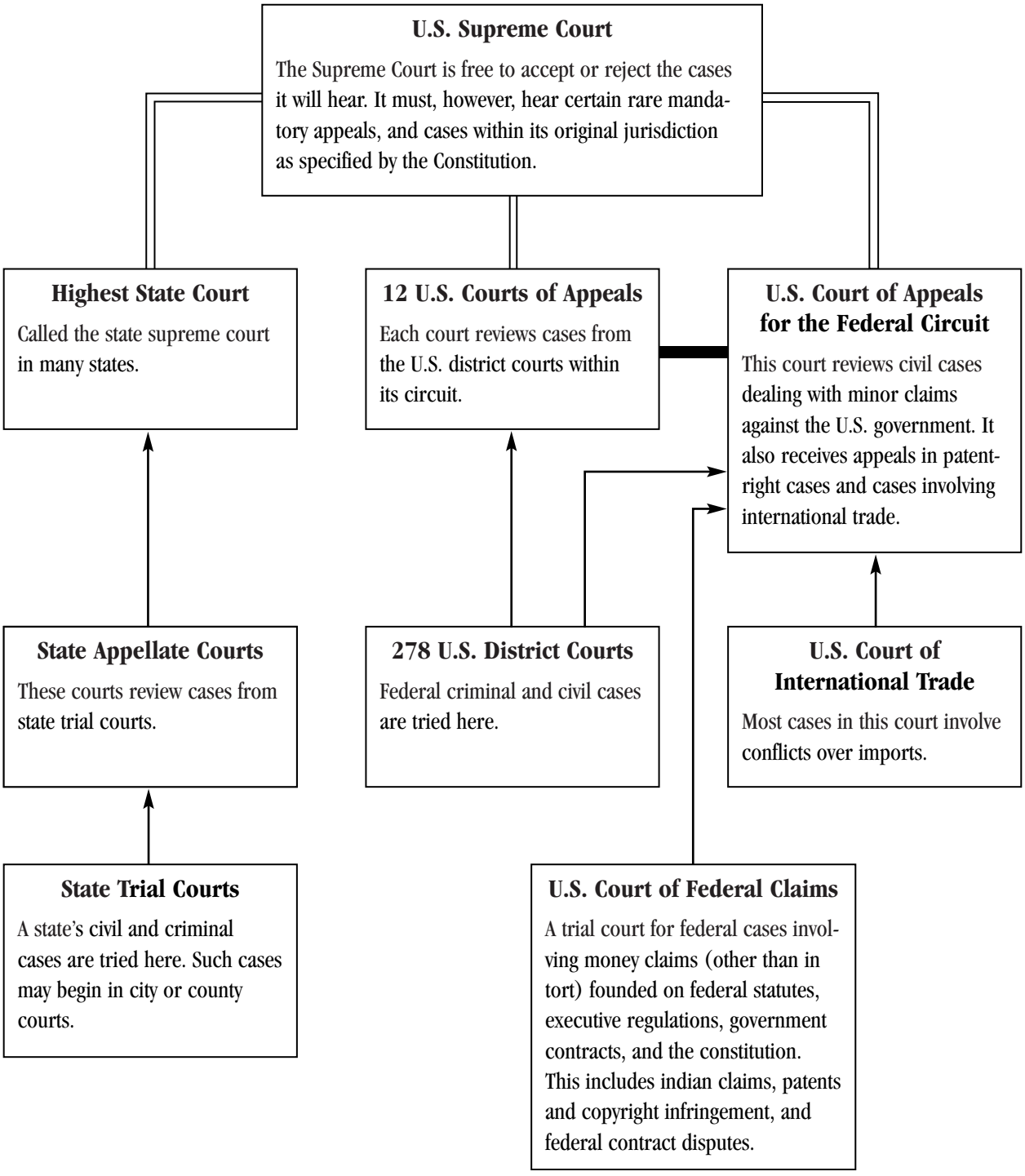
16. A Guide to the Court System

Map of the Ten Judicial Districts



16. A Guide to the Court System

How Cases Travel Through America's Judicial System



16. A Guide to the Court System

Types of Cases

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

Civil

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

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

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

Criminal

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

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

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

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

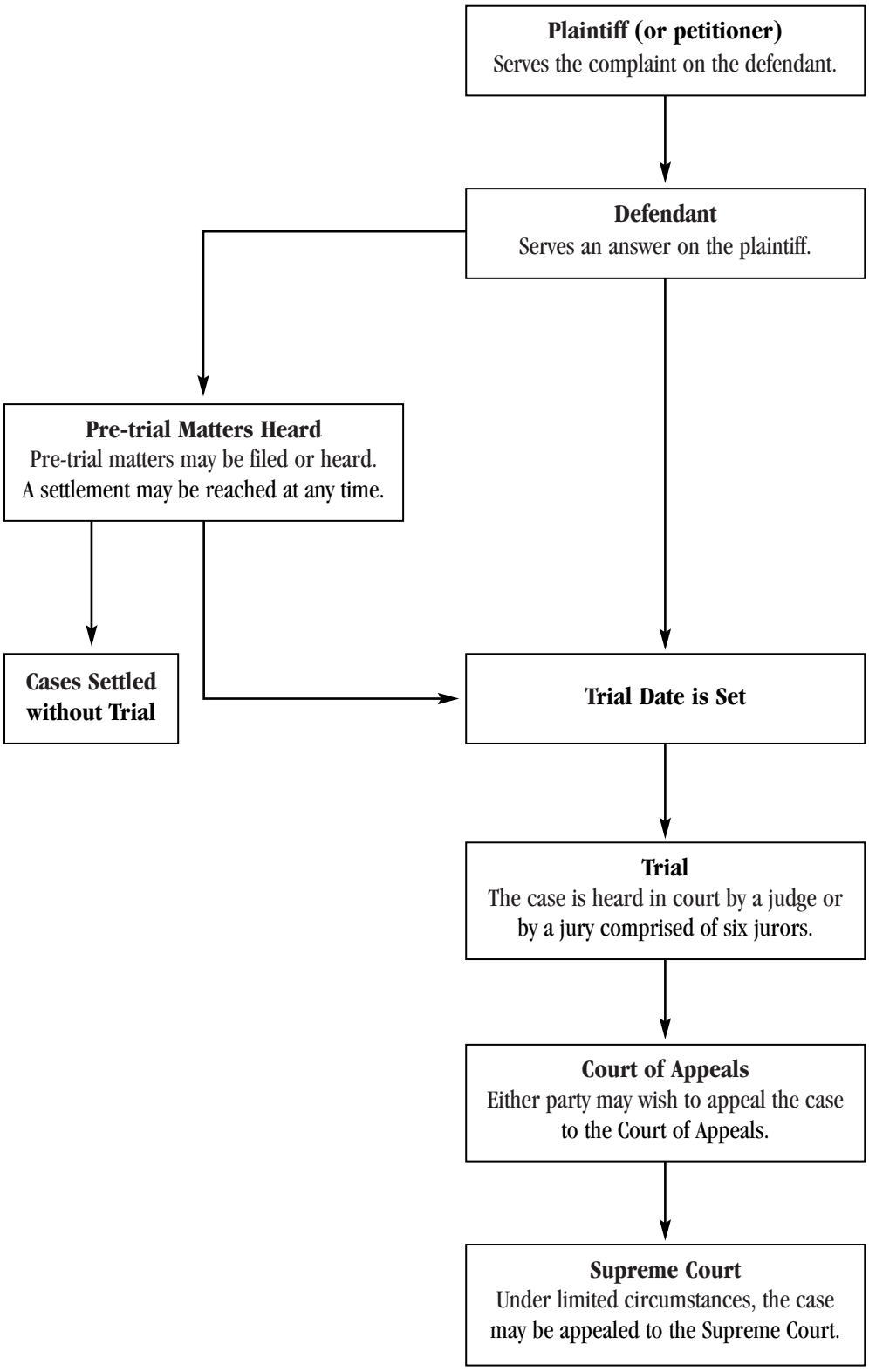
Many crimes, such as arson, sex crimes, contempt of court, and driving while impaired (DWI) have varying degrees of seriousness and, depending on the facts of the specific case, might be a misdemeanor, a gross misdemeanor, or a felony.

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

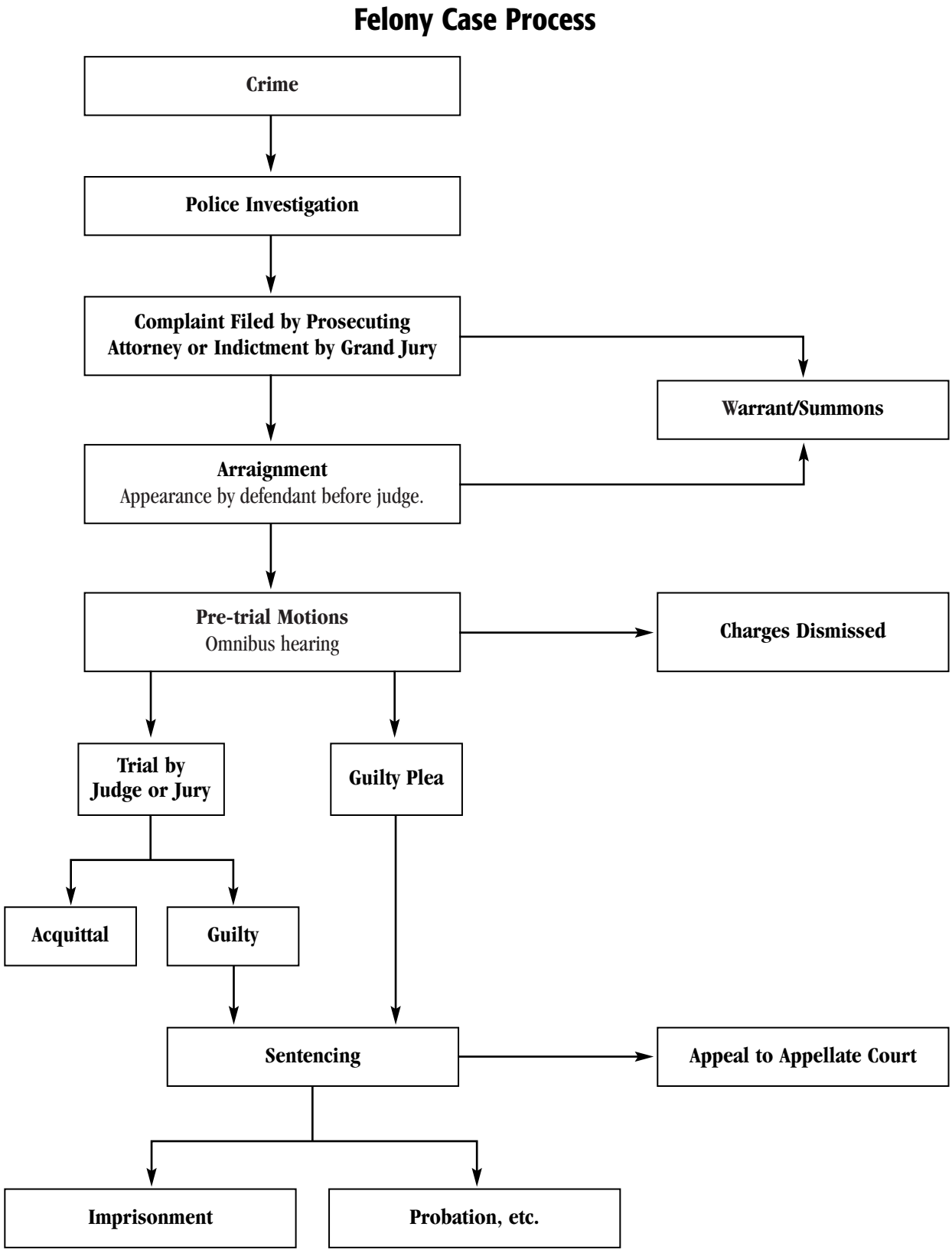
It is very important to remember that the government has the burden in any criminal case of proving the defendant guilty beyond a reasonable doubt. The defendant is presumed innocent and does not have to prove his or her innocence.

16. A Guide to the Court System

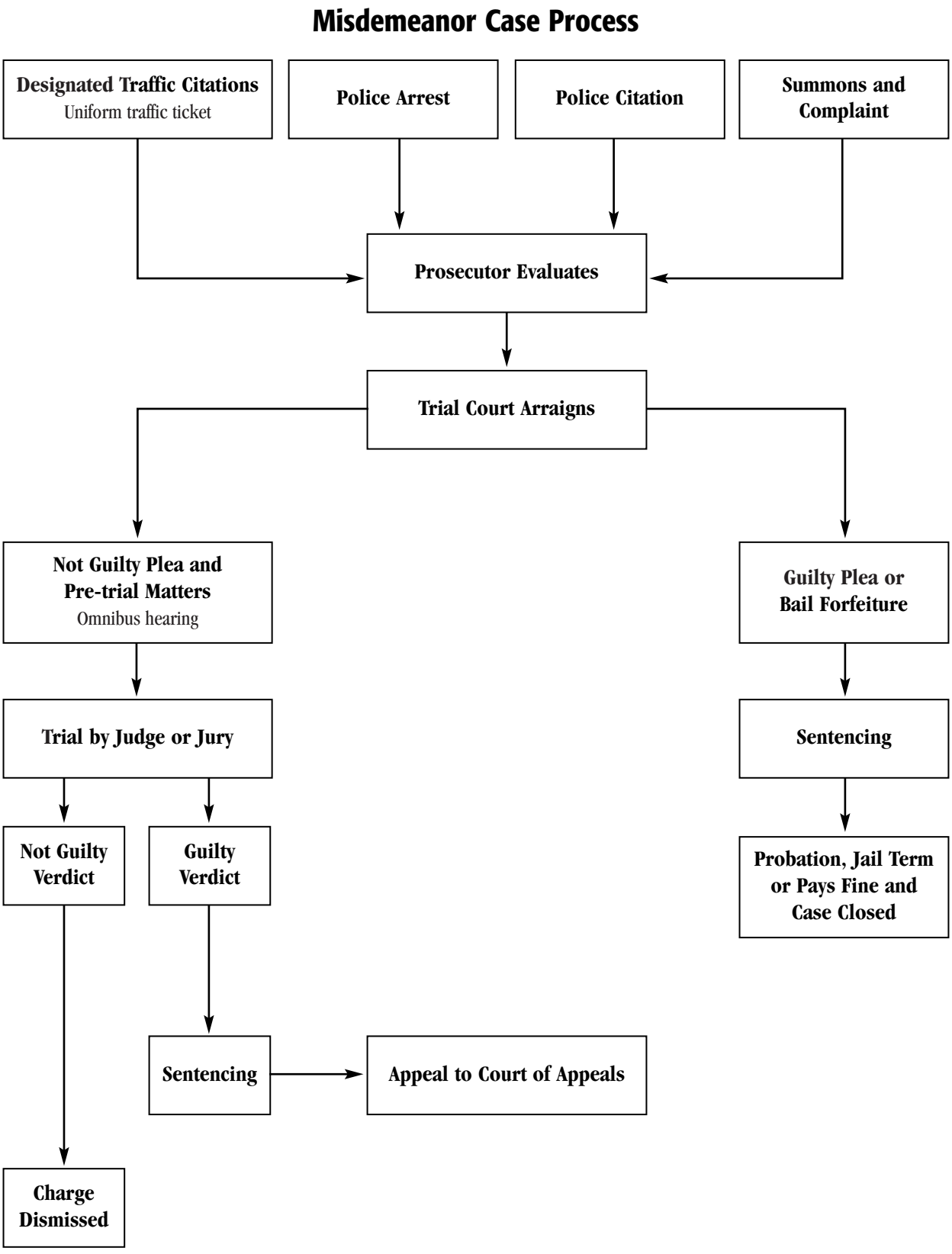
Civil Case Process



16. A Guide to the Court System



16. A Guide to the Court System



16. A Guide to the Court System

The Trial Process

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

Jury Selection

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

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

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

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

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

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

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

Trial Procedures

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

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

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

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

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

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

16. A Guide to the Court System

other, and jurors are not supposed to allow themselves to be influenced by the rulings.

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

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

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

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

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

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

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

17. Juvenile Court

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

Scope of Victims' Rights

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

The juvenile court is responsible for distributing a copy of a notice of rights of victims in juvenile court to each victim of a juvenile crime who attends a juvenile court proceeding, along with a notice of services for victims available in that judicial district. Minn. Stat. 611A.02, subd. 3.

Jurisdiction

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

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

Access to Juvenile Hearings

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

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

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

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

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

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

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

Records/Data Privacy

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

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

The Court may order juvenile court records to be made available to certain persons providing supervision and custody of the child and to the public. The court must find that release of 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).

17. Juvenile Court

Under Minnesota Statutes section 260B.171, subdivision 4, some information about a juvenile offender may be released including name and age of the juvenile, act for which the juvenile was petitioned, date of the offense, and disposition. However, the name of the juvenile can be withheld from the victim, if the request appears prompted by a desire to engage in unlawful activities on the part of the requester. Information that can be released to the victim included: Under section 260B.171, subdivision 5 the prosecuting attorney has the authority to release investigative data collected by law enforcement agencies to the victim upon the victim's written request. The victim's request for data can be denied if the prosecutor believes the release will interfere with the investigation or the request is prompted by a desire to engage in unlawful activities. Also, the data cannot be released if it involves videotaping of a child abuse victim, which is prohibited from release under the data privacy act. Minn. Stat. 13.821.

Victims of juvenile crime may obtain information from court services in order to assert their right to restitution. Minn. Stat. 13.84.

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

Certification

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

Presumption in Favor of Certification

There is a presumption in favor of certification if:

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

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

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

Non-presumptive Certification

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

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

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

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

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

Extended Jurisdiction Juvenile (EJJ) Prosecutions

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

17. Juvenile Court

(1) the child was age 14-17, a certification hearing was held, and the court decided to designate the proceeding an extended jurisdiction juvenile prosecution;

(2) the child was age 16-17, the presumption for certification applies; and the prosecutor designated the case as an EJJ prosecution in the delinquency petition;

(3) the child was age 14-17, the prosecutor requested an EJJ prosecution, a hearing was held on the EJJ issue, and the court designated the case an EJJ prosecution.

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

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

If an EJJ prosecution results in a guilty plea or finding of guilty, the court shall impose one or more juvenile dispositions under section 260B.198; and impose an adult criminal sentence. The adult sentence is then stayed on condition that the offender not violate provisions of the juvenile disposition order and not commit a new offense.

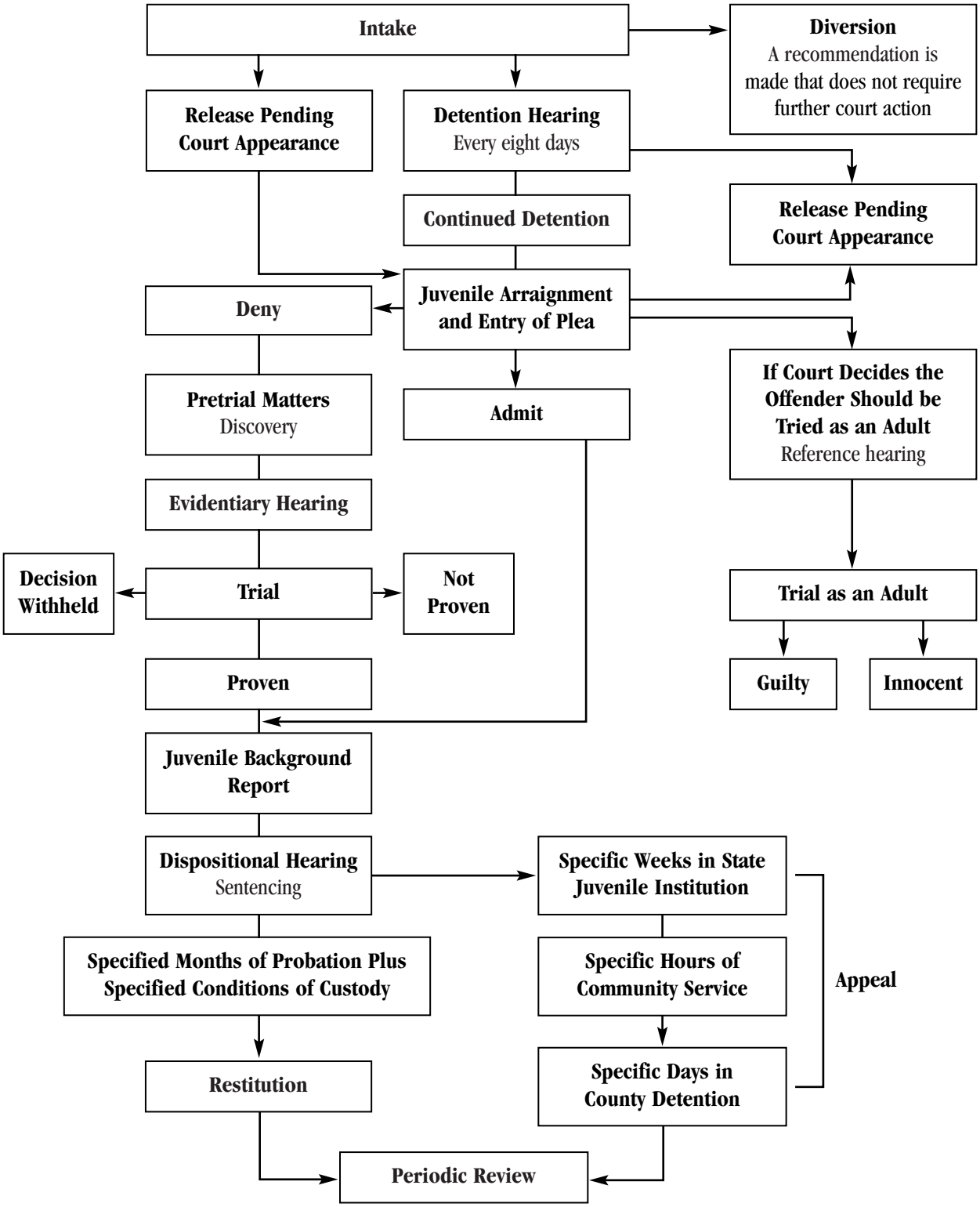
When a person convicted as an EJJ violates the conditions imposed or is alleged to have committed a new offense, the court may revoke the stay and direct the offender to be taken into custody. The offender is then entitled to a hearing with representation by counsel. After the hearing, if reasons exist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

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

17. Juvenile Court

Juvenile Court Procedure

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



18. Civil Lawsuits

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

The Minnesota State Bar Association will provide attorney referrals. Contact them at *www.mnfindalawyer.com.* The Hennepin County Bar Association also has a Lawyer Referral and Information Service which can be accessed either by calling 612-752-6666 or on-line at *www.hcba.org.*

Victims should seek an attorney with experience in the type of case they are pursuing (i.e., 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.

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

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

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

Insurance Policies

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

Parental Liability for Damage Done by Minor Child

Parents and guardians of minor offenders are liable for some of the costs related to willful and malicious acts done by the minor that cause personal injury or property damage. Parents or guardians of the minor living with them are jointly and severally liable for such acts by the minor to an amount not exceeding $1000. This provision does not relieve the minor child from personal liability for such injury or damage. Minn. Stat. 540.18.

Differences between Criminal and Civil Cases

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

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

18. Civil Lawsuits

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

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

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

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

19. Statute of Limitations

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

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

Criminal Cases

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

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

Minn. Stat. 628.26.

Other crimes have statutes of limitation ranging from three years to nine years. Typically, criminal indictments for a majority of criminal acts must be filed within 3 years of the offense. But there are some exceptions, such as:

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

How the Statute Applies

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

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

Civil Lawsuits

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

20. Minnesota Sentencing Guidelines

The material provided in this summary was adapted from the Minnesota Sentencing Guidelines and Commentary manual, revised August 1, 2006. The sentencing guidelines are updated at least annually. Current and past versions of the Minnesota Sentencing Guidelines and Commentary manual are available on the Minnesota Sentencing Guidelines Commission's Web site and in alternate formats upon request. Persons with questions about the guidelines may contact the guidelines office.

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

Victim Input into the Sentencing

Presentence Investigation

Under Minnesota Statutes section 611A.02, subdivision 2 (b)(5), upon charging of an offender, the crime victim has the right to be informed of and participate in the prosecutorial process. Section 611A.037 provides that a presentence investigation report includes:

- a concise statement of what disposition the victim deems appropriate, including reasons given, if any by the victim; and
- any written objections by the victim to the proposed disposition.

Victim Impact Statement

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

Overview of the Minnesota Sentencing Guidelines

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

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

General Structure of the Guidelines

Presumptive Sentence

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

Sentencing Grids

The sentencing guidelines grid specifies the presumptive sentence for felony crimes, depending on the severity level of the

20. Minnesota Sentencing Guidelines

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.

The most up-to-date Sentencing Guidelines Grid is located at: *www.msgc.state.mn.us.* For your convenience copies of the August 1, 2006 Sentencing Guidelines Grid, and the August 1, 2006 Sex Offender Grid have been provided at the end of this section.

Offense Severity

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

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

For the most up-to-date Offense Severity Reference Table check the current Sentencing Guidelines and Commentary at *www.msgc.state.mn.us.* For your convenience a condensed copy of the August 1, 2006 Offense Severity Table has been provided at the end of this section.

Criminal History

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

(1) prior felony record;

(2) custody status at the time of the offense;

(3) prior misdemeanor and gross misdemeanor record; and

(4) prior juvenile record for young adult felons.

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

- Severity Level I – II = ½ point;
- Severity Level III – V = 1 point;
- Severity Level VI – VIII = 1½ points;
- Severity Level IX – XI = 2 points;
- Murder 1st Degree = 2 points;
- Severity Level A = 2 points;
- Severity Level B – E = 1½ points;
- Severity Level F – G = 1 point; and
- Severity Level H = ½ point for first offense and 1 point for subsequent offenses.

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

- Severity Level I – II = ½ point;
- Severity Level III – V = 1 point;
- Severity Level VI – VIII = 1½ points;
- Severity Level IX – XI = 2 points;
- Murder 1st Degree = 2 points;
- Severity Level A = 3 points;
- Severity Level B – C = 2 points;
- Severity Level D – E = 1½ points;
- Severity Level F – G = 1 point; and
- Severity Level H = ½ point for first offense and 1 point for subsequent offenses.

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

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juvenile probation or parole status (excluding status following an extended jurisdiction juvenile conviction), or was committed for treatment under Rule 20.

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

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

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

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

Using the Sentencing Grid

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

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

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

Stayed Sentences

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

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

(1) The offender commits a new felony with a presumptive commitment sentence; or

(2) The offender persists in violating conditions of the stay despite the use of more severe conditions.

Mandatory Sentences

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

First-degree murder and certain sex offenders convicted under Minn. Stat. sections 609.109, subd. 3, or 609.3455, subd. 2,

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which have a mandatory life imprisonment sentence, are excluded from offenses covered by the sentencing guidelines.

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

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

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

Concurrent/Consecutive Sentences

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

Presumptive Sentence Modifiers

Attempted Crimes or Conspiracy

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

Gang Crimes

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

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

Jail Credit

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

Certified Juveniles

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

Presentence Mental or Physical Examination for Sex Offenders

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

Modifications

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

Departures

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

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Downward Departure (Mitigating Circumstances)

(1) The victim was the aggressor.

(2) The offender played a minor or passive role or was coerced.

(3) The offender lacked the capacity for judgment because of physical or mental impairment (excluding use of drugs/alcohol).

(4) The offender's presumptive sentence is a commitment, but not a mandatory minimum sentence and:
   (a) The current offense is a severity level 1 or 2 and the offender received all of his prior felony sentences during less than three court appearances; or
   (b) The current offense is at severity level 3 or 4 and the offender received all of his sentences during one court appearance.

(5) Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

(6) Alternative placement for offender with serious and persistent mental illness (See Minn. Stat. 609.1055).

Upward Departure (Aggravating Circumstances)

(1) The victim was vulnerable due to age, infirmity, or reduced physical or mental capacity.

(2) The victim was treated with particular cruelty for which the individual offender should be held responsible.

(3) The current conviction is for a criminal sexual conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a criminal sexual conduct offense or an offense in which the victim was otherwise injured.

(4) The offense is a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
   (a) the offense involved multiple victims or multiple incidents per victim;
   (b) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;
   (c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
   (d) the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or
   (e) the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

(5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
   (a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or
   (b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or
   (c) the offense involved the manufacture of controlled substances for use by other parties; or
   (d) the offender knowingly possessed a firearm during the commission of the offense; or
   (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or
   (f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
   (g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships (e.g. pharmacist, physician or other medical professional).

(6) the offender committed, for hire, a crime against the person.

(7) offender is a "patterned sex offender."

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(8) offender is a "dangerous offender who commits a third violent crime" (See Minn. Stat. 609.1095, subd. 2).

(9) offender is a "career offender" (See Minn. Stat. 609.1095, subd. 4).

(10) Effective January 1, 1995, the offender committed the crime as part of a group of three or more persons who all actively participated in the crime.

(11) the offender intentionally selected the victim or the property against which the offense is committed, in whole or in part, because of the victim's, the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age or national origin.

(12) the offender's use of another's identity without authorization to commit a crime.

Sentencing Issues and Case Law

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

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

Statutory Maximum Sentence

Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), involved a defendant who pled guilty to 2nd degree possession of a firearm for unlawful purposes that carried a prison sentence of between 5 and 10 years. The state requested the court to make the factual finding necessary to impose the state's Hate Crime Law sentencing enhancement provision increasing the sentence to between 10 and 20 years. The judge held the requested hearing, listened to the evidence and determined by a preponderance of the evidence standard that the crime met the Hate Crime Law criteria. The court's imposition of an enhanced prison sentence based on the hate crime statute exceeded the statutory maximum sentence for the underlying offense. Court ruled that any factor other than a prior conviction that increases the penalty for the crime beyond the statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.

Presumptive Sentence

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

State v. Shattuck, 704 N.W.2d 131 (Minn. 2005), involved a defendant who was convicted of two counts of kidnapping, two counts of first degree sexual conduct, and one count of aggravated robbery. The presumptive guideline sentence for these offenses would have been 161 months given the severity level VII ranking with a criminal history score of 9, including a custody status point. Under the Repeat Sex Offender Statute, for certain types of first and second degree sexual conduct offenses, the court shall commit the defendant to not less than 30 years if the court finds (1) an aggravating factor exists which provides for an upward departure, and (2) the offender has previous convictions for first, second or third degree criminal sexual conduct. The court imposed a 161 month sentence for

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the kidnapping conviction and 360 months for the first degree criminal sexual conduct, using the Repeat Sex Offender Statute. The court found that a jury, not the court, must make the determination that aggravating factors are present to impose an upward durational departure under the sentencing guidelines, citing the Blakely ruling. The decision also held that Minn. Stat. 609.109 is unconstitutional since it authorizes the court to impose an upward durational departure without the aid of a jury.

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

While the supreme court was deciding the *Shattuck* case, the legislature amended Minn. Stat. 609.109 to comply with the constitutional issues raised in *Blakely*. However, the court took no position on the constitutionality of legislative action. Acknowledging the court's inherent authority to create rules and procedures, the decision stated that it was the belief of the court that the legislature should decide the manner in which the sentencing guidelines should be amended to comply with the constitutional requirements of *Blakely.* On October 6, 2005, the Minnesota Supreme Court issued an order amending the *Shattuck* opinion clarifying that the legislature has enacted significant new requirements for sentencing aggravated departures which included sentencing juries and bifurcated trials. It further clarified that these changes apply both prospectively and to re-sentencing hearings. This clarification enables re-sentencing hearings to include jury determination of aggravating factors and the imposition of aggravated departure sentences.

State v. Allen, 706 N.W.2d 40 (Minn. 2005), involved a defendant who pled guilty to first degree test refusal as part of a negotiated plea agreement in exchange for the dismissal of other charges and the specific sentence to be determined by the court. The district court determined the defendant had a custody point assigned to their criminal history, since the defendant was on probation for a prior offense at the time of the current offense. The presumptive guidelines sentence was a 42-month stayed sentence. However, based on the defendant's numerous prior alcohol-related convictions and history of absconding from probation, the court determined the defendant was not amenable to probation and sentenced the defendant to a 42-month executed prison sentence, representing an aggravated dispositional departure under the sentencing guidelines. The case was on appeal when *Blakely v. Washington* was decided. The court ruled that a stayed sentence is not merely an alternative mode of serving a prison sentence, in that the additional loss of liberty encountered with an executed sentence exceeds the maximum penalty allowed by a plea of guilty or jury verdict, thus violating the defendant's Sixth Amendment Constitutional right. The court viewed a sentence disposition as much an element of the presumptive sentence as the sentence duration. Dispositional departures that are based on offender characteristics are similar to indeterminate sentencing model judgments and must be part of a jury verdict in that "amenability to probation" is not a fact necessary to constitute a crime. When the district court imposed an aggravated dispositional departure based on the aggravating factor of unamenability to probation without the aid of a jury, the defendant's constitutional rights were violated under *Blakely.* Unamenability to probation may be used as an aggravating factor to impose an upward dispositional departure, but it must be determined by a jury and not the court. The *Allen* case also raises the issue and much speculation whether probation revocations resulting in an executed prison sentence are also subject to Blakely provisions. Although the Allen case focuses on imposition of an executed prison sentence as the result of an aggravated dispositional departure sentence based on the defendant's unamenability to probation, the court's stated reasons in its ruling could be interpreted as to be applicable to probation revocations that result in the imposition of an executed sentence due to an offender's lack of progress or success on probation. The Sentencing Guidelines Commission awaits further action by the Minnesota Courts addressing this specific issue.

State v. Conger, 687 N.W.2d 639 (Minn. Ct. App. 2004), involved a defendant who pled guilty to aiding and abetting in a second degree intentional and unintentional murder. At sentencing, the judge determined that multiple aggravating factors were present and imposed an upward durational departure. The court ruled that the presumptive sentence designated by the guidelines is the maximum sentence a judge may impose without finding facts to support a departure. Any

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fact other than prior conviction used to impose a departure sentence must be found by a jury or admitted by the defendant. The court also ruled that when a defendant pleads guilty, any upward departure that is not entirely based on the facts admitted in the guilty plea is a violation of the defendant's Sixth Amendment rights and unconstitutional.

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

State v. Fairbanks, 688 N.W. 2d 333 (Minn. Ct. App. 2004), involved a defendant who was convicted of first degree assault of a correctional employee and kidnapping. The judge sentenced the defendant under the Dangerous Offender Statute which provides for a durational departure from the presumptive guideline sentence. Criteria necessary for sentencing under this statute include (1) two or more convictions for violent crimes and (2) offender is a danger to public safety. Defendant stipulated to the past criminal behavior during trial but that admission by the defendant alone does not permit a finding that the defendant is a danger to public safety. That finding must be determined by a jury. A judge can only depart upward based solely on prior convictions. The court also ruled that a defendant's waiver of *Blakely* rights must be knowing, intelligent and voluntary.

Mandatory Minimum

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

Custody Status Point

State v. Brooks, 690 N.W.2d 160 (Minn. Ct. App.2004), involved a defendant convicted of a fifth degree assault and tampering with a witness. The defendant had a criminal history score of 6 or more prior to the sentencing for this conviction. The guidelines provide for a three month enhancement for the custody status point. Defendant argued the three month enhancement is in violation of *Blakely.* Court rules that determination of the custody status point is analogous to the *Blakely* exception for "fact of prior conviction." Like a prior conviction, a custody status point is established by court record based on the fact of prior convictions and not by a jury. Presumptive sentencing is meaningless without a criminal history score, which includes the determination of custody status points.

Retroactivity

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

In **State v. Houston,** 702 N.W.2d 268, 273 (Minn. 2005), the Minnesota Supreme Court determined that *Blakely* could be applied retroactively to cases on direct review, but not collateral review. *Teague v. Lane* stated that in order for an issue to be retroactive for collateral review, the case needs to state a rule of law that is either: (1) new or not dictated by precedent or (2) a "Watershed" rule meaning it requires an observance of those criminal procedures that are implicit in the concept of liberty. The court ruled that *Blakely* is not a rule of "watershed" magnitude since the accuracy of the conviction is not diminished. A *Blakely* violation results only in a remand for sentencing rather than a new trial to determine the validity of the conviction, thus *Blakely* does not apply to appeals on collateral review.

State v. Beaty, 696 N.W.2d 406 (Minn. Ct. App. 2005), involved a defendant who pled guilty to a charge with a violation of an order for protection (OFP) and terroristic threats. At sentencing the court imposed the presumptive guideline sentence of 18 month stay of execution. The defendant subsequently violated probation and admitted to the violations. The court revoked

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the defendant's probation, executed the 18 months sentence for the terroristic threats and vacated the stay of imposition for the violation of the OFP, imposing a 36 month concurrent executed sentence, which is an upward departure from the presumptive guideline sentence. Departure was based on the aggravating factors that the victim suffered extreme adverse effect from the violation of the OFP and probation did not appear to deter the defendant. *Blakely* was issued the day after the defendant was sentenced. Defendant challenged his probation revocation and the imposition of the departure under the retroactive provisions of *Blakely.* **United States v. Martin** addressed retroactivity of a standard of review for sentencing procedures and compels courts to apply procedural changes to all sentences that are not final. The defendant's sentence is not final for retroactivity purposes and still subject to appeal. The court held that when a district court imposes a stay of imposition of a sentence, thereby precluding challenge to the sentence on direct review and then subsequently vacates the stay of imposition and imposes an upward departure, *Blakely* will apply retroactively.

Blakely Waiver Issues

State v. Hagen, 690 N.W.2d 155 (Minn. Ct. App. 2004), involved a defendant who pled guilty to Minn. Stat. 609.342 subd. 1(g), sexual penetration of a victim under the age of 16 involving a significant relationship. Defendant lived in the same house as the 13 year old victim and there were numerous aggravating factors associated with the offense such as zone of privacy, particular vulnerability and great psychological harm, which the defendant does not deny. Defendant admitted the sexual penetration and stated his attorney discussed the "significant relationship" element with him. District court stated this is one of the worst child sex abuse cases it had seen and imposed an aggravated durational departure from the 144 month presumptive guideline sentence to 216 months. Defendant appealed his sentence on *Blakely* issues. Court ruled that *Blakely* has blurred the distinction between offense elements and sentencing factors. When the defendant stipulates to an element of an offense, it must be supported by an oral or written waiver of the defendant's right to a jury trial on that aggravating element. In *Hagen,* the admissions were made at the sentencing hearing rather than at the guilty/not guilty plea hearing where he could waive his right to a jury trial. The record must clearly indicate the aggravating factor was present in the underlying offense. Admissions must be effective and more than just not objecting to the aggravating factors.

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

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Sentencing Guidelines Grid

Presumptive Sentence Lengths in Months

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

Severity Level of Conviction Offense *(Common offenses listed in italics)*		Criminal History Score 0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	XI	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[2]	426 *363-480*[2]
Murder, 3rd Degree; Murder, 2nd Degree (unintentional murder)	X	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-234*	210 *179-252*	225 *192-270*	240 *204-288*
Assault, 1st Degree Controlled Substance Crime, 1st Degree	IX	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-146*	134 *114-160*	146 *125-175*	158 *135-189*
Aggravated Robbery, 1st Degree Controlled Substance Crime, 2nd Degree	VIII	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Felony DWI	VII	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84*[2]
Controlled Substance Crime, 3rd Degree	VI	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary Simple Robbery	V	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	IV	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	III	12[1]	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Theft Crimes ($5,000 or less) Check Forgery ($251 – $2,500)	II	12[1]	12[1]	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	I	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

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

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

[1] One year and one day

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

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Sex Offender Grid

Presumptive Sentence Lengths in Months

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

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

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

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

[1] One year and one day

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

20. Minnesota Sentencing Guidelines

Offense Severity Reference Table

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

XI

Adulteration - 609.687, subd. 3(1); Murder 2 (intentional murder; unintentional drive-by shootings) - 609.19, subd. 1; Murder 2 of an Unborn Child - 609.2662(1).

X

Fleeing a Peace Officer (resulting in death) – 609.487, subd. 4(a); Murder 2 (unintentional murder) - 609.19, subd. 2; Murder 2 of an Unborn Child - 609.2662(2); Murder 3 - 609.195(a); Murder 3 of an Unborn Child - 609.2663.

IX

Assault 1 - 609.221; Assault 1 of an Unborn Child - 609.267; Controlled Substance Crime in the First Degree - 152.021; Criminal Abuse of Vulnerable Adult (death) - 609.2325, subd. 3 (a) (1); Death of an Unborn Child in the Commission of Crime - 609.268, subd. 1; Engage or Hire a Minor to Engage in Prostitution – 609.324, subd. 1(a); Importing Controlled Substances Across State Borders – 152.0261; Kidnapping (w/great bodily harm) - 609.25, subd. 2(2); Manslaughter 1 - 609.20(1), (2) & (5); Manslaughter 1 of an Unborn Child - 609.2664(1) & (2); Murder 3 - 609.195(b); Solicits, Promotes, or Receives Profit Derived from Prostitution; Individual Under 18 - 609.322, subd. 1; Tampering with Witness, Aggravated First Degree - 609.498, subd. 1b.

VIII

Aggravated Robbery 1 – 609.245, subd. 1; Arson 1 - 609.561; Burglary 1 - 609.582, 1(b) & (c); Controlled Substance Crime in the Second Degree - 152.022; Criminal Abuse of Vulnerable Adult (great bodily harm) - 609.2325, subd. 3 (a) (2); Criminal Vehicular Homicide and Injury - 609.21, subd. 1 & 3; Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (b); Escape from Custody - 609.485, subd. 4(b); Great Bodily Harm Caused by Distribution of Drugs - 609.228; Identity Theft – 609.527, subd. 3(5); Kidnapping (not in safe place or victim under 16) - 609.25, subd. 2(2); Malicious Punishment of Child (great bodily harm) - 609.377, subd. 6; Manslaughter 1 – 609.20 (3) & (4); Manslaughter 1 of an Unborn Child - 609.2664(3); Manslaughter 2 – 609.205 (1) & (5); Manslaughter 2 of an Unborn Child - 609.2665(1).

VII

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

VI

Aggravated Robbery 2 – 609.245, subd. 2; Assault 2 - 609.222; Bringing Stolen Goods into State (over $2,500) - 609.525; Burglary 1 - 609.582, subd. 1(a); Certain Persons Not to Have Firearms - 624.713, subd. 1 (b), 609.165, subd. 1b; Controlled Substance Crime in the Third Degree - 152.023; Discharge of Firearm at Occupied Transit Vehicle/Facility - 609.855, subd. 5; Explosive Device or Incendiary Device - 609.668, subd. 6; Failure to Affix Stamp on Cocaine - 297D.09, subd. 1; Failure to Affix Stamp on Hallucinogens or PCP - 297D.09, subd. 1; Failure to Affix Stamp on Heroin – 297D.09, subd. 1; Failure to Affix Stamp on Remaining Schedule I & II Narcotics - 297D.09, subd. 1; Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b); Kidnapping (safe release/no great bodily harm) - 609.25, subd. 2(1); Precious Metal Dealers, Receiving Stolen Goods (over $2,500) - 609.526, (1); Precious Metal Dealers, Receiving Stolen Goods (over $300) - 609.526, 2nd or subs. Violations; Price Fixing/Collusive Bidding - 325D.53, subd. 1 (2) (a); Theft over $35,000 - 609.52, subd. 2 (3), (4), (15), & (16) with 609.52, subd. 3 (1).

V

Arson 2 - 609.562; Bringing Stolen Goods into State ($1,000 - $2,500) - 609.525; Burglary - 609.582, subd. 2 (a) & (b); Check Forgery over $35,000 - 609.631, subd. 4 (1); Criminal Vehicular Homicide and Injury - 609.21, subd. 2 & 4; Engage or Hire a Minor to Engage in Prostitution – 609.324, subd. 1(b); Financial Exploitation of a Vulnerable Adult (over $2,500) - 609.2335; Financial Transaction Card Fraud over $35,000 - 609.821, subd. 3 (1) (I); Harassment/Stalking (third or subsequent violations) - 609.749, subd. 4(b); Harassment/ Stalking (pattern of harassing conduct) - 609.749, subd. 5; Interference with Emergency Communications – 609.776; Manslaughter 2 - 609.205 (2), (3), & (4); Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), & (4); Negligent Discharge of Explosive -

20. Minnesota Sentencing Guidelines

299F.83; Perjury - 609.48, subd. 4 (1); Possession of Substances with Intent to Manufacture Methamphetamine – 152.0262; Possession or Use (unauthorized) of Explosives - 299F.79, 299F.80, subd. 1, 299F.82, subd. 1; Price Fixing/Collusive Bidding – 325D.53, subd. 1 (1), and subd. 1 (2) (b) & (c); Riot 1 - 609.71, subd. 1; Simple Robbery – 609.24; Solicits, Promotes, or Receives Profit Derived from Prostitution - 609.322, subd. 1a; Tampering with Witness in the First Degree - 609.498, subd. 1a;

IV

Adulteration - 609.687, subd. 3 (2); Assault 2 of an Unborn Child - 609.2671; Assault 3 - 609.223, subd. 1, 2, & 3; Assault 5 (3rd or subsequent violation) - 609.224, subd. 4; Bribery - 609.42, 90.41, 609.86; Bring Contraband into State Prison - 243.55; Bring Dangerous Weapon into County Jail - 641.165, subd. 2 (b); Bringing Stolen Goods into State ($301-$999) – 609.525; Burglary 2 - 609.582, subd. 2 (c) & (d); Burglary 3 - 609.582, subd. 3; Controlled Substance Crime in the Fourth Degree - 152.024; Criminal Abuse of Vulnerable Adult (substantial bodily harm) - 609.2325, subd. 3 (a) (3); Domestic Assault - 609.2242, subd. 4; Domestic Assault by Strangulation – 609.2247; False Imprisonment (substantial bodily harm) - 609.255, subd. 3; Financial Exploitation of a Vulnerable Adult ($2,500 or less) - 609.2335; Fleeing a Peace Officer (substantial bodily harm) - 609.487, subd. 4 (c); Harassment/Stalking (aggravated violations) - 609.749, subd. 3(a),(b); Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4(a); Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2; Malicious Punishment of Child (2nd or subsequent violation) - 609.377, subd. 3; Malicious Punishment of Child (bodily harm) – 609.377, subd. 4; Malicious Punishment of Child (substantial bodily harm) - 609.377, subd. 5; Negligent Fires - 609.576, subd. 1 (1); Perjury - 300.61; & 609.48, subd. 4 (2); Precious Metal Dealers, Receiving Stolen Goods ($301 - $2,500) - 609.526 (1) & (2); Receiving Stolen Property (firearm) - 609.53; Security Violations (over $2,500) – 80A.22, subd. 1, 80B.10, subd. 1, 80C.16, subd. 3(a) & (b); Sports Bookmaking - 609.76, subd. 2; Terroristic Threats - 609.713, subd. 1; Theft From Person - 609.52; Theft of Controlled Substances - 609.52, subd. 3 (2); Theft of Firearm - 609.52, subd. 3 (1); Theft of Incendiary Device - 609.52, subd. 3 (2); Theft of Motor Vehicle – 609.52, subd. 2 (1); Use of Drugs to Injure or Facilitate Crime - 609.235; Violation of an Order for Protection - 518B.01, subd. 14 (d); Violation of Restraining Order - 609.748, subd. 6 (d); Weapon in Courthouse or Certain State Buildings - 609.66, subd. 1g

III

Anhydrous Ammonia (tamper/theft/transport) – 152.136; Arson 3 - 609.563; Check Forgery (over $2,500) - 609.631, subd. 4 (2); Coercion - 609.27, subd. 1 (1); Coercion (over $2,500) – 609.27, subd. 1 (2), (3), (4), & (5); Criminal Vehicular Homicide and Injury - 609.21, subd. 2a; Damage to Property - 609.595, subd. 1 (1); Damages; Illegal Molestation of Human Remains; Burials; Cemeteries - 307.08, subd. 2; Dangerous Smoking - 609.576, subd. 2; Dangerous Trespass, Railroad Tracks - 609.85(1); Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2, 624.713, subd. 1 (a); Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (2); Drive-By Shooting (unoccupied motor vehicle or building) - 609.66, subd. 1e (a); Engage or Hire a Minor to Engage in Prostitution – 609.324, subd. 1 (c); Escape from Civil Commitment – 609.485, subd. 4 (a) (5); Escape from Custody - 609.485, subd. 4 (a) (1); False Imprisonment - 609.255, subd. 2; False Traffic Signal - 609.851, subd. 2; Firearm Silencer (public housing, school, or park zone) - 609.66, subd. 1a (a)(1); Gambling Taxes - 297E.13, subd. 1-4; Hinder Logging (great bodily harm) - 609.591, subd. 3 (1); Identity Theft - 609.527, subd. 3 (4); Insurance Tax - 297I.90, subd. 1 & 2; Intentional Release of Harmful Substance - 624.732, subd. 2; Methamphetamine Crimes Involving Children and Vulnerable Adults – 152.137; Motor Vehicle Use Without Consent - 609.52, subd. 2 (17); Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew - 609.50, subd. 2; Possession of Burglary Tools - 609.59; Possession of Code Grabbing Devices - 609.586, subd. 2; Possession of Shoplifting Gear - 609.521; Possession or Sale of Stolen or Counterfeit Check - 609.528, subd. 3 (4); Receiving Stolen Goods (over $2,500) - 609.53; Security Violations (under $2,500) – 80A.22, subd. 1, 80B.10, subd. 1, 80C.16, subd. 3(a) & (b); Tampering with Fire Alarm System (results in bodily harm) - 609.686, subd. 2; Tax Evasion Laws – 289A.63; Tear Gas & Tear Gas Compounds; Electronic incapacitation devices - 624.731, subd. 8(a); Theft Crimes - Over $2,500 (See Theft Offense List); Theft of Controlled Substances - 609.52, subd. 3 (3) (b); Theft of Public Records – 609.52; Theft of Trade Secret - 609.52, subd. 2 (8); Unauthorized Presence at Camp Ripley - 609.396, subd. 2;

II

Accidents - 169.09, subd. 14 (a) (1); Aggravated Forgery (misc.) (non-check) - 609.625, 609.635, 609.64; Bribery of Participant or Official in Contest - 609.825, subd. 2; Cellular Counterfeiting 1 – 609.894, subd. 4; Check Forgery ($251 -

20. Minnesota Sentencing Guidelines

$2,500) - 609.631, subd. 4 (3) (a); Coercion ($300 - $2,500) - 609.27, subd. 1 (2), (3), (4), & (5); Controlled Substance in the Fifth Degree – 152.025; Counterfeited Intellectual Property - 609.895, subd. 3 (a); Damage to Property - 609.595, subd. 1 (2), (3), & (4); Discharge of Firearm (intentional) - 609.66, subd. 1a (a) (2); Discharge of Firearm (public housing, school, or park zone) - 609.66, subd. 1a (a) (2) & (3); Dishonored Check (over $500) - 609.535, subd. 2a(a)(1); Duty to Render Aid (death or great bodily harm) - 609.662, subd. 2 (b) (1); Electronic Use of False Pretense to Obtain Identity – 609.527, subd. 5a; Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics - 297D.09, subd. 1; Failure to Control a Regulated Animal, resulting in great bodily harm or death – 346.155, subd. 10 (e); Firearm Silencer - 609.66, subd. 1a (a) (1); Furnishing a Dangerous Weapon - 609.66, subd. 1c; Furnishing Firearm to Minor - 609.66, subd. 1b; Gambling Regulations - 349.2127, subd. 1-6, 349.22, subd. 4; Identity Theft – 609.527, subd. 3 (3); Mail Theft – 609.529; Negligent Fires (damage $2,500 or more) - 609.576, subd. 1 (3)(iii); Possession or Sale of Stolen or Counterfeit Check – 609.528, subd. 3 (3); Precious Metal Dealers, Regulatory Provisions - 325F.743; Receiving Stolen Goods ($2,500 or less) - 609.53; Riot 2 - 609.71, subd. 2; Telecommunications Fraud - 609.893, subd. 2; Terroristic Threats - 609.713, subd. 2; Theft - Looting - 609.52; Theft Crimes - $2,500 or less (See Theft Offense List); Transfer Pistol to Ineligible Person - 624.7141, subd. 2; Transfer Pistol to Minor - 624.7132, subd. 15 (b); Wildfire Arson - 609.5641, subd. 1.

I

Accidents - 169.09, subd. 14 (a) (2); Assault 4 - 609.2231, subd. 1, 2, 3, & 3a; Assault Weapon in Public if Under 21 - 624.7181, subd. 2; Assaulting or Harming a Police Horse - 609.597, subd. 3 (3); Assaults Motivated by Bias - 609.2231, subd. 4 (b); Aiding Offender to Avoid Arrest - 609.495, subd. 1; Bullet-Resistant Vest During Commission of Crime – 609.486; Cable Communication Systems Interference - 609.80, subd. 2; Cellular Counterfeiting 2 - 609.894, subd. 3; Certification for Title on Watercraft - 86B.865, subd. 1; Check Forgery ($250 or less) - 609.631, subd. 4 (3) (b); Child Neglect/Endangerment - 609.378; Counterfeited Intellectual Property - 609.895, subd. 3 (b); Crime Committed for Benefit of Gang – 609.229, subd. 3 (c); Criminal Damage to Property Motivated by Bias - 609.595, subd. 1a, (a); Criminal Penalties Regarding the Activities of Corporations – 300.60; Criminal Use of Real Property (Movie Pirating) – 609.896; Dangerous Weapons on School Property - 609.66, 1d(a); Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (1); Discharge of Firearm (reckless) - 609.66, subd. 1a (a) (3); Discharge of Firearm at Unoccupied Transit Vehicle/Facility - 609.855, subd. 5; Duty to Render Aid (substantial bodily harm) - 609.662, subd. 2 (b) (2); Escape from Civil Commitment – 609.485, subd. 4 (a) (4); Escape from Custody - 609.485, subd, 4 (a) (2); Failure to Affix Stamp on Marijuana/Hashish/ Tetrahydrocannabinols – 297D.09, subd. 1; Failure to Affix Stamp on Schedule IV Substances – 297D.09, subd. 1; Failure to Appear in Court - 609.49, 588.20, subd. 1; False Declaration - 256.984; False Information - Certificate of Title Application - 168A.30; Financial Transaction Card Fraud - 609.821, subd. 2 (3) & (4); Fleeing A Peace Officer - 609.487, subd. 3; Forgery - 609.63; and Forgery Related Crimes (See Forgery Related Offense List); Fraudulent Drivers' Licenses and Identification Cards – 609.652; Insurance Regulations – 62A.41; Interference with Privacy (subsequent violations & minor victim) – 609.746, subd. 1 (e); Interference with Transit Operator - 609.855, subd. 2 (c) (1); Leaving State to Evade Establishment of Paternity – 609.31; Liquor Taxation (Criminal Penalties) – 297G.19, subd. 3, 4(c), 5(c); Lottery Fraud - 609.651, subd. 1 with subd. 4(a); Nonsupport of Spouse or Child - 609.375, subd. 2a; Pistol without a Permit (subsequent violations) - 624.714, subd. 1a; Prize Notices and Solicitations - 325F.755, subd. 7; Prostitution Crimes (gross misdemeanor level) Committed in School or Park Zones - 609.3242, subd. 2 (2); Remove or Alter Serial Number on Firearm - 609.667; Sale of Simulated Controlled Substance – 152.097; Tampering with a Fire Alarm (potential for bodily harm) – 609.686, subd. 2; Tax on Petroleum and Other Fuels (Willful Evasion) – 296A.23, subd. 2; Terroristic Threats - 609.713, subd. 3 (a); Theft from Abandoned or Vacant Building ($500 or less) - 609.52, subd. 3 (3) (d) (iii); Unlawful Acts Involving Liquor - 340A.701; Voting Violations – Chapter 201, 203B, & 204C.

Unranked

Abortion – 617.20, 617.22, 145.412; Accomplice After the Fact – 609.495, subd. 3; Adulteration – 609.687, subd. 3 (3); Aiding Suicide – 609.215; Altering Engrossed Bill – 3.191; Animal Fighting – 343.31; Assaulting or Harming a Police Horse – 609.597, subd. 3 (1) & (2); Bigamy – 609.355; Cigarette Tax and Regulation Violations – 297F.20; Collusive Bidding/Price Fixing – 325D.53, subds. 1 (3), 2 & 3; Computer Encryption – 609.8912; Concealing Criminal Proceeds; Engaging in Business – 609.496; 609.497; Corrupting Legislator – 609.425; Counterfeiting of Currency – 609.632; Damage to Property of Critical

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Public Service Facilities, Utilities, and Pipelines – 609.594; Escape with Violence from Gross Misdemeanor or Misdemeanor Offense – 609.485, subd. 4 (a) (3); Failure to Report – 626.556, subd. 6; Falsely Impersonating Another – 609.83; Female Genital Mutilation – 609.2245; Forced Execution of a Declaration – 145B.105; Fraudulent or Improper Financing Statements – 609.7475; Gambling Acts (Cheating, Certain Devices Prohibited; Counterfeit Chips; Manufacture, Sale, Modification of Devices; Instruction) – 609.76, subd. 3, 4, 5, 6, & 7; Hazardous Wastes – 609.671; Horse Racing – Prohibited Act – 240.25; Incest – 609.365; Insurance Fraud – Employment of Runners – 609.612; Interstate Compact Violation – 243.161; Issuing a Receipt for Goods One Does Not Have – 227.50; Issuing a Second Receipt Without "Duplicate" On It – 227.52; Killing or Harming a Public Safety Dog – 609.596, subd. 1; Labor Trafficking – 609.282; Lawful Gambling Fraud – 609.763; Metal Penetrating Bullets – 624.74; Misprision of Treason – 609.39; Motor Vehicle Excise Tax – 297B.10; Obscene Materials; Distribution – 617.241, subd. 4; Obstructing Military Forces – 609.395; Pipeline Safety – 299J.07, subd. 2; Police Radios During Commission of Crime – 609.856; Racketeering, Criminal Penalties (RICO) – 609.904; Real and Simulated Weapons of Mass Destruction – 609.712; Refusal to Assist – 6.53; Sale of Membership Camping Contracts – 82A.03, 82A.13, 82A.25; Service Animal Providing Service – 343.21, subd. 9 (e) (g); State Lottery Fraud – 609.651, subd. 1 with 4 (b) and subd. 2 & 3; Subdivided Land Fraud – 83.43; Torture or Cruelty to Pet or Companion Animal – 343.21, subd. 9 (c) (d) (f) (h); Treason – 609.385; Unauthorized Computer Access – 609.891; Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking – 609.283; Unlawful Transfer of Sounds; Sales – 325E.201; Warning Subject of Investigation – 609.4971; Warning Subject of Surveillance or Search – 609.4975; Wire Communications Violations – 626A.02, subd. 4; 626A.03, subd. 1 (b) (iii), 626A.26, subd. 2 (1) (ii).

Criminal Sexual Conduct Reference Table

A

Criminal Sexual Conduct 1 - 609.342.

B

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

C

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

D

Criminal Sexual Conduct 2 - 609.343 subd. 1 (a), (b), (g); Criminal Sexual Conduct 3 - 609.344 subd. 1 (a), (b), (e), (f); Dissemination of Child Pornography: subsequent or by predatory offender - 617.247 subd 3.

E

Criminal Sexual Conduct 4 - 609.345 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m) & (n); Use Minors in Sexual Performance - 617.246 subd. 2, 3, 4; Dissemination of Child Pornography - 617.247 subd. 3.

F

Criminal Sexual Conduct 4 - 609.345 subd. 1 (a), (b), (e), (f); Possession of Child Pornography: subsequent or by predatory offender - 617.247 subd. 4.

G

Criminal Sexual Conduct 5- 609.3451 subd. 3; Solicit Children to Engage in Sexual Contact – 617.352 subd. 2; Indecent Exposure - 617.23 subd. 3; Possession of Child Pornography – 617.247 subd. 4.

H

Failure to Register as a Predatory Offender – 243.166 subd. 5(b), (c).

21. Crime Victim Justice Unit

Corresponding Statutes: Minn. Stat. §§ 611A.72; 611A.73; and 611A.74.

Office of Justice Programs, Suite 2300
445 Minnesota Street
St. Paul, MN 55101-1515
Metro: 651-201-7310
Toll free: 1-800-247-0390
Fax: 651-296-5787
TTY: 651-205-4827
www.ojp.state.mn.us

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

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

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

The Crime Victim Justice Unit works to:

(1) Ensure compliance with crime victim rights legislation;

(2) Prevent mistreatment of crime victims by criminal justice agencies;

(3) Provide information and referrals to victims and criminal justice professionals;

(4) Amend practices that are unjust, discriminatory, oppressive or unfair;

(5) Improve attitudes of criminal justice employees toward crime victims;

(6) Increase public awareness regarding the rights of crime victims;

(7) Encourage crime victims to assert their rights; and

(8) Provide crime victims a forum to question the actions of criminal justice agencies and victim assistance programs.

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

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

Assisting Crime Victims

Callers may be provided information to enable them to resolve their issues independent of outside interference or they may be referred to a more appropriate resource. If more assistance is needed, callers may have their issues resolved informally with the assistance of an investigator, or if the investigator feels the issue requires a formal investigation, the caller will be provided with a complaint form that will initiate the investigative process.

Investigations

The CVJU investigates complaints of victim mistreatment and violation of statutory victim rights under Minnesota Statutes chapter 611A and other provisions. Mistreatment occurs when a public

21. Crime Victim Justice Unit

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 violations such as failures to provide:

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

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

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

PART 2

MINNESOTA CRIME VICTIMS REPARATIONS BOARD

SERVICE PROVIDERS HANDBOOK

Part 2 – Minnesota Crime Victims Reparations Board

Service Providers Handbook

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Part 2 – Minnesota Crime Victims Reparations Board

Service Providers Handbook

Introduction

The Crime Victims Reparations Board was established in 1974 to assist crime victims in Minnesota with their financial losses and to restore at least a portion of the victim's economic losses resulting from the crime.

This handbook is intended to provide victim service providers with information that will help them assist victims of crime in filing a Reparations claim. The purpose is to aid in the understanding of how the program works and what type of financial assistance may be available to victims of violent crime. The handbook includes a list of eligibility criteria that need to be met by the victim, as well as what benefits are available. At any time that questions arise, please feel free to contact the Reparations staff for assistance.

Contacting the Reparations Board

Reparations staff are available to answer your questions or assist claimants during regular office hours:
8:00 a.m. – 4:30 p.m., Monday – Friday.

The Crime Victims Reparations Board office is located on the twenty-third floor of the Bremer Building.

Crime Victims Reparations Board
445 Minnesota Street, Suite 2300
St. Paul, MN 55101-1515
651-201-7300
1-888-622-8799
Fax 651-296-5787
Hearing Impaired Access TTY: 651-205-4827

Board Members

Mary Waldkirch — Washington County Attorney's Office Victim/Witness Program
Robert Goodell, Chair — Anoka County Attorney's Office
Kim Lund — Minneapolis Police Department
Raichel Brown — Crime Victim Representative
Philip Eckman, M.D. — Physician

Staff

Alcenya Ajayi, Claims Specialist 651-201-7301
Marie Bibus, Director 651-201-7304
Gert Borowski, Administrative Specialist 651-201-7306
Jeanne Brann, Administrative Specialist 651-201-7308
Gloria Passer, Administrative Specialist 651-201-7337
Danielle Kitto, Claims Manager 651-201-7321
Barbara McCarty, Restitution Manager 651-201-7326
Mary Lou Nelson, Claims Specialist 651-201-7331
Cathy O'Bryan, Receptionist 651-201-7300
Amy Studtmann, Claims Specialist 651-201-7344
L.V., Administrative Specialist

The Crime Victims Reparations Board is a program of the Minnesota Office of Justice Programs.
Jeri Boisvert, Division Director

What are the Eligibility Requirements?

(1) The claimant must be a victim, a family member of a victim, dependent, estate of a deceased victim, a person purchasing products or services for a victim, or the victim's guardian, guardian ad litem, conservator, or authorized agent. A service provider cannot file a claim.

(2) The victim must be a person who suffered injury or death as a direct result of a crime, a good faith effort to prevent a crime or to apprehend a person suspected of engaging in a crime.

(3) The applicant must have been the victim of a crime that occurred in Minnesota or a Minnesota resident victimized while in another country.

(4) The claim must be filed within 3 years (See Exceptions to the Filing Deadline.)

(5) The crime must be reported to the police within 30 days (See Police Reporting Exceptions.)

(6) Victim must cooperate fully with both the police and prosecutor, and must agree to pursue charges.

(7) There must be no contributory misconduct by the victim (See Contributory Misconduct for further explanation.)

(8) There must be evidence that a crime was committed. It's not necessary that the offender be prosecuted or convicted to show that a crime occurred. Whether the case was charged or not is, however, a factor in the board's decision in determining if a crime occurred. The Board relies heavily on police reports and conclusions of the prosecuting attorney's office.

Service Providers Handbook

Exceptions to the Filing Deadline

The following are the only allowable exceptions to the filing deadline.

Unable to File. If the victim was unable to file due to physical or mental disability, the claim must be filed within three years of the time when the victim was reasonably able to file.

Injury Not Reasonably Discoverable. If the victim's injury or death was not reasonably discoverable within three years of the injury, the claim can be made within three years of the time when the injury or death is reasonably discoverable.

Child Abuse. The time limit begins when the crime was reported to the police.

Kidnapping. The three-year period begins on the date the child was located rather than the date the child was taken.

Harassment/Stalking. The three-year period begins on the date of the most recent reported incident of harassment or stalking.

Parole/Pardon/ECRC Hearing. The "reasonable discovery" exception may be applied in cases where the victim needs counseling due to a parole or pardon board or end-of-confinement review hearing, as the trauma is not discoverable until that event takes place.

There are no exceptions for circumstances where:
(1) the victim/claimant did not know reparations existed,

(2) victim was incompetent, but his or her affairs were being managed by a guardian or parent,

(3) victim was a minor at the time, or

(4) the police or county attorney failed to inform the victim/claimant of reparations, even though they are required by law to do so.

Police Reporting Exceptions

The following are the only allowable exceptions to the 30-day reporting deadline:

Unable to Report. If the crime could not reasonably have been reported within the required time period, it must have been reported within 30 days of when a report could have been made.

Sexual Assault*. There is no time period requirement for reporting the incident to the police. However, the victim must make a report to the police in order to be eligible for reparations. The claim must be filed within three years of the incident.

Child Abuse*. There is no time period requirement for reporting the incident to the police. The claimant must, however, make a report to the police in order to be eligible for reparations.

* These are the most current rules. The date of the incident can affect the reporting requirements. So check with the reparations staff if you are unsure.

What Specific Types of Crimes are Covered?

The types of crimes listed below are the most common crimes for which we receive claims. This list is not exclusive.

- Homicide
- Assault
- Domestic Abuse
- Sexual Assault
- Child Abuse (Physical and Sexual)
- Kidnapping
- Arson
- Robbery
- Stalking
- Harassment
- Hit and Run Motor Vehicle Accidents
- Drunk Driving
- Criminal Vehicular Operation

What Types of Crimes are Not Covered?

Crime, for the purpose of Reparations compensation, must include conduct prohibited by statute, which also poses a substantial threat of personal injury or death. Property crimes, such as burglary or theft, are not covered by the Reparations program unless injuries were involved. The Reparations program does not compensate for injuries sustained in accidents involving motor vehicles, bicycles, airplanes, or boats unless:

(1) the injury or death was intentionally inflicted;

(2) the driver was using the vehicle while fleeing the scene of a crime he/she committed;

(3) or the driver was committing one of the following crimes: Criminal Vehicular Homicide and Injury, Felony Hit-and-Run, or Driving Under the Influence.

Car accidents involving failure to yield, careless driving, and lack of insurance are not covered.

In cases of harassment/stalking, arson, or other serious property crimes, the property damage is not covered. However, the Board will consider payment for counseling and lost wages incurred by the victim as long as there is a substantial threat of personal injury or death. The Reparations Board will also pay for medical care for any injuries (such as smoke inhalation in an arson.)

People who commit suicide, or witness someone committing suicide, are not eligible for reparations.

What is Contributory Misconduct?

By law, the Reparations Board must reduce claims where the victim contributed to the incident through misconduct or negligence. Under the rules, contributory misconduct includes the following **acts** that **contributed to the injury** for which the claim was filed:

(1) using fighting words, obscene or threatening gestures, or other provocation, including use of gang or hate group hand signs, colors, symbols, or statements;

(2) knowingly and willingly riding in a vehicle operated by a person under the influence of alcohol or a controlled substance;

(3) consuming alcohol or a controlled substance or other mood altering substances;

(4) failing to retreat or withdraw from a situation where an option to do so was readily available;

(5) planning, conspiring or attempting to unlawfully use, procure, distribute or sell controlled substances;

(6) unlawfully possessing controlled substances;

(7) being a confirmed member or associate of a gang or hate group.

These acts constitute contributory misconduct only where they directly contributed to the claimant's victimization. The Board may reduce the claim by 25%, 50%, or 75%, or they may deny the claim completely. If you have any questions regarding specific cases of contributory misconduct, please contact the Reparations staff.

No reparations will be awarded if the victim or claimant was in the act of committing a crime at the time the injury occurred. This is similar to contributory misconduct except that the Board must deny the award completely if the victim was committing a crime. This is required by statute and there is no discretion by the Board to reduce the claim.

What is Full Cooperation?

The Board's rules state that victims must make a reasonable effort to comply with any specific and direct requests that law enforcement personnel made to them. The victim must cooperate during the entire time the investigation remains active, and through all prosecution proceedings. The victim must cooperate by giving a statement to the police, submitting evidence if requested, looking at mug shots, and agreeing to pursue charges. The victim must also cooperate with the county or city attorney by agreeing to give a statement or testify as requested. Failure to cooperate because of fear of retaliation is not an exception to the Board's rule. In determining whether a victim cooperated, the Board takes into consideration physical or mental impairments or disabilities, which might have affected the victim's ability to respond to such requests.

When Should a Claim be Filed?

Individuals who have suffered injury as a result of a violent crime should file a reparations claim immediately. Victims have three years from the date of injury to file a claim, however the claim should be filed as soon after the incident as possible. All expenses directly related to the crime should be included on the claim form. Medical treatment or court proceedings do not need to be completed prior to filing a reparations claim. If there is a question regarding eligibility, contact the staff of the Reparations Board for further assistance.

Service Providers Handbook

What is the Maximum Award?

The maximum amount of reparations allowed as a result of one crime is $50,000. * However, there are caps for specific services. Very few claimants reach the maximum amount.

* If multiple claimants file on behalf of one victim, the maximum for all claimants **combined** is $50,000.

What Types of Expenses are Covered?

- Hospital and Physician
- Prescriptions
- Physical Therapy
- Chiropractic Care
- Mental Health Care ($7,500 maximum)
- Lost Wages (See Who is eligible for Lost Wages)
- Funeral ($6,500 maximum)
- Household Services
- Substitute Child Care
- Ambulance
- Prosthesis/Wheelchair
- Dental Care
- Return of an Abducted Child
- Crime Scene Clean-up
- Remodeling of household for accessibility
- Eyeglasses (if broken during the assault)
- Abortions or prenatal care and delivery if pregnancy is a result of sexual assault

What Types of Expenses are Not Covered?

- Damaged or stolen property
- Stolen cash or checks
- New locks, security devices, or alarm systems
- School tuition
- Foster care and shelter fees
- Long distance phone calls
- Attorney / Private Investigator fees
- Trial related expenses (lost wages, mileage)
- Hotel costs
- Memberships to a health club
- Mileage/parking
- Moving expenses

What is the Minimum Award?

A claimant must have more than $50 of out-of-pocket losses as a result of the crime.

What if Losses are Less Than $50?

To be eligible for reparations, the claimant must have more than $50 of out-of-pocket losses due to the crime. If losses are less than $50, the claimant will receive a letter saying that the claim has been placed on inactive status. If the claimant incurs further losses, the Reparations office should be contacted to reactivate the file. This is one reason why claimants should be encouraged to apply for Reparations even though they may not have sufficient losses at the time of filing.

Are Sexual Assault Exams Covered?

Claimants must first submit the bill for a sexual assault exam to the county for payment. Usually the County Attorney's office or the County Sheriff administers a sexual assault fund to pay for exams. If the cost of the exam exceeds any payment by the county, the Board will cover the additional costs.

Is Mental Health Counseling Covered?

The Reparations Board will pay for counseling sessions for:

- Victims
- Family members (spouse or domestic partner, parents, children, siblings, and grandparents) of injured or deceased victims
- Witnesses to a violent crime
- Persons who discover the body of a homicide victim

Procedure for Approval of Sessions.
If an eligible victim or claimant needs pre-approval for counseling, a claims specialist will notify the counselor that the Board is approving payment for a certain time period.

Service Providers Handbook

Pre-existing or Unrelated Conditions.
If a counselor indicates that only a portion of the counseling addresses the crime, or the victim or claimant had a pre-existing condition, the award may be reduced.

Maximum for Outpatient Mental Health Counseling.
The total accumulated expenses for outpatient counseling must not exceed $7,500. This cap does not include in-patient hospitalization, diagnostic evaluation or testing, or medication management.

The Board only pays a percentage of the expenses, and providers are required to write-off the remaining amount.

Is It Possible to Get an Extension for Additional Counseling?

If more sessions are needed beyond the time period initially approved by the Board, the therapist must submit a request for extension form with a detailed treatment plan. The therapist may obtain a form from the Reparations office. The Reparations staff determines whether an extension is necessary and reasonable. Extensions are not guaranteed and may be denied.

How Long Does It Take to Process a Claim?

It takes about four months for a claim to be processed and paid. Please feel free to have victims contact the Reparations office to check the status of a claim if payment has not been received within four to five months. Also, please remind claimants to notify the office if they have moved or changed phone numbers.

How is a Claim Processed?

After a claim form has been received, a claim file number and a claims specialist are assigned. A form is sent to the investigating law enforcement agency to verify that:

(1) a crime was committed,

(2) the crime was reported within 30 days of occurrence,

(3) that the victim has cooperated fully and

(4) whether there was any contributory misconduct on the part of the victim.

After a completed form and the corresponding police reports are received, the claims specialist reviews the claim for eligibility. If any of the eligibility requirements are not met, the claim is forwarded to the Board for review. If all eligibility requirements are met, the claim is approved. Billing forms are then sent to all service providers (e.g., hospitals) listed on the claim form. If lost wages are requested, a form is sent to the victim's employer to verify the amount of lost wages. Be sure to have victims provide a complete list of expenses and complete addresses of service providers and their employer.

When all requested information is received, the assigned claims specialist reviews all expenses to assure they are reasonable and necessary, and related to the crime, and that any collateral sources, such as insurance and Medical Assistance are billed first. The claims specialist then calculates the amount of the award.

How Does the Board Make Decisions?

The Board is composed of five members appointed by the Commissioner of the Department of Public Safety. Members and staff meet once a month to discuss claims where the claimant may not meet all eligibility criteria or where services may be questionable. The Board votes to either pay, reduce or deny the claim. Board decisions are based on information submitted by the claimant, police reports and records from medical and mental health providers.

How Can Reductions in Claims or Denials Be Appealed?

A decision made by the staff or Board may be appealed by sending a letter to the Reparations office within 30 days. The letter should state that the claimant is requesting a reconsideration and include why the Board's decision is incorrect. The Board discusses all requests for reconsideration at their monthly meeting. Claimants are welcome to attend the meeting to discuss their claim with the Board. **If a claimant wishes to attend a Board meeting, he/she must call 651-201-7300 to make an appointment.**

All denial or reduction letters include a brochure explaining appeal rights in detail.

If, after reconsideration, a claimant is still unhappy with the Board's decision, they may send a letter requesting a hearing before a state administrative law judge. The Board's attorney and the Director will attend the hearing. The claimant must attend the hearing and may bring an advocate. Telephone hearings are possible if the claimant lives outside of the metro area. **The administrative law judge can only make a**

recommendation to the Board. The Board then discusses whether to accept the recommendation and issues a final decision.

When Will the Victim Receive a Check?

After an award is calculated and approved by the claims specialist, an award notice is sent to the claimant in the mail. If there is a mistake on the award notice, the victim should contact the claims specialist immediately.

Payments are made from the Department of Finance directly to the victim or to the service provider if there is an outstanding bill. Checks are mailed within two to three weeks after the award notice has been received by the claimant. In many cases funds are paid through an electronic fund transfer.

Where Does Reparations Funding Come From?

The greatest portion of funding comes from the State of Minnesota General Fund appropriation. Additional funds are received from the federal Victims of Crime Act program from fines levied on federal prisoners, the Minnesota Department of Corrections inmate wages, and reimbursements to the Board in the form of restitution, refunds, or subrogation of civil awards.

The Board Only Covers a Percentage of Medical, Dental and Mental Health Expenses. Is the Victim Responsible for Any Remaining Costs?

The Board pays only a percentage of medical, dental and mental health expenses and the provider is required to write-off the remaining amount. Please contact the office for current rates.

Providers are required by MN Rule 3050.3700 to accept the Board's reduced payment as payment-in-full and should not charge the patient for the remaining balance. If the provider bills the victim for the amount that should be written off, the victim should notify the Board immediately. **However, if the bill has already been paid by the victim, he/she will be reimbursed for 100% of the payment.**

If the claim has been reduced for contributory misconduct, then the victim is responsible for that percentage of the expenses. The provider may bill the claimant and does not have to write off the balance.

What if the Victim Has Additional Expenses After the Award is Made?

Claims are kept on file with the Reparations Board permanently and may be reopened at any time. If the claimant has additional expenses related to the crime, which were not paid in the first award, they may be submitted to the Board for a supplementary award. The claimant should send in the additional bills or send a letter explaining the additional expense(s). Ongoing expenses such as mental health counseling, chiropractic care and lost wages are paid on a quarterly basis. Loss of support is paid annually.

How Does Insurance or Medical Assistance Affect Reparations Claims?

Insurance

All other sources of payment available, including health insurance or Medical Assistance, must be used before receiving a Reparations award for the same services. If the victim's health plan only covers certain doctors or clinics, those providers must be used. **If the claimant has been using a medical or mental health provider not covered by their health insurance, the claimant is required to switch to the provider covered under their insurance.** The Board will pay bills accumulated prior to the claimant being informed of this policy by receipt of the Claimant Handbook.

Medical Assistance

Claimants who have Medical Assistance or General Assistance Medical Care may not receive payment for medical expenses because Medical Assistance normally covers those expenses. Claimants who might be eligible for Medical Assistance must apply for it and follow through with the application process.

If Medical Assistance is discontinued or did not become effective immediately following the crime, and the claimant is being held personally responsible for the medical bills, the Board will pay those bills.

Are Any Expenses Covered for the Relatives of the Victim?

Some family members are eligible for compensation as secondary victims. Secondary victims include the parents, children, siblings, grandparents and spouse or domestic partner of a deceased victim or injured victim. Parents and spouses or

domestic partners of homicide victims are eligible for full benefits from the Reparations Board. Siblings, children and grandparents of homicide victims are eligible for counseling and one week of lost wages.

The Board will pay for counseling sessions for parents, spouse or domestic partner, children, grandparents and siblings of deceased or injured victims where the treatment plan indicates that such sessions are directly related to the crime. In addition, the Board will pay for medication management during the time period corresponding to the counseling. (See *Is Mental Health Counseling Covered?* for more information.)

Who is Eligible for Lost Wages?

The Board will reimburse the victim for a limited amount of lost income due to the crime. The rate of payment will be approximately the same rate as their net income. For requests that exceed a two week period (six weeks for sexual assault victims), a physician or mental health professional must provide verification of the victim's inability to work. The Board compensates victims for a maximum of 40 hours per week for up to 52 weeks. Victims must use any sick or vacation leave that they have available to them. Any long-term disability, short-term disability, worker's compensation, county assistance or SSI, will also be subtracted off the total lost wages.

If a victim is unemployed or self-employed, they must submit a copy of the previous year's federal tax return. The Board uses the reported adjusted gross income to calculate lost wages. There can be no compensation for unreported or anticipated income. A request for lost wages must be made within two years.

Family Members of Homicide Victims
The spouse or domestic partner and parents of deceased victims are eligible for up to 52 weeks of lost wages. For requests that exceed a 6-week time period, a physician or mental health professional must provide verification of the claimant's inability to work.

Children, grandparents and siblings of a deceased victim are eligible for one week of lost wages. No extension is allowed, unless there are extraordinary circumstances where the limit imposes undue hardship on the family member. Extensions must be approved by the Board.

Family Members of Injured Victims
The spouse or domestic partner, parents, children, grandparents and siblings of an injured victim may be reimbursed for lost wages and reasonable expenses for transportation and lodging, up to $2,000 **combined.**

What is Loss of Support?

In homicide cases and drunk driving, hit and run, and criminal vehicular operation crashes resulting in death, the victim's dependents are eligible for loss of support payments. Dependents usually include the spouse or domestic partner and children under the age of 18. The person who has custody of the children should file the claim for loss of support.

The amount of the loss of support is based on a monthly rate determined by the board each fiscal year. it is paid once a year for 3 years, or until the child reaches 18.

Are Witnesses to a Crime Eligible?

Witnesses to a violent crime and persons who discover the body in a homicide case are entitled to counseling sessions if they have suffered psychological harm as a result of the crime or by discovery of the body. Witnesses are not eligible for any other benefits.

Are Emergency Awards Available?

Yes, an emergency award may be granted for lost wages **in extreme cases.** The claimant must be eligible for lost wages to qualify for emergency assistance. Emergency awards will only be granted if the individual has received an eviction or foreclosure notice, the power or water is being shut off in their place of residence, or they have no money for food. Claimants may only receive one emergency award.

Emergency awards are not separate cash grants. They are payment of lost wages, except that they are awarded as an emergency, which means they are processed as quickly as possible. Call our office at 651-201-7300 and ask to speak to the assigned claims specialist to request emergency assistance. While some emergency awards can be issued within 48 hours, please note it can take up to two weeks to process an emergency award.

Service Providers Handbook

What is Pre-Authorization of Expenses and How is It Obtained?

Upon request, staff may pre-authorize payment for medical procedures, dental care, mental health counseling or funeral expenses if necessary. **Pre-authorization is necessary for certain expenses such as dental work, reconstructive surgery, chiropractic care and mental health care to assure payment.** If the claim meets all of the Board's eligibility requirements, a letter guaranteeing payment of an approved amount can be faxed to the provider. Call our office at 651-201-7300 and ask to speak to the assigned claims specialist to request pre-authorization.

What If Money Is Received from Another Source, such as the Offender, an Insurance Settlement, or a Lawsuit?

A victim must notify the Reparations office if he/she pursues any type of lawsuit related to the crime, or receives an insurance settlement or restitution from the offender.

The Board has the right to recover money paid to the victim from other sources, such as a civil lawsuit, insurance settlement or restitution. If a civil case is won and a settlement received, the Board is entitled to reimbursement of the total amount of awards paid minus one-third for the attorney's fees. The claimant may also be asked to sign an agreement not to submit any further expenses to the Board.

Restitution

The Board may request restitution from the offender. If the Board has paid reparations, the court should order restitution payments to be made directly to the Board. Please contact our office at 651-201-7300 if restitution has been ordered and/or if the victim is receiving payments from the offender.

Part 3

Full Text of Chapter 611A

PART 3 – FULL TEXT OF CHAPTER 611A

Definitions and General Provisions

611A.01 Definitions

For the purposes of sections 611A.01 to 611A.06:

(a) "Crime" means conduct that is prohibited by local ordinance and results in bodily harm to an individual; or conduct that is included within the definition of "crime" in section 609.02, subdivision 1 , or would be included within that definition but for the fact that (i) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (ii) the act was alleged or found to have been committed by a juvenile.

(b) "Victim" means a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime, and for purposes of sections 611A.04 and 611A.045, also includes (i) a corporation that incurs loss or harm as a result of a crime, (ii) a government entity that incurs loss or harm as a result of a crime, and (iii) any other entity authorized to receive restitution under section 609.10 or 609.125. The term "victim" includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person. In a case where the prosecutor finds that the number of family members makes it impracticable to accord all of the family members the rights described in sections 611A.02 to 611A.0395, the prosecutor shall establish a reasonable procedure to give effect to those rights. The procedure may not limit the number of victim impact statements submitted to the court under section 611A.038. The term "victim" does not include the person charged with or alleged to have committed the crime.

(c) "Juvenile" has the same meaning as given to the term "child" in section 260B.007, subdivision 3.

611A.015 Scope of Victims' Rights

The rights afforded to crime victims in sections 611A.01 to 611A.06 are applicable to adult criminal cases, juvenile delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs, and proceedings involving any other act committed by a juvenile that would be a crime as defined in section 609.02, if committed by an adult.

611A.02 Notification of Victim Services and Victims' Rights

Subdivision 1. Victim services.

The commissioner of corrections, in cooperation with the executive director of the Crime Victims Reparations Board, shall develop a plan to provide victims with information concerning victim services in the geographic area where the crime occurred. This information shall include, but need not be limited to, information about available victim crisis centers, programs for victims of sexual assault, victim witness programs, elderly victims projects, victim assistance hotlines, incest abuse programs, and domestic violence shelters and programs. The plan shall take into account the fact that some counties currently have informational service systems and victim or witness services or programs. This plan shall be presented to the appropriate standing committees of the legislature no later than February 1, 1984.

Subdivision 2. Victims' rights.

(a) The Crime Victim and Witness Advisory Council shall develop two model notices of the rights of crime victims.

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

(1) the victim's right to apply for reparations to cover losses, not including property losses, resulting from a violent crime and the telephone number to call to request an application;

(2) the victim's right to request that the law enforcement agency withhold public access to data revealing the victim's identity under section 13.82, subdivision 17, paragraph (d);

(3) the additional rights of domestic abuse victims as described in section 629.341;

(4) information on the nearest crime victim assistance program or resource; and

(5) the victim's rights, if an offender is charged, to be informed of and participate in the prosecution process, including the right to request restitution.

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

Definitions and General Provisions

Subdivision 3. Notice of rights of victims in juvenile court.

(a) The Crime Victim and Witness Advisory Council shall develop a notice of the rights of victims in juvenile court that explains:

(1) the rights of victims in the juvenile court;

(2) when a juvenile matter is public;

(3) the procedures to be followed in juvenile court proceedings; and

(4) other relevant matters.

(b) The juvenile court shall distribute a copy of the notice to each victim of juvenile crime who attends a juvenile court proceeding, along with a notice of services for victims available in that judicial district.

611A.021 Notice of Right to Request Withholding of Certain Public Data

A victim has a right under section 13.82, subdivision 17, clause (d), to request a law enforcement agency to withhold public access to data revealing the victim's identity.

611A.03 Plea Agreements; Notification

Subdivision 1. Plea agreements; notification of victim.

Prior to the entry of the factual basis for a plea pursuant to a plea agreement recommendation, a prosecuting attorney shall make a reasonable and good faith effort to inform the victim of:

(a) 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

(b) the right to be present at the sentencing hearing and at the hearing during which the plea is presented to the court and to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.

Subdivision 2. Notification duties.

A prosecuting attorney satisfies the requirements of subdivision 1 by notifying:

(a) the victim's legal guardian or guardian ad litem; or

(b) the three victims the prosecuting attorney believes to have suffered the most, if there are more than three victims of the offense.

Subdivision 3. [Repealed, 1988 c 649 s 5]

611A.0301 Right to Submit Statement at Plea Presentation Hearing

A victim has the rights described in section 611A.03, subdivision 1, paragraph (b), at a plea presentation hearing.

611A.031 Victim Input Regarding Pretrial Diversion

A prosecutor shall make every reasonable effort to notify and seek input from the victim prior to referring a person into a pretrial diversion program in lieu of prosecution for a violation of sections 609.185, 609.19, 609.195, 609.20, 609.205, 609.221, 609.222, 609.223, 609.224, 609.2242, 609.24, 609.245, 609.25, 609.255, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.561, 609.582, subdivision 1, 609.687, 609.713, and 609.749.

611A.0311 Domestic Abuse Prosecutions Plan and Procedures; Pilot Program

Subdivision 1. Definitions.

(a) "Domestic abuse" has the meaning given in section 518B.01, subdivision 2.

(b) "Domestic abuse case" means a prosecution for:

(1) a crime that involves domestic abuse;

(2) violation of a condition of release following an arrest for a crime that involves domestic abuse; or

(3) violation of a domestic abuse order for protection.

Subdivision 2. Contents of plan.

Each county and city attorney shall develop and implement a written plan to expedite and improve the efficiency and just disposition of domestic abuse cases brought to the prosecuting authority. Domestic abuse advocates, law enforcement officials, and other interested members of the public must have an opportunity to assist in the development or adaptation of the plans in each jurisdiction. The commissioner shall make the model and related training and technical assistance available to all city and county attorneys. All plans must state goals and contain policies and procedures to address the following matters:

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(1) early assignment of a trial prosecutor who has the responsibility of handling the domestic abuse case through disposition, whenever feasible, or, where applicable, probation revocation; and early contact between the trial prosecutor and the victim;

(2) procedures to facilitate the earliest possible contact between the prosecutor's office and the victim for the purpose of acquainting the victim with the criminal justice process, the use of subpoenas, the victim's role as a witness in the prosecution, and the domestic abuse or victim services that are available;

(3) procedures to coordinate the trial prosecutor's efforts with those of the domestic abuse advocate or victim advocate, where available, and to facilitate the early provision of advocacy services to the victim;

(4) procedures to encourage the prosecution of all domestic abuse cases where a crime can be proven;

(5) methods that will be used to identify, gather, and preserve evidence in addition to the victim's in-court testimony that will enhance the ability to prosecute a case when a victim is reluctant to assist, including but not limited to physical evidence of the victim's injury, evidence relating to the scene of the crime, eyewitness testimony, and statements of the victim made at or near the time of the injury;

(6) procedures for educating local law enforcement agencies about the contents of the plan and their role in assisting with its implementation;

(7) the use for subpoenas to victims and witnesses, where appropriate;

(8) procedures for annual review of the plan to evaluate whether it is meeting its goals effectively and whether improvements are needed; and

(9) a timetable for implementation.

Subdivision 3. Notice filed with Department of Public Safety.
Each city and county attorney shall file a notice that a prosecution plan has been adopted with the commissioner of public safety by June 1, 1994.

611A.0315 Victim Notification; Domestic Assault; Harassment

Subdivision 1. Notice of decision not to prosecute.

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

(1) contacting the victim or a person designated by the victim by telephone; and

(2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

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

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

Subdivision 2. Definitions.
For the purposes of this section, the following terms have the meanings given them.

(a) "Assault" has the meaning given it in section 609.02, subdivision 10.

(b) "Domestic assault" means an assault committed by the actor against a family or household member.

(c) "Family or household member" has the meaning given it in section 518B.01, subdivision 2.

(d) "Harassment" means a violation of section 609.749.

(e) "Criminal sexual conduct offense" means a violation of sections 609.342 to 609.3453.

611A.032 [Repealed, 1995 c 186 s 102]

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611A.033 Speedy Trial; Notice of Schedule Change

(a) A victim has the right to request that the prosecutor make a demand under rule 11.10 of the Rules of Criminal Procedure that the trial be commenced within 60 days of the demand. The prosecutor shall make reasonable efforts to comply with the victim's request.

(b) A prosecutor shall make reasonable efforts to provide advance notice of any change in the schedule of the court proceedings to a victim who has been subpoenaed or requested to testify.

611A.034 Separate Waiting Areas in Courthouse

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

611A.035 Confidentiality of Victim's Address

Subdivision 1. Discretion of prosecutor not to disclose.
A prosecutor may elect not to disclose a victim's or witness's home or employment address, telephone number, or date of birth if the prosecutor certifies to the trial court that:

(1) the defendant or respondent has been charged with or alleged to have committed a crime;

(2) the nondisclosure is needed to address the victim's or witness's concerns about safety or security; and

(3) the victim's or witness's home or employment address, telephone number, or date of birth is not relevant to the prosecution's case. If such a certification is made, the prosecutor must make a motion with proper notice for the court's permission to continue to withhold this information. The court shall either:

(1) order the information disclosed to defense counsel, but order it not disclosed to the defendant; or

(2) order the prosecutor to contact the victim or witness to arrange a confidential meeting between defense counsel, or defense counsel's agent, and the victim or witness, at a neutral location, if the victim or witness consents to a meeting. This subdivision shall not be construed to compel a victim or witness to give any statement to or attend any meeting with defense counsel or defense counsel's agent.

Subdivision 2. Witness testimony in court.
No victim or witness providing testimony in court proceedings may be compelled to state a home or employment address, telephone number, or the date of birth of the victim or witness on the record in open court unless the court finds that the testimony would be relevant evidence.

611A.036 Prohibition Against Employer Retaliation

Subdivision 1. Victim or witness.
An employer must allow a victim or witness, who is subpoenaed or requested by the prosecutor to attend court for the purpose of giving testimony, reasonable time off from work to attend criminal proceedings related to the victim's case.

Subdivision 2. Victim's spouse or next of kin.
An employer must allow a victim of a heinous crime, as well as the victim's spouse or next of kin, reasonable time off from work to attend criminal proceedings related to the victim's case.

Subdivision 3. Prohibited acts.
An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to attend a criminal proceeding pursuant to this section.

Subdivision 4. Verification; confidentiality.
An employee who is absent from the workplace shall give 48 hours' advance notice to the employer, unless impracticable or an emergency prevents the employee from doing so. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

Subdivision 5. Penalty.
An employer who violates this section is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to offer job reinstatement to any employee discharged from employment in violation of this section, and to pay the employee back wages as appropriate.

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Subdivision 6. Civil action.
In addition to any remedies otherwise provided by law, an employee injured by a violation of this section may bring a civil action for recovery for damages, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

Subdivision 7. Definition.
As used in this section, "heinous crime" means:

(1) a violation or attempted violation of section 609.185 or 609.19;

(2) a violation of section 609.195 or 609.221; or

(3) a violation of section 609.342, 609.343, or 609.344, if the offense was committed with force or violence or if the complainant was a minor at the time of the offense.

611A.037 Presentence Investigation; Victim Impact; Notice

Subdivision 1. Victim impact statement.
A presentence investigation report prepared under section 609.115 shall include the following information relating to victims:

(a) a summary of the damages or harm and any other problems generated by the criminal occurrence;

(b) 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

(c) an attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

Subdivision 2. Notice to victim.
The officer conducting a presentence or predispositional investigation shall make reasonable and good faith efforts to assure that the victim of that crime is provided with the following information by contacting the victim or assuring that another public or private agency has contacted the victim:

(i) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel;

(ii) the victim's right to request restitution pursuant to section 611A.04;

(iii) the time and place of the sentencing or juvenile court disposition and the victim's right to be present; and

(iv) 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

(v) the officer shall provide the victim with information about the court's options for sentencing and other dispositions. Failure of the officer to comply with this subdivision does not give any rights or grounds for postconviction or post-juvenile disposition relief to the defendant or juvenile court respondent, nor does it entitle a defendant or a juvenile court respondent to withdraw a plea of guilty.

611A.038 Right to Submit Statement at Sentencing

(a) A victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing. The impact statement may be presented to the court orally or in writing, at the victim's option. If the victim requests, the prosecutor must orally present the statement to the court. Statements may include the following, subject to reasonable limitations as to time and length:

(1) a summary of the harm or trauma suffered by the victim as a result of the crime;

(2) a summary of the economic loss or damage suffered by the victim as a result of the crime; and

(3) a victim's reaction to the proposed sentence or disposition.

(b) A representative of the community affected by the crime may submit an impact statement in the same manner that a victim may as provided in paragraph (a). This impact statement shall describe the adverse social or economic effects the offense has had on persons residing and businesses operating in the community where the offense occurred.

(c) If the court permits the defendant or anyone speaking on the defendant's behalf to present a statement to the court, the court shall limit the response to factual issues which are relevant to sentencing.

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(d) Nothing in this section shall be construed to extend the defendant's right to address the court under section 631.20.

611A.0385 Sentencing; Implementation of Right to Notice of Offender Release and Expungement

At the time of sentencing or the disposition hearing in a case in which there is an identifiable victim, the court or its designee shall make reasonable good faith efforts to inform each affected victim of the offender notice of release and notice of expungement provisions of section 611A.06. If the victim is a minor, the court or its designee shall, if appropriate, also make reasonable good faith efforts to inform the victim's parent or guardian of the right to notice of release and notice of expungement. The state court administrator, in consultation with the commissioner of corrections and the prosecuting authorities, shall prepare a form that outlines the notice of release and notice of expungement provisions under section 611A.06 and describes how a victim should complete and submit a request to the commissioner of corrections or other custodial authority to be informed of an offender's release or submit a request to the prosecuting authorities to be informed of an offender's petition for expungement. The state court administrator shall make these forms available to court administrators who shall assist the court in disseminating right to notice of offender release and notice of expungement information to victims.

611A.039 Right to Notice of Final Disposition of Criminal Case

Subdivision 1. Notice required.
Except as otherwise provided in subdivision 2, within 15 working days after a conviction, acquittal, or dismissal in a criminal case in which there is an identifiable crime victim, the prosecutor shall make reasonable good faith efforts to provide to each affected crime victim oral or written notice of the final disposition of the case. When the court is considering modifying the sentence for a felony or a crime of violence or an attempted crime of violence, the court or its designee shall make a reasonable and good faith effort to notify the victim of the crime. If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent or guardian. The notice must include:

(1) the date and approximate time of the review;

(2) the location where the review will occur;

(3) the name and telephone number of a person to contact for additional information; and

(4) a statement that the victim and victim's family may provide input to the court concerning the sentence modification. As used in this section, "crime of violence" has the meaning given in section 624.712, subdivision 5 , and also includes gross misdemeanor violations of section 609.224, and nonfelony violations of sections 518B.01, 609.2231, 609.3451, 609.748, and 609.749.

Subdivision 2. Exception.
If a prosecutor contacts an identifiable crime victim in advance of the final case disposition, either orally or in writing, and notifies the victim of the victim's right to request information on the final disposition of the case, the prosecutor shall only be required to provide the notice described in subdivision 1 to those victims who have indicated in advance their desire to be notified of the final case disposition.

611A.0392 Notice to Community Crime Prevention Group

Subdivision 1. Definitions.

(a) As used in this section, the following terms have the meanings given them.

(b) "Cities of the first class" has the meaning given in section 410.01.

(c) "Community crime prevention group" means a community group focused on community safety and crime prevention that:

(1) meets regularly for the purpose of discussing community safety and patrolling community neighborhoods for criminal activity;

(2) is previously designated by the local law enforcement agency as a community crime prevention group; and

(3) interacts regularly with the police regarding community safety issues.

Subdivision 2. Notice.

(a) A law enforcement agency that is responsible for arresting individuals who commit crimes within cities of the first class shall make reasonable efforts to disclose certain information in a timely manner to the designated leader

of a community crime prevention group that has reported criminal activity, excluding petty misdemeanors, to law enforcement. The law enforcement agency shall make reasonable efforts to disclose information on the final outcome of the investigation into the criminal activity including, but not limited to, where appropriate, the decision to arrest or not arrest the person and whether the matter was referred to a prosecuting authority. If the matter is referred to a prosecuting authority, the law enforcement agency must notify the prosecuting authority of the community crime prevention group's request for notice under this subdivision.

(b) A prosecuting authority who is responsible for filing charges against or prosecuting a person arrested for a criminal offense in cities of the first class shall make reasonable efforts to disclose certain information in a timely manner to the designated leader of a community crime prevention group that has reported specific criminal activity to law enforcement. The prosecuting authority shall make reasonable efforts to disclose information on the final outcome of the criminal proceeding that resulted from the arrest including, but not limited to, where appropriate, the decision to dismiss or not file charges against the arrested person.

(c) A community crime prevention group that would like to receive written or Internet notice under this subdivision must request the law enforcement agency and the prosecuting authority where the specific alleged criminal conduct occurred to provide notice to the community crime prevention group leader. The community crime prevention group must provide the law enforcement agency with the name, address, and telephone number of the community crime prevention group leader and the preferred method of communication.

611A.0395 Right to Information Regarding Defendant's Appeal

Subdivision 1. Prosecuting attorney to notify victims.

(a) The prosecuting attorney shall make a reasonable and good faith effort to provide to each affected victim oral or written notice of a pending appeal. This notice must be provided within 30 days of filing of the respondent's brief. The notice must contain a brief explanation of the contested issues or a copy of the brief, an explanation of the applicable process, information about scheduled oral arguments or hearings, a statement that the victim and the victim's family may attend the argument or hearing, and the name and telephone number of a person that may be contacted for additional information.

(b) In a criminal case in which there is an identifiable crime victim, within 15 working days of a final decision on an appeal, the prosecuting attorney shall make a reasonable and good faith effort to provide to each affected victim oral or written notice of the decision. This notice must include a brief explanation of what effect, if any, the decision has upon the judgment of the trial court and the name and telephone number of a person that may be contacted for additional information.

Subdivision 2. Exception.

The notices described in subdivision 1 do not have to be given to victims who have previously indicated a desire not to be notified.

611A.04 Order of Restitution

Subdivision 1. Request; decision.

(a) A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence. Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional

hearing. The court administrator shall provide copies of this request to the prosecutor and the offender or the offender's attorney at least 24 hours before the sentencing or dispositional hearing. The issue of restitution is reserved or the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim's affidavit or other competent evidence submitted by the victim is not received in time. At the sentencing or dispositional hearing, the court shall give the offender an opportunity to respond to specific items of restitution and their dollar amounts in accordance with the procedures established in section 611A.045, subdivision 3.

(b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:

(1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;

(2) sufficient evidence of a right to restitution has been submitted; and

(3) the true extent of the victim's loss or the loss of the Crime Victims Reparations Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request. If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, the prosecutor, and the Crime Victims Reparations Board at least five business days before the hearing. The court's restitution decision is governed by this section and section 611A.045.

(c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented. If the court grants partial restitution it shall also specify the full amount of restitution that may be docketed as a civil judgment under subdivision 3. The court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. In the case of a defendant who is on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment.

Subdivision 1a. Crime board request.
The Crime Victims Reparations Board may request restitution on behalf of a victim by filing a copy of orders of the board, if any, which detail any amounts paid by the board to the victim. The board may file the payment order with the court administrator or with the person or agency the court has designated to obtain information relating to restitution. The board shall submit the payment order not less than three business days after it is issued by the board. The court administrator shall provide copies of the payment order to the prosecutor and the offender or the offender's attorney within 48 hours of receiving it from the board or at least 24 hours before the sentencing or dispositional hearing, whichever is earlier. By operation of law, the issue of restitution is reserved if the payment order is not received at least three days before the sentencing or dispositional hearing. The filing of a payment order for reparations with the court administrator shall also serve as a request for restitution by the victim. The restitution requested by the board may be considered to be both on its own behalf and on behalf of the victim. If the board has not paid reparations to the victim or on the victim's behalf, restitution may be made directly to the victim. If the board has paid reparations to the victim or on the victim's behalf, the court shall order restitution payments to be made directly to the board.

Subdivision 1b. Affidavit of disclosure.
An offender who has been ordered by the court to make restitution in an amount of $500 or more shall file an affidavit of financial disclosure with the correctional agency responsible for investigating the financial resources of the offender on request of the agency. The commissioner of corrections shall prescribe what financial information the affidavit must contain.

Subdivision 2. Procedures.
The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the restitution is to be paid. The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days; except that the court administrator is not required to disburse a restitution payment that is under $10 unless the payment would fulfill the offender's restitution obligation. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the amount of restitution actually paid by the offender. The court administrator shall forward the data collected to the state court administrator who shall compile the data and make it available to the Supreme Court and the legislature upon request.

Subdivision 3. Effect of order for restitution.
An order of restitution may be enforced by any person named in the order to receive the restitution, or by the Crime Victims Reparations Board in the same manner as a judgment in a civil action. Any order for restitution in favor of a victim shall also

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operate as an order for restitution in favor of the Crime Victims Reparations Board, if the board has paid reparations to the victim or on the victim's behalf. Filing fees for docketing an order of restitution as a civil judgment are waived for any victim named in the restitution order. An order of restitution shall be docketed as a civil judgment, in the name of any person named in the order and in the name of the crime victims reparations board, by the court administrator of the district court in the county in which the order of restitution was entered. The court administrator also shall notify the commissioner of revenue of the restitution debt in the manner provided in chapter 270A, the Revenue Recapture Act. A juvenile court is not required to appoint a guardian ad litem for a juvenile offender before docketing a restitution order. Interest shall accrue on the unpaid balance of the judgment as provided in section 549.09. Whether the order of restitution has been docketed or not, it is a debt that is not dischargeable in bankruptcy. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Subdivision 4. Payment of restitution.
When the court orders both the payment of restitution and the payment of a fine and the defendant does not pay the entire amount of court-ordered restitution and the fine at the same time, the court may order that all restitution shall be paid before the fine is paid.

Subdivision 5. Unclaimed restitution payments.
Restitution payments held by the court for a victim that remain unclaimed by the victim for more than three years shall be deposited in the crime victims account created in section 611A.612. At the time the deposit is made, the court shall record the name and last known address of the victim and the amount being deposited, and shall forward the data to the Crime Victims Reparations Board.

611A.045 Procedure for Issuing Order of Restitution

Subdivision 1. Criteria.

(a) The court, in determining whether to order restitution and the amount of the restitution, shall consider the following factors:

(1) the amount of economic loss sustained by the victim as a result of the offense; and

(2) the income, resources, and obligations of the defendant.

(b) If there is more than one victim of a crime, the court shall give priority to victims who are not governmental entities when ordering restitution.

Subdivision 2. Presentence investigation.
The presentence investigation report made pursuant to section 609.115, subdivision 1, must contain information pertaining to the factors set forth in subdivision 1.

Subdivision 2a. Payment structure.
The court shall include in every restitution order a provision requiring a payment schedule or structure. The court may assign the responsibility for developing the schedule or structure to the court administrator, a probation officer, or another designated person. The person who develops the payment schedule or structure shall consider relevant information supplied by the defendant. If the defendant is placed on supervised probation, the payment schedule or structure must be incorporated into the probation agreement and must provide that the obligation to pay restitution continues throughout the term of probation. If the defendant is not placed on probation, the structure or schedule must provide that the obligation to pay restitution begins no later than 60 days after the restitution order is issued.

Subdivision 3. Dispute; evidentiary burden; procedures.

(a) At the sentencing, dispositional hearing, or hearing on the restitution request, the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts. This burden of production must include a detailed sworn affidavit of the offender setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims. The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing. A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.

(b) An offender may challenge restitution, but must do so by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later. Notice to the offender's attorney is deemed notice to the offender.

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The hearing request must be made in writing and filed with the court administrator. A defendant may not challenge restitution after the 30-day time period has passed.

611A.046 Victim's Right to Request Probation Review Hearing

A victim has the right to ask the offender's probation officer to request a probation review hearing if the offender fails to pay restitution as required in a restitution order.

611A.05 Penalties No Bar to Civil Remedies

The provision in any law for a penalty or forfeiture for its violation shall not be construed to deprive an injured person of the right to recover from the offender damages sustained by reason of the violation of such law.

611A.06 Right to Notice of Release

Subdivision 1. Notice of release required.
The commissioner of corrections or other custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, including release on extended furlough and for work release; released from a juvenile correctional facility; released from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency, or commitment under section 253B.18 or 253B.185; or if the offender's custody status is reduced, if the victim has mailed to the commissioner of corrections or to the head of the facility in which the offender is confined a written request for this notice. The good faith effort to notify the victim must occur prior to the offender's release or when the offender's custody status is reduced. For a victim of a felony crime against the person for which the offender was sentenced to imprisonment for more than 18 months, the good faith effort to notify the victim must occur 60 days before the offender's release.

Subdivision 1a. Notice of expungement required.
The prosecuting authority with jurisdiction over an offense for which expungement is being sought shall make a good faith effort to notify a victim that the expungement is being sought if:

(1) the victim has mailed to the prosecuting authority with jurisdiction over an offense for which expungement is being sought a written request for this notice, or

(2) the victim has indicated on a request for notice of expungement submitted under subdivision 1 a desire to be notified in the event the offender seeks an expungement for the offense. A copy of any written request for a notice of expungement request received by the commissioner of corrections or other custodial authority shall be forwarded to the prosecutorial authority with jurisdiction over the offense to which the notice relates. The prosecutorial authority complies with this section upon mailing a copy of an expungement petition relating to the notice to the address which the victim has most recently provided in writing.

Subdivision 2. Contents of notice.
The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release. The commissioner or other custodial authority complies with this section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the commissioner or authority in writing.

Subdivision 3. Notice of escape.
If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, or from any facility described in subdivision 1, the commissioner or other custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the offender's release under subdivision 1 within six hours after discovering the escape and shall also make reasonable efforts to notify the victim within 24 hours after the offender is apprehended.

Subdivision 4. Private data.
All identifying information regarding the victim, including the victim's request and the notice provided by the commissioner or custodial authority, is classified as private data on individuals as defined in section 13.02, subdivision 12, and is accessible only to the victim.

Subdivision 5. Definition.
As used in this section, "crime against the person" means a crime listed in section 611A.031.

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Electronic Monitoring

611A.07 Electronic Monitoring to Protect Domestic Abuse Victims; Standards

Subdivision 1. Generally.
The commissioner of corrections, after considering the recommendations of the Advisory Council on Battered Women and Domestic Abuse and the Sexual Assault Advisory Council, and in collaboration with the commissioner of public safety, shall adopt standards governing electronic monitoring devices used to protect victims of domestic abuse. In developing proposed standards, the commissioner shall consider the experience of the courts in the Tenth Judicial District in the use of the devices to protect victims of domestic abuse. These standards shall promote the safety of the victim and shall include measures to avoid the disparate use of the device with communities of color, product standards, monitoring agency standards, and victim disclosure standards.

Subdivision 2. [Repealed, 1996 c 310 s 1]

Barring Perpetrator Recovery

611A.08 Barring Perpetrators of Crimes from Recovering for Injuries Sustained During Criminal Conduct

Subdivision 1. Definitions.
As used in this section:

(1) "perpetrator" means a person who has engaged in criminal conduct and includes a person convicted of a crime;

(2) "victim" means a person who was the object of another's criminal conduct and includes a person at the scene of an emergency who gives reasonable assistance to another person who is exposed to or has suffered grave physical harm;

(3) "course of criminal conduct" includes the acts or omissions of a victim in resisting criminal conduct; and

(4) "convicted" includes a finding of guilt, whether or not the adjudication of guilt is stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no contest plea, a judgment of conviction, an adjudication as a delinquent child, an admission to a juvenile delinquency petition, or a disposition as an extended jurisdiction juvenile.

Subdivision 2. Perpetrator's assumption of the risk.
A perpetrator assumes the risk of loss, injury, or death resulting from or arising out of a course of criminal conduct involving a violent crime, as defined in this section, engaged in by the perpetrator or an accomplice, as defined in section 609.05, and the crime victim is immune from and not liable for any civil damages as a result of acts or omissions of the victim if the victim used reasonable force as authorized in section 609.06 or 609.065.

Subdivision 3. Evidence.
Notwithstanding other evidence which the victim may adduce relating to the perpetrator's conviction of the violent crime involving the parties to the civil action, a certified copy of: a guilty plea; a court judgment of guilt; a court record of conviction as specified in section 599.24, 599.25, or 609.041; an adjudication as a delinquent child; or a disposition as an extended jurisdiction juvenile pursuant to section 260B.130 is conclusive proof of the perpetrator's assumption of the risk.

Subdivision 4. Attorney's fees to victim.
If the perpetrator does not prevail in a civil action that is subject to this section, the court may award reasonable expenses, including attorney's fees and disbursements, to the victim.

Subdivision 5. Stay of civil action.
Except to the extent needed to preserve evidence, any civil action in which the defense set forth in subdivision 1 or 2 is raised shall be stayed by the court on the motion of the defendant during the pendency of any criminal action against the plaintiff based on the alleged violent crime.

Subdivision 6. Violent crime; definition.
For purposes of this section, "violent crime" means an offense named in sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.342; 609.343; 609.344; 609.345; 609.561; 609.562; 609.563; and 609.582, or an attempt to commit any of these offenses. "Violent crime" includes crimes in other states or jurisdictions which would have been within the definition set forth in this subdivision if they had been committed in this state.

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Sex Offender HIV Testing

611A.19 Testing of Sex Offender for Human Immunodeficiency Virus

Subdivision 1. Testing on request of victim.

(a) Upon the request or with the consent of the victim, the prosecutor shall make a motion in camera and the sentencing court shall issue an order requiring an adult convicted of or a juvenile adjudicated delinquent for violating section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or any other violent crime, as defined in section 609.1095, to submit to testing to determine the presence of human immunodeficiency virus (HIV) antibody if:

(1) the crime involved sexual penetration, however slight, as defined in section 609.341, subdivision 12 ; or

(2) evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit the human immunodeficiency virus (HIV).

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

(c) The order shall include the name and contact information of the victim's choice of health care provider.

Subdivision 2. Disclosure of test results.

The date and results of a test performed under subdivision 1 are private data as defined in section 13.02, subdivision 12, when maintained by a person subject to chapter 13, or may be released only with the subject's consent, if maintained by a person not subject to chapter 13. The results are available, on request, to the victim or, if the victim is a minor, to the victim's parent or guardian and positive test results shall be reported to the commissioner of health. Unless the subject of the test is an inmate at a state correctional facility, any test results given to a victim or victim's parent or guardian shall be provided by a health professional who is trained to provide the counseling described in section 144.7414. If the subject of the test is an inmate at a state correctional facility, test results shall be given by the Department of Corrections' medical director to the victim's health care provider who shall give the results to the victim or victim's parent or guardian. Data regarding administration and results of the test are not accessible to any other person for any purpose and shall not be maintained in any record of the court or court services or any other record. After the test results are given to the victim or the victim's parent or guardian, data on the test must be removed from any medical data or health records maintained under section 13.384 or 144.335 and destroyed, except for those medical records maintained by the Department of Corrections.

Notice of Risk of Sexually Transmitted Disease

611A.20 Notice of Risk of Sexually Transmitted Disease

Subdivision 1. Notice required.

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

Subdivision 2. Contents of notice.

The commissioners of public safety and corrections, in consultation with sexual assault victim advocates and health care professionals, shall develop the notice required by subdivision 1. The notice must inform the victim of:

(1) the risk of contracting sexually transmitted diseases as a result of a sexual assault;

(2) the symptoms of sexually transmitted diseases;

(3) recommendations for periodic testing for the diseases, where appropriate;

(4) locations where confidential testing is done and the extent of the confidentiality provided;

(5) information necessary to make an informed decision whether to request a test of the offender under section 611A.19; and

(6) other medically relevant information.

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Domestic Violence and Sexual Assault Prevention

611A.201 Director of Prevention of Domestic Violence and Sexual Assault

Subdivision 1. Appointment of director.
The executive director of the center for crime victim services shall appoint a person to serve as director of domestic violence and sexual assault prevention in the center. The director must have experience in domestic violence and sexual assault prevention issues. The director serves at the executive director's pleasure in the unclassified service. The executive director may appoint, supervise, discipline, and discharge employees to assist the director in carrying out the director's responsibilities under this section.

Subdivision 2. Director's responsibilities.
The director shall have the following duties:

(1) advocate for the rights of victims of domestic violence and sexual assault;

(2) increase public education and visibility about the prevention of domestic violence and sexual assault;

(3) encourage accountability regarding domestic violence and sexual assault at all levels of the system, and develop recommendations to improve accountability when the system fails;

(4) support prosecution and civil litigation efforts regarding domestic violence and sexual assault at the federal and state levels;

(5) study issues involving domestic violence and sexual assault as they pertain to both men and women and present findings and recommendations resulting from these studies to all branches of government;

(6) initiate policy changes regarding domestic violence and sexual assault at all levels of government;

(7) coordinate existing resources and promote coordinated and immediate community responses to better serve victims of domestic violence and sexual assault;

(8) build partnerships among law enforcement, prosecutors, defenders, advocates, and courts to reduce the occurrence of domestic violence and sexual assault;

(9) encourage and support the efforts of health care providers, mental health experts, employers, educators, clergy members, and others, in raising awareness of and addressing how to prevent domestic violence and sexual assault;

(10) coordinate and maximize the use of federal, state, and local resources available to prevent domestic violence and sexual assault and leverage more resources through grants and private funding; and

(11) serve as a liaison between the executive director of the center for crime victim services and the commissioner of health with regard to the Department of Health's sexual violence prevention program funded by federal block grants, and oversee how this money is spent.

Subdivision 3. Service as chair of interagency task force.
The director shall serve as the chair of the interagency task force described in section 611A.202.

Subdivision 4. Annual report.
By January 15 of each year, the director shall report to the governor and the legislature on matters within the director's jurisdiction. In addition to other issues deemed relevant by the director, the report may include recommendations for changes in policies and laws relating to domestic violence and sexual assault prevention.

Subdivision 5. Other responsibilities.
In addition to those described in this section, the executive director of the center may assign other appropriate responsibilities to the director.

611A.202 MS 2004 [Expired]

Program to Aid Victims of Sexual Attacks

611A.21 Development of Statewide Program; Definition; Services

Subdivision 1. Program.
The commissioner of corrections shall develop a community based, statewide program to aid victims of reported sexual attacks.

Subdivision 2. Sexual attack.
As used in sections 611A.21 and 611A.221, a "sexual attack" means any nonconsensual act of rape, sodomy, or indecent liberties.

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Subdivision 3. Program services.
The program developed by the commissioner of corrections may include, but not be limited to, provision of the following services:

(a) Voluntary counseling by trained personnel to begin as soon as possible after a sexual attack is reported. The counselor shall be of the same sex as the victim and shall, if requested, accompany the victim to the hospital and to other proceedings concerning the alleged attack, including police questioning, police investigation, and court proceedings. The counselor shall also inform the victim of hospital procedures, police and court procedures, the possibility of contracting venereal disease, the possibility of pregnancy, expected emotional reactions and any other relevant information; and shall make appropriate referrals for any assistance desired by the victim.

(b) Payment of all costs of any medical examinations and medical treatment which the victim may require as a result of the sexual attack if the victim is not otherwise reimbursed for these expenses or is ineligible to receive compensation under any other law of this state or of the United States.

611A.22 Powers of Commissioner

In addition to developing the statewide program, the commissioner of corrections may:

(a) assist and encourage county attorneys to assign prosecuting attorneys trained in sensitivity and understanding of victims of sexual attacks;

(b) assist the Peace Officers Training Board and municipal police forces to develop programs to provide peace officers training in sensitivity and understanding of victims of sexual attacks; and encourage the assignment of trained peace officers of the same sex as the victim to conduct all necessary questioning of the victim;

(c) encourage hospital administrators to place a high priority on the expeditious treatment of victims of sexual attacks; and to retain personnel trained in sensitivity and understanding of victims of sexual attacks.

611A.221 Additional Power

The Department of Correction's victim service unit is authorized to accept and expend funds received from other state agencies, other units of governments and other agencies, that result from the distribution of resource materials.

611A.23 [Repealed, 1996 c 310 s 1]

611A.24 [Repealed, 1985 c 262 s 7]

611A.25 Sexual Assault Advisory Council

Subdivision 1. Creation.
The commissioner of corrections shall appoint a 12-member Advisory Council on Sexual Assault to advise the commissioner on the implementation and continued operation of sections 611A.21 and 611A.221. The Sexual Assault Advisory Council shall also serve as a liaison between the commissioner and organizations that provide services to victims of sexual assault, and as an advocate within the Department of Corrections for the rights of sexual assault victims.

Subdivision 2. Membership.
No more than six of the members of the Sexual Assault Advisory Council may be representatives of community or governmental organizations that provide services to sexual assault victims. One-half of the council's members shall reside in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver Counties, and one-half of the members shall reside in the nonmetropolitan area. To the extent possible, nonmetropolitan members must be representative of all nonmetropolitan regions of the state.

Subdivision 3. Terms; vacancies; expenses.
Section 15.059 governs the filling of vacancies and removal of members of the Sexual Assault Advisory Council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. The council expires on June 30, 2003. Council members shall receive expense reimbursement as specified in section 15.059.

Subdivision 4. [Repealed, 1991 c 272 s 20]

Subdivision 5. Duties.
In addition to other duties, the advisory council shall advise the director of domestic violence and sexual assault prevention in matters related to preventing occurrences of these types of violence.

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611A.26 Polygraph Examinations; Criminal Sexual Conduct Complaints; Limitations

Subdivision 1. Polygraph prohibition.
No law enforcement agency or prosecutor shall require that a complainant of a criminal sexual conduct offense submit to a polygraph examination as part of or a condition to proceeding with the investigation, charging, or prosecution of such offense.

Subdivision 2. Law enforcement inquiry.
A law enforcement agency or prosecutor may not ask that a complainant of a criminal sexual conduct offense submit to a polygraph examination as part of the investigation, charging, or prosecution of such offense unless the complainant has been referred to and had the opportunity to exercise the option of consulting with a sexual assault counselor as defined in section 595.02, subdivision 1, paragraph (k).

Subdivision 3. Informed consent requirement.
At the request of the complainant, a law enforcement agency may conduct a polygraph examination of the complainant only with the complainant's written, informed consent as provided in this subdivision.

Subdivision 4. Informed consent.
To consent to a polygraph, a complainant must be informed in writing that:

(1) the taking of the polygraph examination is voluntary and solely at the victim's request;

(2) a law enforcement agency or prosecutor may not ask or require that the complainant submit to a polygraph examination;

(3) the results of the examination are not admissible in court; and

(4) the complainant's refusal to take a polygraph examination may not be used as a basis by the law enforcement agency or prosecutor not to investigate, charge, or prosecute the offender.

Subdivision 5. Polygraph refusal.
A complainant's refusal to submit to a polygraph examination shall not prevent the investigation, charging, or prosecution of the offense.

Subdivision 6. Definitions.
For the purposes of this section, the following terms have the meanings given.

(a) "Criminal sexual conduct" means a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3451.

(b) "Complainant" means a person reporting to have been subjected to criminal sexual conduct.

(c) "Polygraph examination" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness.

Note: This section, as added by Laws 2007, chapter 54, article 4, section 7, is effective July 1, 2008. Laws 2007, chapter 54, article 4, section 7, the effective date.

Battered Women

611A.31 Definitions

Subdivision 1. Scope.
For the purposes of sections 611A.31 to 611A.36, the following terms have the meanings given.

Subdivision 2. Battered woman.
"Battered woman" means a woman who is being or has been victimized by domestic abuse as defined in section 518B.01, subdivision 2.

Subdivision 3. Emergency shelter services.
"Emergency shelter services" include, but are not limited to, secure crisis shelters for battered women and housing networks for battered women.

Subdivision 4. Support services.
"Support services" include, but are not limited to, advocacy services, legal services, counseling services, transportation services, child care services, and 24 hour information and referral services.

Subdivision 5. Commissioner.
"Commissioner" means the commissioner of the Department of Corrections or a designee.

611A.32 Battered Women Programs

Subdivision 1. Grants awarded.
The commissioner shall award grants to programs which provide emergency shelter services to battered women and support services to battered women and domestic abuse victims and their children. The commissioner shall also award grants for training, technical assistance, and for the development and implementation of education programs to increase public awareness of the causes of battering, the solutions to preventing

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and ending domestic violence, and the problems faced by battered women and domestic abuse victims. Grants shall be awarded in a manner that ensures that they are equitably distributed to programs serving metropolitan and non-metropolitan populations. By July 1, 1995, community-based domestic abuse advocacy and support services programs must be established in every judicial assignment district.

Subdivision 1a. Program for American Indian women. The commissioner shall establish at least one program under this section to provide emergency shelter services and support services to battered American Indian women. The commissioner shall grant continuing operating expenses to the program established under this subdivision in the same manner as operating expenses are granted to programs established under subdivision 1.

Subdivision 2. Applications.
Any public or private nonprofit agency may apply to the commissioner for a grant to provide emergency shelter services to battered women, support services to domestic abuse victims, or both, to battered women and their children. The application shall be submitted in a form approved by the commissioner by rule adopted under chapter 14, after consultation with the advisory council, and shall include:

(1) a proposal for the provision of emergency shelter services for battered women, support services for domestic abuse victims, or both, for battered women and their children;

(2) a proposed budget;

(3) evidence of an ability to integrate into the proposed program the uniform method of data collection and program evaluation established under sections 611A.33 and 611A.34;

(4) evidence of an ability to represent the interests of battered women and domestic abuse victims and their children to local law enforcement agencies and courts, county welfare agencies, and local boards or departments of health;

(5) evidence of an ability to do outreach to unserved and underserved populations and to provide culturally and linguistically appropriate services; and

(6) any other content the commissioner may require by rule adopted under chapter 14, after considering the recommendations of the advisory council. Programs which have been approved for grants in prior years may submit materials which indicate changes in items listed in clauses (1) to (6), in order to qualify for renewal funding.

Nothing in this subdivision may be construed to require programs to submit complete applications for each year of renewal funding.

Subdivision 3. Duties of grantees.
Every public or private nonprofit agency which receives a grant to provide emergency shelter services to battered women and support services to battered women and domestic abuse victims shall comply with all rules of the commissioner related to the administration of the pilot programs.

Subdivision 4. [Repealed, 1991 c 272 s 20]

Subdivision 5. Classification of data collected by grantees.
Personal history information and other information collected, used or maintained by a grantee from which the identity or location of any victim of domestic abuse may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the grantee shall maintain the data in accordance with the provisions of chapter 13.

611A.33 Duties of Commissioner

The commissioner shall:

(1) review applications for and award grants to a program pursuant to section 611A.32, subdivision 1 , after considering the recommendation of the advisory council;

(2) appoint the members of the advisory council created under section 611A.34, and provide consultative staff and other administrative services to the advisory council;

(3) after considering the recommendation of the advisory council, appoint a program director to perform the duties set forth in section 611A.35;

(4) design and implement a uniform method of collecting data on domestic abuse victims to be used to evaluate the programs funded under section 611A.32;

(5) provide technical aid to applicants in the development of grant requests and provide technical aid to programs in meeting the data collection requirements established by the commissioner; and

(6) adopt, under chapter 14, all rules necessary to implement the provisions of sections 611A.31 to 611A.36.

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611A.34 Advisory Council on Battered Women

Subdivision 1. Generally.
The commissioner shall appoint a 12-member advisory council to advise the commissioner on the implementation and continued operation of sections 611A.31 to 611A.36. The Advisory Council on Battered Women and Domestic Abuse shall also serve as a liaison between the commissioner and organizations that provide services to battered women and domestic abuse victims. Section 15.059 governs the filling of vacancies and removal of members of the advisory council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. Notwithstanding section 15.059, the council shall not expire. Council members shall not receive per diem, but shall receive expenses in the same manner and amount as state employees.

Subdivision 2. Membership.
Persons appointed shall be knowledgeable about and have experience or interest in issues concerning battered women and domestic abuse victims, including the need for effective advocacy services. The membership of the council shall broadly represent the interests of battered women and domestic abuse victims in Minnesota. No more than six of the members of the Advisory Council on Battered Women and Domestic Abuse may be representatives of community or governmental organizations that provide services to battered women and domestic abuse victims. One-half of the council's members shall reside in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver Counties, and one-half of the members shall reside in the non-metropolitan area. To the extent possible, non-metropolitan members must be representative of all non-metropolitan regions of the state.

Subdivision 3. Duties.
The advisory council shall:

(1) advise the commissioner on all planning, development, data collection, rulemaking, funding, and evaluation of programs and services for battered women and domestic abuse victims that are funded under section 611A.32, other than matters of a purely administrative nature;

(2) advise the commissioner on the adoption of rules under chapter 14 governing the award of grants to ensure that funded programs are consistent with section 611A.32, subdivision 1;

(3) recommend to the commissioner the names of five applicants for the position of domestic abuse program director;

(4) advise the commissioner on the rules adopted under chapter 14 pursuant to section 611A.33;

(5) review applications received by the commissioner for grants under section 611A.32 and make recommendations on the awarding of grants;

(6) advise the program director in the performance of duties in the administration and coordination of the programs funded under section 611A.32; and

(7) advise the director of domestic violence and sexual assault prevention in matters related to preventing these occurrences of these types of violence.

Subdivision 4. Conflicts of interest.
A member of the advisory council shall be excluded from participating in review and recommendations concerning a grant application if the member:

(1) serves or has served at any time during the past three years as an employee, volunteer, or governing board member of an organization whose application is being reviewed; or

(2) has a financial interest in the funding of the applicant organization.

611A.345 Advisory Council Recommendations

The commissioner shall consider the advisory council's recommendations before awarding grants or adopting policies regarding the planning, development, data collection, rulemaking, funding or evaluation of programs and services for battered women and domestic abuse victims funded under section 611A.32. Before taking action on matters related to programs and services for battered women and domestic abuse victims and their children, except day-to-day administrative operations, the commissioner shall notify the advisory council of the intended action. Notification of grant award decisions shall be given to the advisory council in time to allow the council to request reconsideration.

611A.35 Advisory Council on Battered Women and Domestic Abuse Program Director

The commissioner shall appoint a program director. In appointing the program director the commissioner shall give due consideration to the list of applicants submitted to the commissioner pursuant to section 611A.34, subdivision 3, clause (3). The program director shall administer the funds

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appropriated for sections 611A.31 to 611A.36, consult with and provide staff to the advisory council, and perform other duties related to battered women's and domestic abuse programs as the commissioner may assign. The program director shall serve at the pleasure of the commissioner in the unclassified service.

611A.36 Data Collection

Subdivision 1. Form prescribed.
The commissioner shall, by rule adopted under chapter 14, after considering the recommendations of the advisory council, prescribe a uniform form and method for the collection of data on domestic abuse victims. The method and form of data collection shall be designed to document the incidence of assault on domestic abuse victims as defined in section 611A.31, subdivision 2. All data collected by the commissioner pursuant to this section shall be summary data within the meaning of section 13.02, subdivision 19.

Subdivision 2. Mandatory data collection.
Every local law enforcement agency shall collect data related to domestic abuse victims in the form required by the commissioner. The data shall be collected and transmitted to the commissioner at such times as the commissioner shall, by rule, require.

Subdivision 3. Immunity from liability.
Any person participating in good faith and exercising due care in the collection and transmission of data pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of the person's action.

611A.361 General Crime Victims Advisory Council

Subdivision 1. Creation.
The commissioner of corrections shall appoint a 12-member Advisory Council on General Crime Victims to advise the commissioner on the implementation and continued operation of chapter 611A with respect to victims of crimes other than sexual assault and domestic abuse. The General Crime Victims Advisory Council shall also serve as a liaison between the commissioner and organizations that provide services to victims of crime, and as an advocate within the Department of Corrections for the rights of general crime victims.

Subdivision 2. Membership.
No more than six of the members of the General Crime Victims Advisory Council may be representatives of community or governmental organizations that provide services to crime victims. One-half of the council's members shall reside in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver Counties, and one-half of the members shall reside in the non-metropolitan area. To the extent possible, non-metropolitan members must be representative of all non-metropolitan regions of the state.

Subdivision 3. Terms; vacancies; expenses.
Section 15.059 governs the filling of vacancies and removal of members of the General Crime Victims Advisory Council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. The council expires on June 30, 2003. Council members shall receive expense reimbursement as specified in section 15.059.

Subdivision 4. [Repealed, 1991 c 272 s 20]

611A.362 [Renumbered 119A.20]

611A.363 [Renumbered 119A.21]

611A.364 [Renumbered 119A.22]

611A.365 [Renumbered 119A.23]

Shelter Facility Per Diem Payments

611A.37 Definitions

Subdivision 1. Scope.
For purposes of sections 611A.371 to 611A.375, the terms defined have the meanings given them unless otherwise provided or indicated by the context.

Subdivision 2. Director.
"Director" means the director of the Minnesota Center for Crime Victim Services or a designee.

Subdivision 3. Center.
"Center" means the Minnesota Center for Crime Victim Services.

Subdivision 4. Shelter facility.
"Shelter facility" means a secure crisis shelter, housing network,

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safe home, or other facility operated by a nonprofit organization and designated by the center for the purpose of providing food, lodging, safety, and 24-hour coverage for battered women and their children.

Subdivision 5. Designated shelter facility.
"Designated shelter facility" means a facility that has applied to, and been approved by, the center to provide shelter and services to battered women and their children.

Subdivision 6.MS 2002 [Repealed, 2002 c 220 art 7 s 33]

Subdivision 7.MS 2002 [Repealed, 2002 c 220 art 7 s 33]

Subdivision 8. Battered woman.
"Battered woman" has the meaning given in section 611A.31, subdivision 2.

611A.371 Program Operation

Subdivision 1. Purpose.
The purpose of the grant program is to provide reimbursement in a timely, efficient manner to local programs for the reasonable and necessary costs of providing battered women and their children with food, lodging, and safety. Grant funding may not be used for other purposes.

Subdivision 2. Nondiscrimination.
Designated shelter facilities are prohibited from discriminating against a battered woman or her children on the basis of race, color, creed, religion, national origin, marital status, status with regard to public assistance, disability, or sexual orientation.

Subdivision 3. Data.
Personal history information collected, used, or maintained by a designated shelter facility from which the identity or location of any battered woman may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the facility shall maintain the data in accordance with the provisions of chapter 13.

611A.372 Duties of Director

In addition to any other duties imposed by law, the director, with the approval of the commissioner of public safety, shall:

(1) supervise the administration of grant payments to designated shelter facilities;

(2) collect data on shelter facilities;

(3) conduct an annual evaluation of the grant program;

(4) report to the governor and the legislature on the need for emergency secure shelter;

(5) develop an application process for shelter facilities to follow in seeking reimbursement under the grant program; and

(6) adopt rules to implement and administer sections 611A.37 to 611A.375.

611A.373 Payments

Subdivision 1. Payment.
Payments to designated shelter facilities must be in the form of a grant. Designated shelter facilities may submit requests for payment monthly based on their expenses. The process for the submission of payments and for the submission of requests may be established by the director. Upon approval of the request for payment by the center, payments shall be made directly to designated shelter facilities from grant funds on behalf of women and their children who reside in the shelter facility. Payments made to a designated shelter facility must not exceed the grant amount for that facility unless approved by the director. These payments must not affect the eligibility of individuals who reside in shelter facilities for public assistance benefits, except when required by federal law or regulation.

Subdivision 2. Reserve grant amount.
The center shall calculate the grant amount for each designated shelter facility. This calculation may be based upon program type, average occupancy rates, and licensed capacity limits. The total of all grant amounts shall not exceed the legislative appropriation.

Subdivision 3. Accountability.
Shelter facilities must comply with reporting requirements and any other measures imposed by the Minnesota Center for Crime Victim Services to improve accountability and program outcomes including, but not limited to, information on all restricted or unrestricted fund balances.

611A.375 MS 2002 [Repealed, 2002 c 220 art 7 s 33]

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Crime Victim Crisis Center

611A.41 Crime Victim Crisis Center

Subdivision 1. Center.
For the purposes of sections 611A.41 to 611A.44, "center" means a crime victim crisis center providing services to victims of crime.

Subdivision 2. Operational centers.
The commissioner of corrections, not later than January 1, 1978, shall establish at least two operational centers. The commissioner of corrections may contract with a public or private agency for the purposes of planning, implementing and evaluating the centers established herein.

611A.42 [Repealed, 1996 c 310 s 1]

611A.43 Functions

The centers shall:

(a) provide direct crisis intervention to crime victims;

(b) provide transportation for crime victims to assist them in obtaining necessary emergency services;

(c) investigate the availability of insurance or other financial resources available to the crime victims;

(d) refer crime victims to public or private agencies providing existing needed services;

(e) encourage the development of services which are not already being provided by existing agencies;

(f) coordinate the services which are already being provided by various agencies;

(g) facilitate the general education of crime victims about the criminal justice process;

(h) educate the public as to program availability;

(i) encourage educational programs which will serve to reduce victimization and which will diminish the extent of trauma where victimization occurs; and

(j) provide other appropriate services.

611A.44 [Repealed, 1996 c 310 s 1]

611A.46 Classification of Data

(a) Personal history information and other information collected, used, and maintained by a Minnesota Center for Crime Victim Services grantee from which the identity and location of any crime victim may be determined are private data on individuals as defined in section 13.02, subdivision 12 , and the grantee shall maintain the data in accordance with the provisions of chapter 13.

(b) Personal history data and other information collected, used, and maintained by the Minnesota Center for Crime Victim Services from which the identity and location of any victim may be determined are private data on individuals as defined in section 13.02, subdivision 12.

(c) Internal auditing data shall be classified as provided by section 13.392.

Crime Victims Reparations

611A.51 Title

Sections 611A.51 to 611A.68 shall be known as the Minnesota Crime Victims Reparations Act.

611A.52 Definitions

Subdivision 1. Terms.
For the purposes of sections 611A.51 to 611A.68 the following terms shall have the meanings given them.

Subdivision 2. Accomplice.
"Accomplice" means any person who would be held criminally liable for the crime of another pursuant to section 609.05.

Subdivision 3. Board.
"Board" means the crime victims reparations board established by section 611A.55.

Subdivision 4. Claimant.
"Claimant" means a person entitled to apply for reparations pursuant to sections 611A.51 to 611A.68.

Subdivision 5. Collateral source.
"Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under sections 611A.51 to 611A.68 which the victim or claimant has received, or which is readily available to the victim, from:

(1) the offender;

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(2) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 611A.51 to 611A.68;

(3) Social Security, Medicare, and Medicaid;

(4) state required temporary nonoccupational disability insurance;

(5) workers' compensation;

(6) wage continuation programs of any employer;

(7) proceeds of a contract of insurance payable to the victim for economic loss sustained because of the crime;

(8) a contract providing prepaid hospital and other health care services, or benefits for disability;

(9) any private source as a voluntary donation or gift; or

(10) proceeds of a lawsuit brought as a result of the crime. The term does not include a life insurance contract.

Subdivision 6. Crime.

(a) "Crime" means conduct that:

(1) occurs or is attempted anywhere within the geographical boundaries of this state, including Indian reservations and other trust lands;

(2) poses a substantial threat of personal injury or death; and

(3) is included within the definition of "crime" in section 609.02, subdivision 1, or would be included within that definition but for the fact that (i) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or (ii) the act was alleged or found to have been committed by a juvenile.

(b) A crime occurs whether or not any person is prosecuted or convicted but the conviction of a person whose acts give rise to the claim is conclusive evidence that a crime was committed unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or rehearing has been ordered.

(c) "Crime" does not include an act involving the operation of a motor vehicle, aircraft, or watercraft that results in injury or death, except that a crime includes any of the following:

(1) injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or watercraft;

(2) injury or death caused by a driver in violation of section 169.09, subdivision 1; 169A.20; or 609.21; and

(3) injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which the driver knowingly and willingly participated.

(d) Notwithstanding paragraph (a), "crime" includes an act of international terrorism as defined in United States Code, title 18, section 2331, committed outside of the United States against a resident of this state.

Subdivision 7. Dependent.

"Dependent" means any person who was dependent upon a deceased victim for support at the time of the crime.

Subdivision 8. Economic loss.

"Economic loss" means actual economic detriment incurred as a direct result of injury or death.

(a) In the case of injury the term is limited to:

(1) reasonable expenses incurred for necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations, including ambulance services, drugs, appliances, and prosthetic devices;

(2) reasonable expenses associated with recreational therapy where a claimant has suffered amputation of a limb;

(3) reasonable expenses incurred for psychological or psychiatric products, services, or accommodations, not to exceed an amount to be set by the board, where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim;

(4) loss of income that the victim would have earned had the victim not been injured;

(5) reasonable expenses incurred for substitute child care or household services to replace those the victim or claimant would have performed had the victim or the claimant's child not been injured. As used in this clause, "child care services" means services provided by facilities licensed under and in compliance with either Minnesota Rules, parts 9502.0315 to 9502.0445, or 9545.0510 to 9545.0670, or exempted from licensing requirements pursuant to section 245A.03. Licensed facilities must be paid at a rate not to exceed their standard rate of payment. Facilities

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exempted from licensing requirements must be paid at a rate not to exceed $3 an hour per child for daytime child care or $4 an hour per child for evening child care;

(6) reasonable expenses actually incurred to return a child who was a victim of a crime under section 609.25 or 609.26 to the child's parents or lawful custodian. These expenses are limited to transportation costs, meals, and lodging from the time the child was located until the child was returned home; and

(7) the claimant's moving expenses, storage fees, and phone and utility installation fees, up to a maximum of $1,000 per claim, if the move is necessary due to a reasonable fear of danger related to the crime for which the claim was filed.

(b) In the case of death the term is limited to:

(1) reasonable expenses actually incurred for funeral, burial, or cremation, not to exceed an amount to be determined by the board on the first day of each fiscal year;

(2) reasonable expenses for medical, chiropractic, hospital, rehabilitative, psychological and psychiatric services, products or accommodations which were incurred prior to the victim's death and for which the victim's survivors or estate are liable;

(3) loss of support, including contributions of money, products or goods, but excluding services which the victim would have supplied to dependents if the victim had lived; and

(4) reasonable expenses incurred for substitute child care and household services to replace those which the victim or claimant would have performed for the benefit of dependents if the victim or the claimant's child had lived. Claims for loss of support for minor children made under clause (3) must be paid for three years or until the child reaches 18 years old, whichever is the shorter period. After three years, if the child is younger than 18 years old a claim for loss of support may be resubmitted to the board, and the board staff shall evaluate the claim giving consideration to the child's financial need and to the availability of funds to the board. Claims for loss of support for a spouse made under clause

(5) shall also be reviewed at least once every three years. The board staff shall evaluate the claim giving consideration to the spouse's financial need and to the availability of funds to the board. Claims for substitute child care services made under clause (4) must be limited to the actual care that the deceased victim would have provided to enable surviving family members to pursue economic, educational, and other activities other than recreational activities.

Subdivision 9. Injury.
"Injury" means actual bodily harm including pregnancy and emotional trauma.

Subdivision 10. Victim.
"Victim" means a person who suffers personal injury or death as a direct result of:

(1) a crime;

(2) the good faith effort of any person to prevent a crime; or

(3) the good faith effort of any person to apprehend a person suspected of engaging in a crime.

611A.53 Reparations Awards Prohibited

Subdivision 1. Generally.
Except as provided in subdivisions 1a and 2, the following persons shall be entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met:

(a) a victim who has incurred economic loss;

(b) a dependent who has incurred economic loss;

(c) the estate of a deceased victim if the estate has incurred economic loss;

(d) any other person who has incurred economic loss by purchasing any of the products, services, and accommodations described in section 611A.52, subdivision 8, for a victim;

(e) the guardian, guardian ad litem, conservator or authorized agent of any of these persons.

Subdivision 1a. Providers; limitations.
No hospital, medical organization, health care provider, or other entity that is not an individual may qualify for reparations under subdivision 1, clause (d). If a hospital, medical organization, health care provider, or other entity that is not an indi-

vidual qualifies for reparations under subdivision 1, clause (e) because it is a guardian, guardian ad litem, conservator, or authorized agent, any reparations to which it is entitled must be made payable solely or jointly to the victim, if alive, or to the victim's estate or successors, if the victim is deceased.

Subdivision 1b. Minnesota residents injured elsewhere.

(a) A Minnesota resident who is the victim of a crime committed outside the geographical boundaries of this state but who otherwise meets the requirements of this section shall have the same rights under this chapter as if the crime had occurred within this state upon a showing that the state, territory, United States possession, country, or political subdivision of a country in which the crime occurred does not have a crime victim reparations law covering the resident's injury or death.

(b) Notwithstanding paragraph (a), a Minnesota resident who is the victim of a crime involving international terrorism who otherwise meets the requirements of this section has the same rights under this chapter as if the crime had occurred within this state regardless of where the crime occurred or whether the jurisdiction has a crime victims' reparations law.

Subdivision 2. Limitations on awards.

No reparations shall be awarded to a claimant otherwise eligible if:

(a) the crime was not reported to the police within 30 days of its occurrence or, if it could not reasonably have been reported within that period, within 30 days of the time when a report could reasonably have been made. A victim of criminal sexual conduct in the first, second, third, or fourth degree who does not report the crime within 30 days of its occurrence is deemed to have been unable to have reported it within that period;

(b) the victim or claimant failed or refused to cooperate fully with the police and other law enforcement officials;

(c) the victim or claimant was the offender or an accomplice of the offender or an award to the claimant would unjustly benefit the offender or an accomplice;

(d) the victim or claimant was in the act of committing a crime at the time the injury occurred;

(e) no claim was filed with the board within three years of victim's injury or death; except that

(1) if the claimant was unable to file a claim within that period, then the claim can be made within three years of the time when a claim could have been filed; and

(2) if the victim's injury or death was not reasonably discoverable within three years of the injury or death, then the claim can be made within three years of the time when the injury or death is reasonably discoverable.

The following circumstances do not render a claimant unable to file a claim for the purposes of this clause:

(1) lack of knowledge of the existence of the Minnesota Crime Victims Reparations Act,

(2) the failure of a law enforcement agency to provide information or assistance to a potential claimant under section 611A.66,

(3) the incompetency of the claimant if the claimant's affairs were being managed during that period by a guardian, guardian ad litem, conservator, authorized agent, or parent, or

(4) the fact that the claimant is not of the age of majority; or

(5) the claim is less than $50.

The limitations contained in clauses (a) and (e) do not apply to victims of child abuse. In those cases the three-year limitation period commences running with the report of the crime to the police.

611A.54 Amount of Reparations

Reparations shall equal economic loss except that:

(1) reparations shall be reduced to the extent that economic loss is recouped from a collateral source or collateral sources. Where compensation is readily available to a claimant from a collateral source, the claimant must take reasonable steps to recoup from the collateral source before claiming reparations;

(2) reparations shall be denied or reduced to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims; and

(3) reparations paid to all claimants suffering economic loss as the result of the injury or death of any one victim shall not exceed $50,000.No employer may deny an employee an award of benefits based on the employee's eligibility or potential eligibility for reparations.

Part 3 – Full Text of Chapter 611A

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611A.55 Crime Victims Reparations Board

Subdivision 1. Creation of board.
There is created in the Department of Public Safety, for budgetary and administrative purposes, the Crime Victims Reparations Board, which shall consist of five members appointed by the commissioner of public safety and selected from among the membership of the Crime Victim and Witness Advisory Council created in section 611A.71. One of the members shall be designated as chair by the commissioner of public safety and serve as such at the commissioner's pleasure. At least one member shall be a medical or osteopathic physician licensed to practice in this state, and at least one member shall be a victim, as defined in section 611A.01.

Subdivision 2. Membership, terms and compensation.
The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575. Members of the board who are also members of the Crime Victim and Witness Advisory Council created in section 611A.71 shall not be compensated while performing duties for the advisory council.

Subdivision 3. Part-time service.
Members of the board shall serve part time.

611A.56 Powers and Duties of The Board

Subdivision 1. Duties.
In addition to carrying out any duties specified elsewhere in sections 611A.51 to 611A.68 or in other law, the board shall:

(a) provide all claimants with an opportunity for hearing pursuant to chapter 14;

(b) adopt rules to implement and administer sections 611A.51 to 611A.68, including rules governing the method of practice and procedure before the board, prescribing the manner in which applications for reparations shall be made, and providing for discovery proceedings;

(c) publicize widely the availability of reparations and the method of making claims; and

(d) prepare and transmit annually to the governor and the commissioner of public safety a report of its activities including the number of claims awarded, a brief description of the facts in each case, the amount of reparation awarded, and a statistical summary of claims and awards made and denied.

Subdivision 2. Powers.
In addition to exercising any powers specified elsewhere in sections 611A.51 to 611A.68 or other law, the board upon its own motion or the motion of a claimant or the attorney general may:

(a) issue subpoenas for the appearance of witnesses and the production of books, records, and other documents;

(b) administer oaths and affirmations and cause to be taken affidavits and depositions within and without this state;

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge;

(d) order a mental or physical examination of a victim or an autopsy of a deceased victim provided that notice is given to the person to be examined and that the claimant and the attorney general receive copies of any resulting report;

(e) suspend or postpone the proceedings on a claim if a criminal prosecution arising out of the incident which is the basis of the claim has been commenced or is imminent;

(f) request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to perform its duties under sections 611A.51 to 611A.68;

(g) grant emergency reparations pending the final determination of a claim if it is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made; and

(h) reconsider any decision granting or denying reparations or determining their amount.

611A.57 Determination of Claims

Subdivision 1. [Repealed, 1993 c 326 art 6 s 26]

Subdivision 2. Investigation.
The board staff shall examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of a claim to the extent that an investigation is necessary.

Subdivision 3. Claim decision.
The board executive director may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support of it and the report of the investigation of such claim. If unable to decide the claim upon the basis of the papers and any report of investigation, the board executive director shall discuss the matter with other members of the board present at a board meeting. After discussion the board shall vote on whether

to grant or deny the claim or whether further investigation is necessary. A decision granting or denying the claim shall then be issued by the executive director.

Subdivision 4. Written decision.
The written decision granting or denying a claim shall be filed with the board, and a copy shall be provided to the claimant.

Subdivision 5. Reconsideration.
The claimant may, within 30 days after receiving the decision of the board, apply for reconsideration before the entire board. Upon request for reconsideration, the board shall reexamine all information filed by the claimant, including any new information the claimant provides, and all information obtained by investigation. The board may also conduct additional examination into the validity of the claim. Upon reconsideration, the board may affirm, modify, or reverse the prior ruling. A claimant denied reparations upon reconsideration is entitled to a contested case hearing within the meaning of chapter 14.

Subdivision 6. Data.
Claims for reparations and supporting documents and reports are investigative data and subject to the provisions of section 13.39 until the claim is paid, denied, withdrawn, or abandoned. Following the payment, denial, withdrawal, or abandonment of a claim, the claim and supporting documents and reports are private data on individuals as defined in section 13.02, subdivision 12 ; provided that the board may forward any reparations claim forms, supporting documents, and reports to local law enforcement authorities for purposes of implementing section 1A.67.

611A.58 Attorney's Fees; Limitation for Representation Before Board

The board may limit the fee charged by any attorney for representing a claimant before the board.

611A.59 [Repealed, 1987 c 244 s 8]

611A.60 Reparations; How Paid

Reparations may be awarded in a lump sum or in installments in the discretion of the board. The amount of any emergency award shall be deducted from the final award, if a lump sum, or prorated over a period of time if the final award is made in installments. Reparations are exempt from execution or attachment except by persons who have supplied services, products or accommodations to the victim as a result of the injury or death which is the basis of the claim. The board, in its discretion may order that all or part of the reparations awarded be paid directly to these suppliers.

611A.61 Subrogation

Subdivision 1. Subrogation rights of state.
The state shall be subrogated, to the extent of reparations awarded, to all the claimant's rights to recover benefits or advantages for economic loss from a source which is or, if readily available to the victim or claimant would be, a collateral source. Nothing in this section shall limit the claimant's right to bring a cause of action to recover for other damages.

Subdivision 2. Duty of claimant to assist.
A claimant who receives reparations must agree to assist the state in pursuing any subrogation rights arising out of the claim. The board may require a claimant to agree to represent the state's subrogation interests if the claimant brings a cause of action for damages arising out of the crime or occurrence for which the board has awarded reparations. An attorney who represents the state's subrogation interests pursuant to the client's agreement with the board is entitled to reasonable attorney's fees not to exceed one-third of the amount recovered on behalf of the state.

Subdivision 3. [Repealed, 1995 c 226 art 7 s 26]

611A.612 Crime Victims Account

A crime victim account is established as a special account in the state treasury. Amounts collected by the state under section 611A.61, paid to the Crime Victims Reparations Board under section 611A.04, subdivision 1a, or amounts deposited by the court under section 611A.04, subdivision 5 , shall be credited to this account. Money credited to this account is annually appropriated to the Department of Public Safety for use for crime victim reparations under sections 611A.51 to 611A.67.

611A.62 Medical Privilege

There is no privilege as to communication or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under sections 611A.51 to 611A.56 in which that condition is an issue. Nothing contained in this section shall be interpreted to abridge the attorney-client privilege.

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611A.63 Enforcement of Board's Orders

If a person refuses to comply with an order of the board or asserts a privilege to withhold or suppress evidence relevant to a claim, the board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the board may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a mental or physical examination.

611A.64 Department of Corrections; Restitution

The Department of Corrections may, as a means of assisting in the rehabilitation of persons committed to their care, establish programs and procedures whereby such persons may contribute toward restitution of those persons injured as a consequence of their criminal acts.

611A.65 Use of Record of Claim; Evidence

Neither a record of the proceedings on a claim, a decision of the board, nor the fact that an award has been made or denied shall be admissible as evidence in any criminal or civil action against the alleged offender, except an action by the state on its subrogation claim.

611A.66 Law Enforcement Agencies; Duty to Inform Victims of Right to File Claim

All law enforcement agencies investigating crimes shall provide victims with notice of their right to apply for reparations with the telephone number to call to request an application form. Law enforcement agencies shall assist the board in performing its duties under sections 611A.51 to 611A.68. Law enforcement agencies within ten days after receiving a request from the board shall supply the board with requested reports, notwithstanding any provisions to the contrary in chapter 13, and including reports otherwise maintained as confidential or not open to inspection under section 260B.171 or 260C.171. All data released to the board retains the data classification that it had in the possession of the law enforcement agency.

611A.67 Fraudulent Claims; Penalty

Any person who knowingly makes a false claim under sections 611A.51 to 611A.68 is guilty of a gross misdemeanor.

611A.675 Fund For Emergency Needs of Crime Victims

Subdivision 1. Grants authorized.
The Crime Victim and Witness Advisory Council shall make grants to prosecutors and victim assistance programs for the purpose of providing emergency assistance to victims. As used in this section, "emergency assistance" includes but is not limited to:

(1) replacement of necessary property that was lost, damaged, or stolen as a result of the crime;

(2) purchase and installation of necessary home security devices;

(3) transportation to locations related to the victim's needs as a victim, such as medical facilities and facilities of the criminal justice system;

(4) cleanup of the crime scene; and

(5) reimbursement for reasonable travel and living expenses the victim incurred to attend court proceedings that were held at a location other than the place where the crime occurred due to a change of venue.

Subdivision 2. Application for grants.
A city or county attorney's office or victim assistance program may apply to the council for a grant for any of the purposes described in subdivision 1 or for any other emergency assistance purpose approved by the council. The application must be on forms and pursuant to procedures developed by the council. The application must describe the type or types of intended emergency assistance, estimate the amount of money required, and include any other information deemed necessary by the council.

Subdivision 3. Reporting by local agencies required.
A city or county attorney's office or victim assistance program that receives a grant under this section shall file an annual report with the council itemizing the expenditures made during the preceding year, the purpose of those expenditures, and the ultimate disposition, if any, of each assisted victim's criminal case.

Subdivision 4. Report to legislature.
On or before February 1, 1999, the council shall report to the chairs of the Senate crime prevention and House of Representatives judiciary committees on the implementation, use, and administration of the grant program created under this section.

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611A.68 Limiting Commercial Exploitation of Crimes; Payment of Victims

Subdivision 1. Definition.
For purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Contract" means an agreement regarding, in whole or in part,

(1) the reenactment of an offender's crime by way of a movie, book, newspaper or magazine article, radio or television presentation, or live or recorded entertainment of any kind, or

(2) the expression of the offender's thoughts, feelings, opinions, or emotions about the crime.

(b) "Crime" means an offense which is a felony under the laws of Minnesota or that would have been a felony if committed in Minnesota, and includes an offense committed or attempted on an Indian reservation or other trust land.

(c) "Offender" means a person convicted of a crime or found not guilty of a crime by reason of insanity.

(d) "Person" includes persons, corporations, partnerships, and other legal entities.

Subdivision 2.[Repealed, 1988 c 638 s 17]

Subdivision 2a. Notice and payment of proceeds to board required.
A person that enters into a contract with an offender convicted in this state, and a person that enters into a contract in this state with an offender convicted in this state or elsewhere within the United States, must comply with this section if the person enters into the contract during the ten years after the offender is convicted of a crime or found not guilty by reason of insanity. If an offender is imprisoned or committed to an institution following the conviction or finding of not guilty by reason of insanity, the ten-year period begins on the date of the offender's release. A person subject to this section must notify the Crime Victims Reparations Board of the existence of the contract immediately upon its formation, and pay over to the board money owed to the offender or the offender's representatives by virtue of the contract according to the following proportions:

(a) if the crime occurred in this state, the person shall pay to the board 100 percent of the money owed under the contract;

(b) if the crime occurred in another jurisdiction having a law applicable to the contract which is substantially similar to this section, this section does not apply, and the person must not pay to the board any of the money owed under the contract; and

(c) in all other cases, the person shall pay to the board that percentage of money owed under the contract which can fairly be attributed to commerce in this state with respect to the subject matter of the contract.

Subdivision 3. Victim notification.
When the board receives a payment pursuant to this section, it shall attempt to notify any known victims of the crime and shall publish a notice of that fact in a newspaper having general circulation in the county where the crime was committed. The expenses of notification shall be paid from the amount received for that case.

Subdivision 4. Deductions.
When the board has made reparations payments to or on behalf of a victim of the offender's crime pursuant to sections 611A.51 to 611A.68, it shall deduct the amount of the reparations award from any payment received under this section by virtue of the offender's contract unless the board has already been reimbursed for the reparations award from another collateral source.

Subdivision 4a. Offender's minor dependent claims.
Immediately after money is deposited with the board under this section, the board may allocate up to ten percent of any money remaining after a deduction is made under subdivision 4 for the benefit of the offender's dependent minor children. The board shall then retain the funds allocated until a claim is made by the dependent minor children or their representative. Upon receiving a claim, the board shall disburse the allocated funds to the dependent minor children if it is shown by clear and convincing evidence that the funds will not be used in a way that benefits the offender.

Subdivision 4b. Claims by victims of offender's crime.
A victim of a crime committed by the offender and the estate of a deceased victim of a crime committed by the offender may submit the following claims for reparations and damages to the board to be paid from money received by virtue of the offender's contract:

(1) claims for reparations to which the victim is entitled under sections 611A.51 to 611A.68 and for which the victim has not yet received an award from the board;

(2) claims for reparations to which the victim would have been entitled under sections 611A.51 to 611A.68, but for the $50,000 maximum limit contained in section 611A.54, clause (3); and

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(3) claims for other uncompensated damages suffered by the victim as a result of the offender's crime including, but not limited to, damages for pain and suffering. The victim must file the claim within five years of the date on which the board received payment under this section. The board shall determine the victim's claim in accordance with the procedures contained in sections 611A.57 to 611A.63. An award made by the board under this subdivision must be paid from the money received by virtue of the offender's contract that remains after a deduction or allocation, if any, has been made under subdivision 4 or 4a.

Subdivision 4c. Claims by other crime victims.
The board may use money received by virtue of an offender's contract for the purpose of paying reparations awarded to victims of other crimes pursuant to sections 611A.51 to 611A.68 under the following circumstances:

(1) money remain after deductions and allocations have been made under subdivisions 4 and 4a, and claims have been paid under subdivision 4b; or

(2) no claim is filed under subdivision 4b within five years of the date on which the board received payment under this section. None of this money may be used for purposes other than the payment of reparations.

Subdivision 5. [Repealed, 1988 c 638 s 17]

Subdivision 6. Payments for costs of defense.
Notwithstanding any other provision of this section, the board shall make payments to an offender from the account of amounts received with reference to that offender upon the order of a court of competent jurisdiction after a showing by that offender that the money shall be used for the reasonable costs of defense in the appeal of a criminal conviction or in proceedings pursuant to this section.

Subdivision 7. Deposit of money in state treasury.
All money received by the board pursuant to this section shall be deposited in the state treasury, credited to a special account, and are appropriated to the board for the purposes of this section. Money in the special account may be invested pursuant to section 11A.25. When so invested, any interest or profit shall accrue to, and any loss be borne by, the special account. The board shall allocate money in the special account to each case pursuant to this section.

Subdivision 8. Penalty.

(a) A person who willfully fails to notify the board of the existence of a contract as required by this section is guilty of a gross misdemeanor.

(b) Except as otherwise provided in paragraph (a), any person or offender who takes any action, whether by way of execution of a power of attorney, creation of corporate or trust entities or otherwise, to defeat the purpose of this section is guilty of a misdemeanor.

Minnesota Crime Victim and Witness Advisory Council Act

611A.70 MS 2004 [Expired]

611A.71 MS 2004 [Expired]

Crime Victim Ombudsman Act

611A.72 Citation

Sections 611A.72 to 611A.74 may be cited as the "Crime Victim Oversight Act."

611A.73 Definitions

Subdivision 1. Definitions.
The definitions in this section apply to this section and section 611A.74.

Subdivision 2. Appropriate authority.
"Appropriate authority" includes anyone who is the subject of a complaint under sections 611A.72 to 611A.74 to the commissioner or anyone within the agency who is in a supervisory position with regard to one who is the subject of a complaint under sections 611A.72 to 611A.74.

Subdivision 3. Elements of the criminal justice system.
"Elements of the criminal justice system" refers to prosecuting attorneys and members of their staff; peace officers; probation and corrections officers; city, state, and county officials involved in the criminal justice system; and does not include the judiciary.

Subdivision 4. Victim.
"Victim" refers to anyone or the next of kin of anyone who has been or purports to have been subjected to a criminal act, whether a felony, a gross misdemeanor, or misdemeanor.

Subdivision 5. Victim assistance program.
"Victim assistance program" refers to any entity which provides or claims to provide services and assistance to victims on a regular, ongoing basis.

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Subdivision 6. Commissioner.
"Commissioner" means the commissioner of public safety.

611A.74 Crime Victim Ombudsman; Creation

Subdivision 1. Authority under this act.
The commissioner shall have the authority under sections 611A.72 to 611A.74 to investigate decisions, acts, and other matters of the criminal justice system so as to promote the highest attainable standards of competence, efficiency, and justice for crime victims in the criminal justice system.

Subdivision 1a.[Repealed, 2002 c 220 art 7 s 33]

Subdivision 2. Duties.
The commissioner may investigate complaints concerning possible violation of the rights of crime victims or witnesses provided under this chapter, the delivery of victim services by victim assistance programs, the administration of the crime victims' reparations act, and other complaints of mistreatment by elements of the criminal justice system or victim assistance programs. The commissioner shall act as a liaison, when the commissioner deems necessary, between agencies, either in the criminal justice system or in victim assistance programs, and victims and witnesses. The commissioner may be concerned with activities that strengthen procedures and practices which lessen the risk that objectionable administrative acts will occur. The commissioner must answer questions concerning the criminal justice system and victim services put to the commissioner by victims and witnesses in accordance with the commissioner's knowledge of the facts or law, unless the information is otherwise restricted. The commissioner shall establish a procedure for referral to the crime victim crisis centers, the crime victims reparations board, and other victim assistance programs when services are requested by crime victims or deemed necessary by the commissioner. The commissioner's files are confidential data as defined in section 13.02, subdivision 3, during the course of an investigation or while the files are active. Upon completion of the investigation or when the files are placed on inactive status, they are private data on individuals as defined in section 13.02, subdivision 12.

Subdivision 3. Powers.
The commissioner has those powers necessary to carry out the duties set out in subdivision 2, including:

(a) The commissioner may investigate, with or without a complaint, any action of an element of the criminal justice system or a victim assistance program included in subdivision 2.

(b) The commissioner may request and shall be given access to information and assistance the commissioner considers necessary for the discharge of responsibilities. The commissioner may inspect, examine, and be provided copies of records and documents of all elements of the criminal justice system and victim assistance programs. The commissioner may request and shall be given access to police reports pertaining to juveniles and juvenile delinquency petitions, notwithstanding section 260B.171 or 260C.171. Any information received by the commissioner retains its data classification under chapter 13 while in the commissioner's possession. Juvenile records obtained under this subdivision may not be released to any person.

(c) The commissioner may prescribe the methods by which complaints are to be made, received, and acted upon; may determine the scope and manner of investigations to be made; and subject to the requirements of sections 611A.72 to 611A.74, may determine the form, frequency, and distribution of commissioner conclusions, recommendations, and proposals.

(d) After completing investigation of a complaint, the commissioner shall inform in writing the complainant, the investigated person or entity, and other appropriate authorities of the action taken. If the complaint involved the conduct of an element of the criminal justice system in relation to a criminal or civil proceeding, the commissioner's findings shall be forwarded to the court in which the proceeding occurred.

(e) Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the commissioner shall consult with that agency or person.

Subdivision 4. No compelled testimony.
Neither the commissioner nor any member of the commissioner's staff may be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to matters involving the exercise of official duties under sections 611A.72 to 611A.74 except as may be necessary to enforce the provisions of this section.

Subdivision 5. Recommendations.

(a) On finding a complaint valid after duly considering the complaint and whatever material the commissioner deems pertinent, the commissioner may recommend action to the appropriate authority.

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(b) If the commissioner makes a recommendation to an appropriate authority for action, the authority shall, within a reasonable time period, but not more than 30 days, inform the commissioner about the action taken or the reasons for not complying with the recommendation.

(c) The commissioner may publish conclusions and suggestions by transmitting them to the governor, the legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency, the commissioner shall include any statement the administrative agency may have made to the commissioner by way of explaining its past difficulties or its present rejection of the commissioner's proposals.

Subdivision 6. Reports.
In addition to whatever reports the commissioner may make from time to time, the commissioner shall biennially report to the legislature and to the governor concerning the exercise of the commissioner's functions under sections 611A.72 to 611A.74 during the preceding biennium. The biennial report is due on or before the beginning of the legislative session following the end of the biennium.

611A.75 [Repealed, 1997 c 7 art 2 s 67]

Victim Services Telephone Line

611A.76 Crime Victim Services Telephone Line

The commissioner of public safety shall operate at least one statewide toll-free 24-hour telephone line for the purpose of providing crime victims with referrals for victim services and resources.

Mediation Programs

611A.77 Mediation Programs for Criime Victims and Offenders

Subdivision 1. Grants.
The executive director of the center for crime victim services shall award grants to nonprofit organizations to create or expand mediation programs for crime victims and offenders. For purposes of this section, "offender" means an adult charged with a nonviolent crime or a juvenile who has been referred to a mediation program before or after a petition for delinquency has been filed in connection with a nonviolent offense, and "nonviolent crime" and "nonviolent offense" exclude any offense in which the victim is a family or household member, as defined in section 518B.01, subdivision 2.

Subdivision 2. Programs.
The executive director of the center for crime victim services shall award grants to further the following goals:

(1) to expand existing mediation programs for crime victims and juvenile offenders to also include adult offenders;

(2) to initiate victim-offender mediation programs in areas that have no victim-offender mediation programs;

(3) to expand the opportunities for crime victims to be involved in the criminal justice process;

(4) to evaluate the effectiveness of victim-offender mediation programs in reducing recidivism and encouraging the payment of court-ordered restitution; and

(5) to evaluate the satisfaction of victims who participate in the mediation programs.

Subdivision 3. Mediator qualifications.
The executive director of the center for crime victim services shall establish criteria to ensure that mediators participating in the program are qualified.

Subdivision 4. Match required.
A nonprofit organization may not receive a grant under this section unless the group has raised a matching amount from other sources.

Restorative Justice Programs

611A.775 Restorative Justice Programs

A community-based organization, in collaboration with a local governmental unit, may establish a restorative justice program. A restorative justice program is a program that provides forums where certain individuals charged with or petitioned for having committed an offense meet with the victim, if appropriate; the victim's family members or other supportive persons, if appropriate; the offender's family members or other supportive persons, if appropriate; a law enforcement official or prosecutor when appropriate; other criminal justice system professionals when appropriate; and members of the community, in order to:

(1) discuss the impact of the offense on the victim and the community;

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(2) provide support to the victim and methods for reintegrating the victim into community life;

(3) assign an appropriate sanction to the offender; and

(4) provide methods for reintegrating the offender into community life.

Crime Victim Services Roundtable

611A.78 Crime Victim Services Roundtable

Subdivision 1. Membership.
A crime victim services roundtable is created and shall be convened by the commissioner of administration or a designee. The roundtable membership shall include representatives from the following: the departments of Health; Human Services; Corrections; and Public Safety; the Supreme Court; the Minnesota Planning Agency; the Office of the Attorney General; the Office of Crime Victim Ombudsman; the County Attorneys Association; and the Office of Dispute Resolution. The roundtable membership shall also include one person representing the four councils designated in sections 3.922, 3.9223, 3.9225, and 3.9226.

Subdivision 2. Duties.
The crime victim services roundtable shall meet at least four times each year to discuss issues concerning victim services, including, but not limited to, methods for improving the delivery of and securing increased funding for victim services. The roundtable shall present to the legislature any initiatives, including those for increasing efficiency in the administration of services, which require legislative action.

Civil Damages for Bias Offenses

611A.79 Civil Damages for Bias Offenses

Subdivision 1. Definition.
For purposes of this section, "bias offense" means conduct that would constitute a crime and was committed because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin.

Subdivision 2. Cause of action; damages and fees injunction.
A person who is damaged by a bias offense has a civil cause of action against the person who committed the offense. The plaintiff is entitled to recover the greater of:

(1) $500; or

(2) actual general and special damages, including damages for emotional distress. A plaintiff also may obtain punitive damages as provided in sections 549.191 and 549.20 or an injunction or other appropriate relief.

Subdivision 3. Relation to criminal proceeding; burden of proof.
A person may bring an action under this section regardless of the existence or outcome of criminal proceedings involving the bias offense that is the basis for the action. The burden of proof in an action under this section is preponderance of the evidence.

Subdivision 4. Parental liability.
Section 540.18 applies to actions under this section, except that:

(1) the parent or guardian is liable for all types of damages awarded under this section in an amount not exceeding $5,000; and

(2) the parent or guardian is not liable if the parent or guardian made reasonable efforts to exercise control over the minor's behavior.

Subdivision 5. Trial; limitation period.

(a) The right to trial by jury is preserved in an action brought under this section.

(b) An action under this section must be commenced not later than six years after the cause of action arises.

Subdivision 6. Other rights preserved.
The remedies under this section do not affect any rights or remedies of the plaintiff under other law.

Actions Involving Coercion into Prostitution

611A.80 Definitions

Subdivision 1. General.
The definitions in this section apply to sections 611A.80 to 611A.88.

Subdivision 2. Coerce.
"Coerce" means to use or threaten to use any form of domination, restraint, or control for the purpose of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution. Coercion exists if the totality of the circumstances establish the existence of domination,

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restraint, or control that would have the reasonably foreseeable effect of causing an individual to engage in or remain in prostitution or to relinquish earnings from prostitution. Evidence of coercion may include, but is not limited to:

(1) physical force or actual or implied threats of physical force;

(2) physical or mental torture;

(3) implicitly or explicitly leading an individual to believe that the individual will be protected from violence or arrest;

(4) kidnapping;

(5) defining the terms of an individual's employment or working conditions in a manner that can foreseeably lead to the individual's use in prostitution;

(6) blackmail;

(7) extortion or claims of indebtedness;

(8) threat of legal complaint or report of delinquency;

(9) threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise;

(10) promise of legal benefit, such as posting bail, procuring an attorney, protecting from arrest, or promising unionization;

(11) promise of financial rewards;

(12) promise of marriage;

(13) restraining speech or communication with others, such as exploiting a language difference, or interfering with the use of mail, telephone, or money;

(14) isolating an individual from others;

(15) exploiting a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency;

(16) taking advantage of lack of intervention by child protection;

(17) exploiting victimization by previous sexual abuse or battering;

(18) exploiting pornographic performance;

(19) interfering with opportunities for education or skills training;

(20) destroying property;

(21) restraining movement;

(22) exploiting HIV status, particularly where the defendant's previous coercion led to the HIV exposure; or

(23) exploiting needs for food, shelter, safety, affection, or intimate or marital relationships.

Subdivision 3. Promotes the prostitution of an individual.
"Promotes the prostitution of an individual" has the meaning given in section 609.321, subdivision 7.

Subdivision 4. Prostitution.
"Prostitution" has the meaning given in section 609.321, subdivision 9.

611A.81 Cause of Action for Coercion for Use in Prostitution

Subdivision 1. Cause of action created.

(a) An individual has a cause of action against a person who:

(1) coerced the individual into prostitution;

(2) coerced the individual to remain in prostitution;

(3) used coercion to collect or receive any of the individual's earnings derived from prostitution; or

(4) hired, offered to hire, or agreed to hire the individual to engage in prostitution, knowing or having reason to believe that the individual was coerced into or coerced to remain in prostitution by another person. For purposes of clauses (1) and (2), money payment by a patron, as defined in section 609.321, subdivision 4, is not coercion under section 611A.80, subdivision 2, clause (5) or (11), or exploiting needs for food or shelter under section 611A.80, subdivision 2, clause (23). Clause (3) does not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual's earnings derived from prostitution.

(b) An individual has a cause of action against a person who did the following while the individual was a minor:

(1) solicited or induced the individual to practice prostitution;

(2) promoted the prostitution of the individual;

(3) collected or received the individual's earnings derived from prostitution; or

(4) hired, offered to hire, or agreed to hire the individual to engage in prostitution. Mistake as to age is not a defense to an action under this paragraph.

Subdivision 2. Damages.
A person against whom a cause of action may be maintained under subdivision 1 is liable for the following damages that resulted from the plaintiff's being used in prostitution or to which the plaintiff's use in prostitution proximately contributed:

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(1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and

(2) damages for death as may be allowed under section 573.02, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

611A.82 Acts Not Defenses

None of the following shall alone or jointly be a sufficient defense to an action under section 611A.81:

(1) the plaintiff consented to engage in acts of prostitution;

(2) the plaintiff was paid or otherwise compensated for acts of prostitution;

(3) the plaintiff engaged in acts of prostitution prior to any involvement with the defendant;

(4) the plaintiff apparently initiated involvement with the defendant;

(5) the plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant;

(6) the defendant had not engaged in prior acts of prostitution with the plaintiff;

(7) as a condition of employment, the defendant required the plaintiff to agree not to engage in prostitution; or

(8) the defendant's place of business was posted with signs prohibiting prostitution or prostitution-related activities.

611A.83 Evidence

Subdivision 1. Use in other proceedings.
In the course of litigation under section 611A.81, any transaction about which a plaintiff testifies or produces evidence does not subject the plaintiff to criminal prosecution or any penalty or forfeiture. Any testimony or evidence, documentary or otherwise, or information directly or indirectly derived from that testimony or evidence that is given or produced by a plaintiff or a witness for a plaintiff may not be used against that person in any other investigation or proceeding, other than a criminal investigation or proceeding for perjury committed while giving the testimony or producing the evidence.

Subdivision 2. Convictions.
Evidence of convictions for prostitution or prostitution-related offenses is inadmissible in a proceeding brought under section 611A.81 for purposes of attacking the plaintiff's credibility. If the court admits evidence of prior convictions for purposes permitted under Minnesota Rules of Evidence, rule 404(b) with respect to motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, the fact finder may consider the evidence solely for those purposes and shall disregard details offered to prove any fact that is not relevant.

611A.84 Statute of Limitations

An action for damages under section 611A.81 must be commenced not later than six years after the cause of action arises, except that the running of the limitation period is suspended during the time that coercion as defined in section 611A.80 continues, or as otherwise provided by section 541.13 or 541.15.

611A.85 Other Remedies Preserved

Sections 611A.80 to 611A.88 do not affect the right of any person to bring an action or use any remedy available under other law, including common law, to recover damages arising out of the use of the individual in prostitution or the coercion incident to the individual being used in prostitution; nor do sections 611A.80 to 611A.88 limit or restrict the liability of any person under other law.

611A.86 Double Recovery Prohibited

A person who recovers damages under sections 611A.80 to 611A.88 may not recover the same costs or damages under any other law. A person who recovers damages under any other law may not recover for the same costs or damages under sections 611A.80 to 611A.88.

611A.87 Award of Costs

Upon motion of a prevailing party in an action under sections 611A.80 to 611A.88, the court may award costs, disbursements, and reasonable attorney fees and witness fees to the party.

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611A.88 No Avoidance of Liability

No person may avoid liability under sections 611A.80 to 611A.88 by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the plaintiff.

611A.90 Release of Videotapes of Child Abuse Victims

Subdivision 1. Definition.
For purposes of this section, "physical abuse" and "sexual abuse" have the meanings given in section 626.556, subdivision 2, except that abuse is not limited to acts by a person responsible for the child's care or in a significant relationship with the child or position of authority.

Subdivision 2. Court order required.

(a) A custodian of a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse may not release a copy of the videotape without a court order, notwithstanding that the subject has consented to the release of the videotape or that the release is authorized under law.

(b) The court order may govern the purposes for which the videotape may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interests of the child.

Subdivision 3. Petition.
An individual subject of data, as defined in section 13.02, or a patient, as defined in section 144.296, who is seeking a copy of a videotape governed by this section may petition the district court in the county where the alleged abuse took place or where the custodian of the videotape resides for an order releasing a copy of the videotape under subdivision 2. Nothing in this section establishes a right to obtain access to a videotape by any other person nor limits a right of a person to obtain access if access is otherwise authorized by law or pursuant to discovery in a court proceeding.

PART 4

STATUTES/RULES

Selected Statutes – Chapter 5B Data Protection for Victims of Violence

5B.01 Findings; Purpose

The legislature finds that individuals attempting to escape from actual or threatened domestic violence, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for data without disclosing the location of a victim of domestic violence, sexual assault, or stalking; to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, sexual assault, or stalking; and to enable program participants to use an address designated by the secretary of state as a substitute mailing address for all purposes.

5B.02 Definitions

(a) For purposes of this chapter and unless the context clearly requires otherwise, the definitions in this section have the meanings given them.

(b) "Address" means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant under this chapter.

(c) "Applicant" means an adult, parent, or guardian acting on behalf of an eligible minor, or a guardian acting on behalf of an incapacitated person, as defined in section 524.5-102.

(d) "Domestic violence" means an act as defined in section 518B.01, subdivision 2, paragraph (a) and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers.

(e) "Eligible person" means an adult, a minor, or an incapacitated person as defined in section 524.5-102 for whom there is good reason to believe (i) that the eligible person is a victim of domestic violence, sexual assault, or stalking, or (ii) that the eligible person fears for his or her safety or the safety of persons on whose behalf the application is made.

(f) "Mail" means first class letters and flats delivered via the United States Postal Service, including priority, express, and certified mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly defined pharmaceuticals or clearly indicate that they are sent by a government agency.

(g) "Program participant" means an individual certified as a program participant under section 5B.03.

(h) "Stalking" means acts criminalized under section 609.749 and includes a threat of such acts committed against an individual, regardless of whether these acts or threats have been reported to law enforcement officers.

5B.03 Address Confidentiality Program

Subdivision 1. Application.

The secretary of state shall certify an eligible person as a program participant when the secretary receives an application that must contain:

(1) the name of the eligible person;

(2) a statement by the applicant that the applicant has good reason to believe (i) that the eligible person listed on the application is a victim of domestic violence, sexual assault, or stalking, (ii) that the eligible person fears for the person's safety or the safety of persons on whose behalf the application is made, and (iii) that the eligible person is not applying for certification as a program participant in order to avoid prosecution for a crime;

(3) a designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(4) the mailing address where the eligible person can be contacted by the secretary of state and the phone number or numbers where the applicant or eligible person can be called by the secretary of state;

(5) the physical address or addresses of the eligible person, disclosure of which will increase the risk of domestic violence, sexual assault, or stalking;

(6) a statement whether the eligible person would like information on becoming an ongoing absentee ballot recipient pursuant to section 5B.06; and

(7) a statement from the eligible person that gives the secretary of state consent to confirm the eligible person's participation in Safe at Home to a third party who provides the program participant's first and last name and Safe at Home lot number listed on the program participant's card;

(8) the signature of the applicant, an indicator of the applicant's authority to act on behalf of the eligible person, if appropriate, the name and signature of any individual or representative of any person who assisted in the preparation of the application, and the date on which the application was signed; and

(9) any other information as required by the secretary of state.

Selected Statutes – Chapter 5B Data Protection for Victims of Violence

Subdivision 2. Filing.
Applications must be filed with the secretary of state and are subject to the provisions of section 5.15.

Subdivision 3. Certification.
Upon filing a completed application, the secretary of state shall certify the eligible person as a program participant. Program participants shall be certified for four years following the date of filing unless the certification is canceled, withdrawn, or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

Subdivision 4. Changes in information.
Program participants or applicants must inform the secretary of state of any changes in the information submitted on the application.

Subdivision 5. Designated address.
The secretary of state must designate a mailing address to which all mail for program participants is to be sent.

Subdivision 6. Attaining age of majority.
An individual who became a program participant as a minor assumes responsibility for changes in information and renewal when the individual reaches age 18.

5B.04 Certification Cancellation

(a) If the program participant obtains a legal change of identity, the participant loses certification as a program participant.

(b) The secretary of state may cancel a program participant's certification if there is a change in the mailing address, unless the program participant or the person who signed as the applicant on behalf of an eligible person provides the secretary of state with at least two days' prior notice in writing of the change of address.

(c) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(d) The secretary of state shall cancel certification of a program participant who applies using false information.

5B.05 Use of Designated Address

(a) When a program participant presents the address designated by the secretary of state to any person, that address must be accepted as the address of the program participant.

(b) A program participant may use the address designated by the secretary of state as the program participant's work address.

(c) The Office of the Secretary of State shall forward all mail sent to the designated address to the proper program participants.

5B.06 Voting by Program Participant; Use of Designated Address by Count Auditor

A program participant who is otherwise eligible to vote may register with the secretary of state as an ongoing absentee voter. The secretary of state shall determine the precinct in which the residential address of the program participant is located and shall request from and receive from the county auditor or other election official the ballot for that precinct and shall forward the absentee ballot to the program participant with the other materials for absentee balloting as required by Minnesota law. The program participant shall complete the ballot and return it to the secretary of state, who shall review the ballot in the manner provided by section 203B.24. If the ballot and ballot materials comply with the requirements of that section, the ballot must be certified by the secretary of state as the ballot of a program participant and must be forwarded to the appropriate electoral jurisdiction for tabulation along with all other ballots. The name and address of a program participant must not be listed in the statewide voter registration system.

5B.07 Data Classification

Subdivision 1. Classification of data.
Data related to applicants, eligible persons and program participants are private data on individuals as defined by section 13.02, subdivision 12. A consent for release of the address from an applicant, eligible person, or program participant is not effective.

Subd. 2. Release of data.
(a) Upon request from the Bureau of Criminal Apprehension, the secretary of state may share data that are private under subdivision 1 with the Bureau of Criminal Apprehension. Private data received by the Bureau of Criminal Apprehension may be released to a law enforcement agency upon verification that the release will aid the law enforcement agency in responding to an emergency situation or a criminal complaint or conducting an investigation.

(b) Data maintained by the secretary of state, the Bureau of Criminal Apprehension, and law enforcement agencies related to the process for data sharing under this section are nonpublic data as defined in section 13.02 but may be shared among those agencies. Data related to requests received from law enforcement agencies and the Bureau of Criminal Apprehension under this section are private or nonpublic data.

5B.08 Adoption of Rules

Enactment of this section satisfies the requirements of section 14.388, subdivision 1 for the enactment of rules to facilitate the administration of this chapter by state and local agencies.

5B.09 Report to Legislature

The secretary of state shall annually report to the chairs of the legislative committees having jurisdiction over government data practices and public safety stating the number of persons participating in the safe at home program during the previous calendar year. The report must be submitted annually by February 1.

Selected Statutes – Chapter 13 Data Privacy

13.02 Collection, Security, and Dissemination of Records; Definitions

Subdivision 1. Applicability.
As used in this chapter, the terms defined in this section have the meanings given them.

Subdivision 2. Commissioner.
"Commissioner" means the commissioner of the Department of Administration.

Subdivision 3. Confidential data on individuals.
"Confidential data on individuals" means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.

Subdivision 3a. Criminal justice agencies.
"Criminal justice agencies" means all state and local prosecution authorities, all state and local law enforcement agencies, the Sentencing Guidelines Commission, the Bureau of Criminal Apprehension, the Department of Corrections, and all probation officers who are not part of the judiciary.

Subdivision 4. Data not on individuals.
"Data not on individuals" means all government data which is not data on individuals.

Subdivision 5. Data on individuals.
"Data on individuals" means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Subdivision 6. Designee.
"Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Subdivision 7. Government data.
"Government data" means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

Subdivision 7a. Government entity.
"Government entity" means a state agency, statewide system, or political subdivision.

Subdivision 8. Individual.
"Individual" means a natural person. In the case of a minor or an individual adjudged mentally incompetent, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

Subdivision 8a. Not public data.
"Not public data" means any government data which is classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

Subdivision 9. Nonpublic data.
"Nonpublic data" means data not on individuals that is made by statute or federal law applicable to the data:
(a) not accessible to the public; and

(b) accessible to the subject, if any, of the data.

Subdivision 10. Person.
"Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Subdivision 11. Political subdivision.
"Political subdivision" means any county, statutory or home rule charter city, school district, special district, any town exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2, and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to any political subdivision, statewide system or state agency, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with state agencies, political subdivisions or statewide systems.

Subdivision 12. Private data on individuals.
"Private data on individuals" means data which is made by statute or federal law applicable to the data:
(a) not public; and

(b) accessible to the individual subject of that data.

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Subdivision 13. Protected nonpublic data.
"Protected nonpublic data" means data not on individuals which is made by statute or federal law applicable to the data:
(a) not public; and
(b) not accessible to the subject of the data.

Subdivision 14. Public data not on individuals.
"Public data not on individuals" means data which is accessible to the public pursuant to section 13.03.

Subdivision 15. Public data on individuals.
"Public data on individuals" means data which is accessible to the public in accordance with the provisions of section 13.03.

Subdivision 16. Responsible authority.
"Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.

Subdivision 17. State agency.
"State agency" means the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Subdivision 18. Statewide system.
"Statewide system" includes any record keeping system in which government data is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.

Subdivision 19. Summary data.
"Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

13.465 Family and Domestic Relations Data Coded Elsewhere

Subdivision 1. Scope.
The sections referred to in subdivisions 2 to 15 are codified outside this chapter. Those sections classify domestic relations data as other than public, place restrictions on access to government data, or involve data sharing.

Subdivision 2. Child support parties.
Certain data regarding the location of parties in connection with child support proceedings are governed by sections 256.87, subdivision 8; 257.70; and 518.005, subdivision 5. Certain data regarding the suspension of licenses of persons owing child support are governed by section 518A.70, and certain data on newly hired employees maintained by the public authority for support enforcement are governed by section 256.998.

Subdivision 3. Records of artificial insemination.
Access to records held by a court or other agency concerning artificial insemination performed on a married woman with her husband's consent is governed by section 257.56, subdivision 1.

Subdivision 4. Parentage action records.
Inspection of records in parentage actions held by the court, the commissioner of human services, or elsewhere is governed by section 257.70.

Subdivision 5. Adoption background check.
Data related to background checks of prospective adoptive parents are governed by section 259.41, subdivision 3.

Subdivision 6. Fathers' adoption registry.
Data in the fathers' adoption registry are classified under section 259.52, subdivision 4.

Subdivision 7. Commissioner's records of adoption.
Records of adoption held by the commissioner of human services are classified, and access to them is governed by section 259.79, subdivisions 1 and 3.

Subdivision 8. Adoption records.
Various adoption records are classified under section 259.53, subdivision 1. Access to the original birth record of a person who has been adopted is governed by section 259.89.

Subdivision 9. Parent education program.
Certain data involving participation in a parent education program are governed by section 518.157, subdivision 5.

Subdivision 10. Visitation dispute resolution.
Certain data involving visitation dispute resolution are governed by section 518.1751, subdivision 4a.

Subdivision 11. Child custody proceedings.
Court records of child custody proceedings may be sealed as provided in section 518.168.

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Subdivision 12. Child support attorneys.
Certain data provided by an applicant or recipient of child support enforcement services are classified under section 518A.47.

Subdivision 13. Custody mediation.
Child custody or visitation mediation records are classified under section 518.619, subdivision 5.

Subdivision 14. Domestic abuse; petitioner's residence.
Court records on the location or residence of a petitioner in a domestic abuse proceeding are governed by section 518B.01, subdivision 3b.

Subdivision 15. Guardian or conservator; background study.
Access to data for background studies required by the court under section 524.5-118, is governed by that section.

13.6905 Public Safety Data Coded Elsewhere

Subdivision 1. Scope.
The sections referred to in subdivisions 2 to 32 are codified outside this chapter. Those sections classify Department of Public Safety data as other than public, place restrictions on access to government data, or involve data sharing.

Subdivision 2. Vehicle registration application data.
Certain information provided in applications for motor vehicle registrations is governed under section 168.10, subdivision 1.

Subdivision 3. Motor vehicle registration.
Various data on motor vehicle registrations are classified under sections 168.327, subdivision 3, and 168.346.

Subdivision 4. Accident report.
Release of accident reports provided to the Department of Public Safety under section 169.09 is governed by section 169.09, subdivision 13.

Subdivision 9. Driver's alcohol concentration.
Data on the alcohol concentration of a driver whose driver's license is revoked or suspended are classified under section 171.12, subdivision 2a.

Subdivision 10. Driver's license address.
The residence address of certain individuals provided to the commissioner of public safety in drivers' license applications is classified under section 171.12, subdivision 7.

Subdivision 14. Criminal gang investigative data system.
Data in the criminal gang investigative data system are classified in section 299C.091.

Subdivision 15. Registered predatory offenders.
Data maintained relating to predatory offenders are governed by section 299C.093.

Subdivision 16. Juvenile history data.
Data maintained by the Bureau of Criminal Apprehension in the juvenile history record system are governed by section 299C.095.

13.80 Domestic Abuse Data

All government data on individuals which is collected, created, received or maintained by police departments, sheriffs' offices or clerks of court pursuant to the Domestic Abuse Act, section 518B.01, are classified as confidential data, pursuant to section 13.02, subdivision 3, until a temporary court order made pursuant to subdivision 5 or 7 of section 518B.01 is executed or served upon the data subject who is the respondent to the action.

13.82 Comprehensive Law Enforcement Data

Subdivision 1. Application.
This section shall apply to agencies which carry on a law enforcement function, including but not limited to municipal police departments, county sheriff departments, fire departments, the Bureau of Criminal Apprehension, the Minnesota State Patrol, the Board of Peace Officer Standards and Training, the Department of Commerce, and the program integrity section of, and county human service agency client and provider fraud prevention and control units operated or supervised by the Department of Human Services.

Subdivision 2. Arrest data.
The following data created or collected by law enforcement agencies which documents any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty shall be public at all times in the originating agency:

(a) time, date and place of the action;

(b) any resistance encountered by the agency;

(c) any pursuit engaged in by the agency;

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(d) whether any weapons were used by the agency or other individual;

(e) the charge, arrest or search warrants, or other legal basis for the action;

(f) the identities of the agencies, units within the agencies and individual persons taking the action;

(g) whether and where the individual is being held in custody or is being incarcerated by the agency;

(h) the date, time and legal basis for any transfer of custody and the identity of the agency or person who received custody;

(i) the date, time and legal basis for any release from custody or incarceration;

(j) the name, age, sex and last known address of an adult person or the age and sex of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived of liberty;

(k) whether the agency employed wiretaps or other eavesdropping techniques, unless the release of this specific data would jeopardize an ongoing investigation;

(l) the manner in which the agencies received the information that led to the arrest and the names of individuals who supplied the information unless the identities of those individuals qualify for protection under subdivision 17; and

(m) response or incident report number.

Subdivision 3. Request for service data.
The following data created or collected by law enforcement agencies which documents requests by the public for law enforcement services shall be public government data:

(a) the nature of the request or the activity complained of;

(b) the name and address of the individual making the request unless the identity of the individual qualifies for protection under subdivision 17;

(c) the time and date of the request or complaint; and

(d) the response initiated and the response or incident report number.

Subdivision 4. Audio recording of 911 call.
The audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is private data on individuals with respect to the individual making the call, except that a written transcript of the audio recording is public, unless it reveals the identity of an individual otherwise protected under subdivision 17. A transcript shall be prepared upon request. The person requesting the transcript shall pay the actual cost of transcribing the call, in addition to any other applicable costs provided under section 13.03, subdivision 3. The audio recording may be disseminated to law enforcement agencies for investigative purposes. The audio recording may be used for public safety and emergency medical services training purposes.

Subdivision 5. Domestic abuse data.
The written police report required by section 629.341, subdivision 4 , of an alleged incident described in section 629.341, subdivision 1, and arrest data, request for service data, and response or incident data described in subdivision 2, 3, or 6 that arise out of this type of incident or out of an alleged violation of an order for protection must be released upon request at no cost to the victim of domestic abuse, the victim's attorney, or an organization designated by the Minnesota Center for Crime Victims Services, the Department of Corrections, or the Department of Public Safety as providing services to victims of domestic abuse. The executive director or the commissioner of the appropriate state agency shall develop written criteria for this designation in consultation with the Advisory Council on Battered Women and Domestic Abuse.

Subdivision 6. Response or incident data.
The following data created or collected by law enforcement agencies which documents the agency's response to a request for service including, but not limited to, responses to traffic accidents, or which describes actions taken by the agency on its own initiative shall be public government data:

(a) date, time and place of the action;

(b) agencies, units of agencies and individual agency personnel participating in the action unless the identities of agency personnel qualify for protection under subdivision 17;

(c) any resistance encountered by the agency;

(d) any pursuit engaged in by the agency;

(e) whether any weapons were used by the agency or other individuals;

(f) a brief factual reconstruction of events associated with the action;

(g) names and addresses of witnesses to the agency action or the incident unless the identity of any witness qualifies for protection under subdivision 17;

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(h) names and addresses of any victims or casualties unless the identities of those individuals qualify for protection under subdivision 17;

(i) the name and location of the health care facility to which victims or casualties were taken;

(j) response or incident report number;

(k) dates of birth of the parties involved in a traffic accident;

(l) whether the parties involved were wearing seat belts; and

(m) the alcohol concentration of each driver.

Subdivision 7. Criminal investigative data.
Except for the data defined in subdivisions 2, 3, and 6, investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility is confidential or protected nonpublic while the investigation is active. Inactive investigative data is public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subdivision 17. Photographs which are part of inactive investigative files and which are clearly offensive to common sensibilities are classified as private or nonpublic data, provided that the existence of the photographs shall be disclosed to any person requesting access to the inactive investigative file. An investigation becomes inactive upon the occurrence of any of the following events:

(a) a decision by the agency or appropriate prosecutorial authority not to pursue the case;

(b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or

(c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.

Any investigative data presented as evidence in court shall be public. Data determined to be inactive under clause (a) may become active if the agency or appropriate prosecutorial authority decides to renew the investigation.

During the time when an investigation is active, any person may bring an action in the district court located in the county where the data is being maintained to authorize disclosure of investigative data. The court may order that all or part of the data relating to a particular investigation be released to the public or to the person bringing the action. In making the determination as to whether investigative data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data. The data in dispute shall be examined by the court in camera.

Subdivision 8. Child abuse identity data.
Active or inactive investigative data that identify a victim of child abuse or neglect reported under section 626.556 are private data on individuals. Active or inactive investigative data that identify a reporter of child abuse or neglect under section 626.556 are confidential data on individuals, unless the subject of the report compels disclosure under section 626.556, subdivision 11.

Subdivision 9. Inactive child abuse data.
Investigative data that become inactive under subdivision 7, clause (a) or (b), and that relate to the alleged abuse or neglect of a child by a person responsible for the child's care, as defined in section 626.556, subdivision 2, are private data.

Subdivision 10. Vulnerable adult identity data.
Active or inactive investigative data that identify a victim of vulnerable adult maltreatment under section 626.557 are private data on individuals. Active or inactive investigative data that identify a reporter of vulnerable adult maltreatment under section 626.557 are private data on individuals.

Subdivision 11. Inactive vulnerable adult maltreatment data.
Investigative data that becomes inactive under subdivision 7, paragraph (a) or (b), and that relate to the alleged maltreatment of a vulnerable adult by a caregiver or facility are private data on individuals.

Subdivision 12. Name change data.
Data on court records relating to name changes under section 259.10, subdivision 2, which is held by a law enforcement agency, is confidential data on an individual while an investigation is active and is private data on an individual when the investigation becomes inactive.

Subdivision 13. Access to data for crime victims.
On receipt of a written request, the prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or alleged criminal act or to the victim's legal representative unless the release to the individual subject of the data would be prohibited under section 13.821 or the prosecuting authority reasonably believes:

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(a) that the release of that data will interfere with the investigation; or

(b) that the request is prompted by a desire on the part of the requester to engage in unlawful activities.

Subdivision 14. Withholding public data.
A law enforcement agency may temporarily withhold response or incident data from public access if the agency reasonably believes that public access would be likely to endanger the physical safety of an individual or cause a perpetrator to flee, evade detection or destroy evidence. In such instances, the agency shall, upon the request of any person, provide a statement which explains the necessity for its action. Any person may apply to a district court for an order requiring the agency to release the data being withheld. If the court determines that the agency's action is not reasonable, it shall order the release of the data and may award costs and attorney's fees to the person who sought the order. The data in dispute shall be examined by the court in camera.

Subdivision 15. Public benefit data.
Any law enforcement agency may make any data classified as confidential or protected nonpublic pursuant to subdivision 7 accessible to any person, agency, or the public if the agency determines that the access will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest.

Subdivision 16. Public access.
When data is classified as public under this section, a law enforcement agency shall not be required to make the actual physical data available to the public if it is not administratively feasible to segregate the public data from the not public. However, the agency must make the information described as public data available to the public in a reasonable manner. When investigative data becomes inactive, as described in subdivision 7, the actual physical data associated with that investigation, including the public data, shall be available for public access.

Subdivision 17. Protection of identities.
A law enforcement agency or a law enforcement dispatching agency working under direction of a law enforcement agency shall withhold public access to data on individuals to protect the identity of individuals in the following circumstances:

(a) when access to the data would reveal the identity of an undercover law enforcement officer, as provided in section 13.43, subdivision 5;

(b) when access to the data would reveal the identity of a victim or alleged victim of criminal sexual conduct or of a violation of section 617.246, subdivision 2;

(c) when access to the data would reveal the identity of a paid or unpaid informant being used by the agency if the agency reasonably determines that revealing the identity of the informant would threaten the personal safety of the informant;

(d) when access to the data would reveal the identity of a victim of or witness to a crime if the victim or witness specifically requests not to be identified publicly, unless the agency reasonably determines that revealing the identity of the victim or witness would not threaten the personal safety or property of the individual;

(e) when access to the data would reveal the identity of a deceased person whose body was unlawfully removed from a cemetery in which it was interred;

(f) when access to the data would reveal the identity of a person who placed a call to a 911 system or the identity or telephone number of a service subscriber whose phone is used to place a call to the 911 system and:

(1) the agency determines that revealing the identity may threaten the personal safety or property of any person; or

(2) the object of the call is to receive help in a mental health emergency. For the purposes of this paragraph, a voice recording of a call placed to the 911 system is deemed to reveal the identity of the caller;

(g) when access to the data would reveal the identity of a juvenile witness and the agency reasonably determines that the subject matter of the investigation justifies protecting the identity of the witness; or

(h) when access to the data would reveal the identity of a mandated reporter under section 609.456, 626.556, or 626.557. Data concerning individuals whose identities are protected by this subdivision are private data about those individuals. Law enforcement agencies shall establish procedures to acquire the data and make the decisions necessary to protect the identity of individuals described in clauses (c), (d), (f), and (g).

Subdivision 18. Data retention.
Nothing in this section shall require law enforcement agencies to create, collect or maintain data which is not required to be created, collected or maintained by any other applicable rule or statute.

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Subdivision 19. Data in arrest warrant indices.
Data in arrest warrant indices are classified as confidential data until the defendant has been taken into custody, served with a warrant, or appears before the court, except when the law enforcement agency determines that the public purpose is served by making the information public.

Subdivision 20. Property data.
Data that uniquely describe stolen, lost, confiscated, or recovered property are classified as either private data on individuals or nonpublic data depending on the content of the not public data.

Subdivision 21. Reward program data.
To the extent that the release of program data would reveal the identity of an informant or adversely affect the integrity of the fund, financial records of a program that pays rewards to informants are protected nonpublic data in the case of data not on individuals or confidential data in the case of data on individuals.

Subdivision 22. Data on registered criminal offenders.
Data described in section 243.166 shall be classified as described in that section.

Subdivision 23. Data in missing children bulletins.
Data described in section 299C.54 shall be classified as described in that section.

Subdivision 24. Exchanges of information.
Nothing in this chapter prohibits the exchange of information by law enforcement agencies provided the exchanged information is pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation, except not public personnel data.

Subdivision 25. Deliberative processes.
Data that reflect deliberative processes or investigative techniques of law enforcement agencies are confidential data on individuals or protected nonpublic data; provided that information, reports, or memoranda that have been adopted as the final opinion or justification for a decision of a law enforcement agency are public data.

Subdivision 26. Booking photographs.

(a) For purposes of this subdivision, "booking photograph" means a photograph or electronically produced image taken by law enforcement for identification purposes in connection with the arrest of a person.

(b) Except as otherwise provided in this subdivision, a booking photograph is public data. A law enforcement agency may temporarily withhold access to a booking photograph if the agency determines that access will adversely affect an active investigation.

Subdivision 27. Pawnshop data.
Data that would reveal the identity of persons who are customers of a licensed pawnbroker or secondhand goods dealer are private data on individuals. Data describing the property in a regulated transaction with a licensed pawnbroker or secondhand goods dealer are public.

Subdivision 28. Disclosure of predatory offender registrant status.

Law enforcement agency disclosure to health facilities of the registrant status of a registered predatory offender is governed by section 244.052.

Subdivision 29. Juvenile offender photographs.
Notwithstanding section 260B.171, chapter 609A, or other law to the contrary, photographs or electronically produced images of children adjudicated delinquent under chapter 260B shall not be expunged from law enforcement records or databases.

13.821 Videotapes of Child Abuse Victims

(a) Notwithstanding section 13.04, subdivision 3, an individual subject of data may not obtain a copy of a videotape in which a child victim or alleged victim is alleging, explaining, denying, or describing an act of physical or sexual abuse without a court order under section 13.03, subdivision 6, or 611A.90. The definitions of physical abuse and sexual abuse in section 626.556, subdivision 2, apply to this section, except that abuse is not limited to acts by a person responsible for the child's care or in a significant relationship with the child or position of authority.

(b) This section does not limit other rights of access to data by an individual under section 13.04, subdivision 3, other than the right to obtain a copy of the videotape, nor prohibit rights of access pursuant to discovery in a court proceeding.

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13.822 Sexual Assault Data

Subdivision 1. Definitions.

(a) "Community-based program" means any office, institution, or center offering assistance to victims of sexual assault and their families through crisis intervention, medical, and legal accompaniment and subsequent counseling.

(b) "Sexual assault counselor" means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault.

(c) "Victim" means a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

(d) "Sexual assault communication data" means all information transmitted in confidence between a victim of sexual assault and a sexual assault counselor and all other information received by the sexual assault counselor in the course of providing assistance to the victim. The victim shall be deemed the subject of sexual assault communication data.

Subdivision 2. Classification.

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

13.83 Medical Examiner Data

Subdivision 1. Definition.

As used in this section, "medical examiner data" means data relating to deceased individuals and the manner and circumstances of their death which is created, collected, used or maintained by a county coroner or medical examiner in the fulfillment of official duties pursuant to chapter 390, or any other general or local law on county coroners or medical examiners.

Subdivision 2. Public data.

Unless specifically classified otherwise by state statute or federal law, the following data created or collected by a medical examiner or coroner on a deceased individual is public: name of the deceased; date of birth; date of death; address; sex; race; citizenship; height; weight; hair color; eye color; build; complexion; age, if known, or approximate age; identifying marks, scars and amputations; a description of the decedent's clothing; marital status; location of death including name of hospital where applicable; name of spouse; whether or not the decedent ever served in the armed forces of the United States; occupation; business; father's name (also birth name, if different); mother's name (also birth name, if different); birthplace; birthplace of parents; cause of death; causes of cause of death; whether an autopsy was performed and if so, whether it was conclusive; date and place of injury, if applicable, including work place; how injury occurred; whether death was caused by accident, suicide, homicide, or was of undetermined cause; certification of attendance by physician; physician's name and address; certification by coroner or medical examiner; name and signature of coroner or medical examiner; type of disposition of body; burial place name and location, if applicable; date of burial, cremation or removal; funeral home name and address; and name of local register or funeral director.

Subdivision 3. Unidentified individual; public data.

A county coroner or medical examiner unable during an investigation to identify a deceased individual, may release to the public any relevant data which would assist in ascertaining identity.

Subdivision 4. Investigative data.

Data created or collected by a county coroner or medical examiner which is part of an active investigation mandated by chapter 390, or any other general or local law relating to coroners or medical examiners is confidential data or protected nonpublic data, until the completion of the coroner's or medical examiner's final summary of findings but may be disclosed to a state or federal agency charged by law with investigating the death of the deceased individual about whom the medical examiner or coroner has medical examiner data. Upon completion of the coroner's or medical examiner's final summary of findings, the data collected in the investigation and the final summary of it are private or nonpublic data. However, if the final summary and the record of death indicate the manner of death is homicide, undetermined, or pending investigation and there is an active law enforcement investigation, within the meaning of section 13.82, subdivision 7, relating to the death of the deceased individual, the data remain confidential or protected nonpublic. Upon review by the county attorney of the jurisdiction in which the law enforcement investigation is active, the data may be released to persons described in subdivision 8 if the county attorney determines release would not impede the ongoing investigation. When the law enforcement investigation becomes inactive, the data are private or nonpublic data. Nothing in this subdivision shall be construed to make not public the data elements identified in subdivision 2 at any point in the investigation or thereafter.

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Subdivision 5. Other data on deceased individuals.
All other medical examiner data on deceased individuals are nonpublic and shall not be disclosed except:

(1) pursuant to the provisions of chapter 390, or any other general or local law on county coroners or medical examiners;

(2) to a state or federal agency charged by law with investigating the death of the deceased individual about whom the medical examiner or coroner has medical examiner data; or

(3) pursuant to a valid court order.

Subdivision 6. Classification of other data.
Unless a statute specifically provides a different classification, all other data created or collected by a county coroner or medical examiner that is not data on deceased individuals or the manner and circumstances of their death is public pursuant to section 13.03.

Subdivision 7. Court review.
Any person may petition the district court located in the county where medical examiner data is being maintained to authorize disclosure of nonpublic, protected nonpublic, or confidential medical examiner data. The petitioner shall notify the medical examiner or coroner. The court may notify other interested persons and require their presence at a hearing. A hearing may be held immediately if the parties agree, and in any event shall be held as soon as practicable. After examining the data in camera, the court may order disclosure of the data if it determines that disclosure would be in the public interest.

Subdivision 8. Access to nonpublic data.
The data made nonpublic by this section are accessible to the physician who attended the decedent at the time of death, the legal representative of the decedent's estate and to the decedent's surviving spouse, parents, children, and siblings and their legal representatives.

Subdivision 9. Change in classification.
Data classified as nonpublic, protected nonpublic, or confidential by this section shall be classified as public 30 years after the date of death of the decedent.

Subdivision 10. Classification of certain medical examiner and coroner data.
Data described in sections 383B.225, subdivision 6, 390.11, subdivision 7, and 390.32, subdivision 6, shall be classified as described therein.

13.84 Court Services Data

Subdivision 1. Definition.
As used in this section "court services data" means data that are created, collected, used or maintained by a court services department, parole or probation authority, correctional agency, or by an agent designated by the court to perform studies or other duties and that are on individuals who are or were defendants, parolees or probationers of a district court, participants in diversion programs, petitioners or respondents to a family court, or juveniles adjudicated delinquent and committed, detained prior to a court hearing or hearings, or found to be dependent or neglected and placed under the supervision of the court.

Subdivision 2. General.
Unless the data is summary data or a statute, including sections 609.115 and 257.70, specifically provides a different classification, the following court services data are classified as private pursuant to section 13.02, subdivision 12:

(a) Court services data on individuals gathered at the request of a district court to determine the need for any treatment, rehabilitation, counseling, or any other need of a defendant, parolee, probationer, or participant in a diversion program, and used by the court to assist in assigning an appropriate sentence or other disposition in a case;

(b) Court services data on petitioners or respondents to a family court gathered at the request of the court for purposes of, but not limited to, individual, family, marriage, chemical dependency and marriage dissolution adjustment counseling, including recommendations to the court as to the custody of minor children in marriage dissolution cases;

(c) Court services data on individuals gathered by psychologists in the course of providing the court or its staff with psychological evaluations or in the course of counseling individual clients referred by the court for the purpose of assisting them with personal conflicts or difficulties.

Subdivision 3. Third party information.
Whenever, in the course of gathering the private data specified above, a psychologist, probation officer or other agent of the court is directed by the court to obtain data on individual defendants, parolees, probationers, or petitioners or respondents in a family court, and the source of that data provides the data only upon the condition of its being held confidential, that data and the identity of the source shall be confidential data on individuals, pursuant to section 13.02, subdivision 3.

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Subdivision 4. Probation data.
Progress reports and other reports and recommendations provided at the request of the court by parole or probation officers for the purpose of determining the appropriate legal action or disposition regarding an individual on probation are confidential data on individuals.

Subdivision 5. Disclosure.
Private or confidential court services data shall not be disclosed except:

(a) pursuant to section 13.05;

(b) pursuant to a statute specifically authorizing disclosure of court services data;

(c) with the written permission of the source of confidential data;

(d) to the court services department, parole or probation authority or state or local correctional agency or facility having statutorily granted supervision over the individual subject of the data;

(e) pursuant to subdivision 6; or

(f) pursuant to a valid court order.

Subdivision 6. Public benefit data.

(a) The responsible authority or its designee of a parole or probation authority or correctional agency may release private or confidential court services data related to:

(1) criminal acts to any law enforcement agency, if necessary for law enforcement purposes; and

(2) criminal acts or delinquent acts to the victims of criminal or delinquent acts to the extent that the data are necessary for the victim to assert the victim's legal right to restitution.

(b) A parole or probation authority, a correctional agency, or agencies that provide correctional services under contract to a correctional agency may release to a law enforcement agency the following data on defendants, parolees, or probationers: current address, dates of entrance to and departure from agency programs, and dates and times of any absences, both authorized and unauthorized, from a correctional program.

(c) The responsible authority or its designee of a juvenile correctional agency may release private or confidential court services data to a victim of a delinquent act to the extent the data are necessary to enable the victim to assert the victim's right to request notice of release under section 611A.06. The data that may be released include only 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.

Subdivision 7. Public data.
The following court services data on adult individuals is public:

(a) name, age, date of birth, sex, occupation and the fact that an individual is a parolee, probationer or participant in a diversion program, and if so, at what location;

(b) the offense for which the individual was placed under supervision;

(c) the dates supervision began and ended and the duration of supervision;

(d) court services data which was public in a court or other agency which originated the data;

(e) arrest and detention orders, orders for parole or probation revocation and the reasons for revocation;

(f) the conditions of parole, probation or participation and the extent to which those conditions have been or are being met;

(g) identities of agencies, units within agencies and individuals providing supervision; and

(h) the legal basis for any change in supervision and the date, time and locations associated with the change.

Subdivision 8. Limitation.
Nothing in this section shall limit public access to data made public by section 13.82.

Subdivision 9. Child abuse data; release to child protective services.
A court services agency may release private or confidential data on an active case involving assessment or investigation of actions that are defined as sexual abuse, physical abuse, or neglect under section 626.556 to a local welfare agency if:

(1) the local welfare agency has an active case involving a common client or clients who are the subject of the data; and

(2) the data are necessary for the local welfare agency to effectively process the agency's case, including investigating or performing other duties relating to the case required by law. Court services data disclosed under this subdivision

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may be used only for purposes of the active case described in clause (1) and may not be further disclosed to any other person or agency, except as authorized by law.

13.85 Corrections and Detention Data

Subdivision 1. Definition.
As used in this section, "corrections and detention data" means data on individuals created, collected, used or maintained because of their lawful confinement or detainment in state reformatories, prisons and correctional facilities, municipal or county jails, lockups, work houses, work farms and all other correctional and detention facilities.

Subdivision 2. Corrections and detention private data.
Unless the data are summary data or arrest data, or a statute specifically provides a different classification, corrections and detention data on individuals are classified as private pursuant to section 13.02, subdivision 12, to the extent that the release of the data would either

(a) disclose medical, psychological, or financial information, or personal information not related to their lawful confinement or detainment or

(b) endanger an individual's life.

Subdivision 3. Corrections and detention confidential data.
Corrections and detention data are confidential, pursuant to section 13.02, subdivision 3, to the extent that release of the data would:

(a) endanger an individual's life,

(b) endanger the effectiveness of an investigation authorized by statute and relating to the enforcement of rules or law,

(c) identify a confidential informant, or

(d) clearly endanger the security of any institution or its population.

Subdivision 4. Corrections and detention public data.
After any presentation to a court, any data made private or confidential by this section shall be public to the extent reflected in court records.

Subdivision 5. Corrections and detention public benefit data.
The responsible authority or its designee of any agency that maintains corrections and detention data may release private or confidential corrections and detention data to any law enforcement agency, if necessary for law enforcement purposes, or to the victim of a criminal act where the data are necessary for the victim to assert the victim's legal right to restitution.

13.86 Investigative Detention Data

Subdivision 1. Definition.
As used in this section, "investigative detention data" means government data created, collected, used or maintained by the state correctional facilities, municipal or county jails, lockups, work houses, work farms and other correctional and detention facilities which:

(a) if revealed, would disclose the identity of an informant who provided information about suspected illegal activities, and

(b) if revealed, is likely to subject the informant to physical reprisals by others.

Subdivision 2. General.
Investigative detention data is confidential and shall not be disclosed except:

(a) pursuant to section 13.05 or any other statute;

(b) pursuant to a valid court order; or

(c) to a party named in a civil or criminal proceeding, whether administrative or judicial, to the extent required by the relevant Rules of Civil or Criminal Procedure.

13.87 Criminal Justice Data

Subdivision 1. Criminal history data.

(a) Definition. For purposes of this subdivision, "criminal history data" means all data maintained in criminal history records compiled by the Bureau of Criminal Apprehension and disseminated through the criminal justice information system, including, but not limited to fingerprints, photographs, identification data, arrest data, prosecution data, criminal court data, custody and supervision data.

(b) Classification. Criminal history data maintained by agencies, political subdivisions and statewide systems are classified as private, pursuant to section 13.02, subdivision 12, except that data created, collected, or maintained by the Bureau of Criminal Apprehension that identify an individual who was convicted of a crime, the offense of which the individual was convicted, associated court disposition and sentence information, controlling agency, and confinement information are public data for 15 years following the discharge of the sentence imposed for the offense. The Bureau of Criminal Apprehension shall provide to the public at the central office of the bureau the ability to inspect in person, at no charge, through a computer monitor the criminal conviction data classified as public under this subdivision.

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(c) Limitation. Nothing in paragraph (a) or (b) shall limit public access to data made public by section 13.82.

Subdivision 2. Firearms data.
All data pertaining to the purchase or transfer of firearms and applications for permits to carry firearms which are collected by state agencies, political subdivisions or statewide systems pursuant to sections 624.712 to 624.719 are classified as private, pursuant to section 13.02, subdivision 12.

Subdivision 3. Internet access.

(a) The Bureau of Criminal Apprehension shall establish and maintain an Internet Web site containing public criminal history data by July 1, 2004.

(b) Notwithstanding section 13.03, subdivision 3, paragraph (a), the bureau may charge a fee for Internet access to public criminal history data provided through August 1, 2005. The fee may not exceed $5 per inquiry or the amount needed to recoup the actual cost of implementing and providing Internet access, whichever is less. Fees collected must be deposited in the general fund as a nondedicated receipt.

(c) The Web site must include a notice to the subject of data of the right to contest the accuracy or completeness of data, as provided under section 13.04, subdivision 4, and provide a telephone number and address that the subject may contact for further information on this process.

(d) The Web site must include the effective date of data that is posted.

(e) The Web site must include a description of the types of criminal history data not available on the site, including arrest data, juvenile data, criminal history data from other states, federal data, data on convictions where 15 years have elapsed since discharge of the sentence, and other data that are not accessible to the public.

(f) A person who intends to access the Web site to obtain information regarding an applicant for employment, housing, or credit must disclose to the applicant the intention to do so. The Web site must include a notice that a person obtaining such access must notify the applicant when a background check using this Web site has been conducted.

(g) This subdivision does not create a civil cause of action on behalf of the data subject.

(h) This subdivision expires July 31, 2007.

Subdivision 4. Name and event index service; data classification.

(a) For purposes of this section, "name and event index service" means the data held by the Bureau of Criminal Apprehension that link data about an individual that are stored in one or more databases maintained in criminal justice agencies, as defined in section 299C.46, subdivision 2, and in the judiciary.

(b) Data collected, created, or maintained by the name and event index service are classified as private data, pursuant to section 13.02, subdivision 12, and become confidential data, pursuant to section 13.02, subdivision 3, when the data links private or public data about a specific individual to any confidential data about that individual. The data in the name and event index service revert to the private data classification when no confidential data about a specific individual are maintained in the databases. The classification of data in the name and event index service does not change the classification of the data held in the databases linked by the service.

13.871 Criminal Justice Data Coded Elsewhere

Subdivision 1. Scope.
The sections referred to in subdivisions 2 to 8 are codified outside this chapter. Those sections classify criminal justice data as other than public, place restrictions on access to government data, or involve data sharing.

Subdivision 1a. Mental health data received by law enforcement.
Certain mental health data received by law enforcement from health care providers is classified under section 144.335, subdivision 3a.

Subdivision 2. Controlled substance convictions.
Data on certain convictions for controlled substances offenses may be expunged under section 152.18, subdivision 3.

Subdivision 3. Criminal code.

(a) Sources of presentence investigation reports. Disclosure of confidential sources in presentence investigation reports is governed by section 609.115, subdivision 4.

(b) Domestic abuse investigation report. Data contained in domestic abuse investigation reports are classified under section 609.2244.

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(c) Use of motor vehicle to patronize prostitutes. Use of a motor vehicle in the commission of an offense under section 609.324 is noted on the offender's driving records and the notation is classified pursuant to section 609.324, subdivision 5.

(d) Sex offender assessment. Assessor access to data relevant to sex offender assessments is governed under section 609.3457.

(e) Sexual assault crime victims. Data on sexual assault victims are governed by section 609.3471.

(f) Data for assessment of offenders. Access to data for the purpose of a mental health assessment of a convicted harassment offender is governed by section 609.749, subdivision 6.

Subdivision 4. Public defenders.

(a) Disclosure of financial information. Disclosure of financial information provided by a defendant seeking public defender services is governed by section 611.17.

(b) Criminal justice data. Access to the criminal justice data network is governed by section 611.272.

Subdivision 5. Crime victims.

(a) Crime victim notice of release. Data on crime victims who request notice of an offender's release are classified under section 611A.06.

(b) Sex offender HIV tests. Results of HIV tests of sex offenders under section 611A.19, subdivision 2 , are classified under that section.

(c) Battered women. Data on battered women maintained by grantees for emergency shelter and support services for battered women are governed by section 611A.32, subdivision 5.

(d) Victims of domestic abuse. Data on battered women and victims of domestic abuse maintained by grantees and recipients of per diem payments for emergency shelter for battered women and support services for battered women and victims of domestic abuse are governed by sections 611A.32, subdivision 5, and 611A.371, subdivision 3.

(e) Personal history; internal auditing. Certain personal history and internal auditing data is classified by section 611A.46.

(f) Crime victim claims for reparations. Claims and supporting documents filed by crime victims seeking reparations are classified under section 611A.57, subdivision 6.

(g) Crime victim oversight act. Data maintained by the commissioner of public safety under the Crime Victim Oversight Act are classified under section 611A.74, subdivision 2.

(h) Victim identity data. Data relating to the identity of the victims of certain criminal sexual conduct is governed by section 609.3471.

Subdivision 6. Training; investigation; apprehension; reports.

(a) Reports of gunshot wounds. Disclosure of the name of a person making a report under section 626.52, subdivision 2, is governed by section 626.53.

(b) Child abuse report records. Data contained in child abuse report records are classified under section 626.556.

(c) Interstate data exchange. Disclosure of child abuse reports to agencies of another state is classified under section 626.556, subdivision 10g.

(d) Release to family court services. Release of child abuse data to a court services agency is authorized under section 626.556, subdivision 10h.

(e) Release of data to mandated reporters. Release of child abuse data to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data is authorized under section 626.556, subdivision 10j.

(f) Release of child abuse investigative records to other counties. Release of child abuse investigative records to local welfare agencies is authorized under section 626.556, subdivision 10k .

(g) Classifying and sharing records and reports of child abuse. The classification of child abuse data and the sharing of records and reports of child abuse by and between local welfare agencies and law enforcement agencies are governed under section 626.556, subdivision 11.

(h) Disclosure of information not required in certain cases. Disclosure of certain data obtained from interviewing a minor is governed by section 626.556, subdivision 11a.

(i) Data received from law enforcement. Classifying child abuse data received by certain agencies from law enforcement agencies is governed under section 626.556, subdivision 11b.

(j) Disclosure in child fatality cases. Disclosure of information relating to a child fatality is governed under section 626.556, subdivision 11d.

(k) Reports of alcohol abuse. Data on persons making reports under section 626.5563 are classified under section 626.5563, subdivision 5.

(l) Vulnerable adult report records. Data contained in vulnerable adult report records are classified under section 626.557, subdivision 12b.

(m) Adult protection team information sharing. Sharing of local welfare agency vulnerable adult data with a protection team is governed by section 626.5571, subdivision 3.

(n) Child protection team. Data acquired by a case consultation committee or subcommittee of a child protection team are classified by section 626.558, subdivision 3.

(o) Child maltreatment reports peer review panel. Sharing data of cases reviewed by the panel is governed under section 626.5593, subdivision 2.

(p) Peace officer discipline procedures. Access by an officer under investigation to the investigating agency's investigative report on the officer is governed by section 626.89, subdivision 6 .

(q) Racial profiling study data. Racial profiling study data is governed by section 626.951.

Subdivision 7. Domestic abuse police reports.
Police reports on domestic incidents are classified under section 629.341.

Subdivision 8. Board of Pardons records.
Access to Board of Pardons records is governed by section 638.07.

Subdivision 9. Pistol permit data.
Data on persons permitted to carry pistols under the terms of a permit must be shared as required by section 624.714, subdivision 6.

13.875 Juvenile Justice Data Coded Elsewhere

Subdivision 1. Scope.
The sections referred to in subdivisions 2 to 5 are codified outside this chapter. Those sections classify juvenile justice data as other than public, place restrictions on access to government data, or involve data sharing.

Subdivision 2. Peace officers, court services, and corrections records of juveniles.
Inspection and maintenance of juvenile records held by police and the commissioner of corrections and disclosure to school officials of court services data on juveniles adjudicated delinquent are governed by section 260B.171.

Subdivision 3. Juvenile sex offenders.
Certain data on children classified under chapters 13, 144, 260B, and 626 are made accessible to persons assessing whether a child adjudicated a sex offender is in need of and amenable to sex offender treatment under section 260B.198.

Subdivision 4. Court records.
Court records of dispositions involving placement outside this state are classified under section 260B.235, subdivision 8.

Subdivision 5. Information for child placement.
Certain data on children classified under chapters 13, 144, and 260C are made accessible to agencies with the legal responsibility for the residential placement of a child under section 260C.208.

13.88 Community Dispute Resolution Center Data

The guidelines shall provide that all files relating to a case in a community dispute resolution program are to be classified as private data on individuals, pursuant to section 13.02, subdivision 12, with the following exceptions:

(1) When a party to the case has been formally charged with a criminal offense, the data are to be classified as public data on individuals, pursuant to section 13.02, subdivision 15.

(2) Data relating to suspected neglect or physical or sexual abuse of children or maltreatment of vulnerable adults are to be subject to the reporting requirements of sections 626.556 and 626.557.

13.90 Judiciary Exempt

Subdivision 1. Definition.
For purposes of this section, "judiciary" means any office, officer, department, division, board, commission, committee, or agency of the courts of this state, whether or not of record, including but not limited to the Board of Law Examiners, the Lawyer's Professional Responsibility Board, the Board of Judicial Standards, the Lawyer's Trust Account Board, the State Law Library, the State Court Administrator's Office, the District Court Administrator's Office, and the Office of the Court Administrator.

Subdivision 2. Exemption.
The judiciary is not governed by this chapter. Access to data of the judiciary is governed by rules adopted by the Supreme Court.

Selected Statutes – Chapter 15 State Agencies

15.87 Victims of Violence

In furtherance of the state policy of zero tolerance for violence in section 1.50, the state shall have a goal of providing:

(1) every victim of violence in Minnesota, regardless of the county of residence, access to necessary services, including, but not limited to:

(i) crisis intervention services, including a 24-hour emergency telephone line;

(ii) safe housing;

(iii) counseling and peer support services; and

(iv) assistance in pursuing legal remedies and appropriate medical care; and

(2) every child who is a witness to abuse or who is a victim of violence, access to necessary services, including, but not limited to:

(i) crisis child care;

(ii) safe supervised parenting time or independent, neutral exchange locations for parenting time, when needed;

(iii) age appropriate counseling and support; and

(iv) assistance with legal remedies, medical care, and needed social services.

72A.20 Methods, Acts, and Practices Which are Defined as Unfair or Deceptive

Subdivision 29. HIV tests; crime victims and emergency medical service personnel.

No insurer regulated under chapter 61A, 62B, or 62S, or providing health, medical, hospitalization, long-term care insurance, or accident and sickness insurance regulated under chapter 62A, or nonprofit health service plan corporation regulated under chapter 62C, health maintenance organization regulated under chapter 62D, or fraternal benefit society regulated under chapter 64B, may:

(1) use the results of a test to determine the presence of the human immunodeficiency virus (HIV) antibody performed on an offender under section 611A.19 or performed on a crime victim who was exposed to or had contact with an offender's bodily fluids during commission of a crime that was reported to law enforcement officials, in order to make an underwriting decision, cancel, fail to renew, or take any other action with respect to a policy, plan, certificate, or contract;

(2) use the results of a test to determine the presence of a bloodborne pathogen performed on an individual according to sections 144.7401 to 144.7415, 241.33 to 241.342, or 246.71 to 246.722 in order to make an underwriting decision, cancel, fail to renew, or take any other action with respect to a policy, plan, certificate, or contract; or

(3) ask an applicant for coverage or a person already covered whether the person has:

(a) had a test performed for the reason set forth in clause (1) or (2); or

(b) been the victim of an assault or any other crime which involves bodily contact with the offender. This subdivision does not affect tests conducted for purposes other than those described in clause (1) or (2), including any test to determine the presence of a bloodborne pathogen if such test was performed at the insurer's direction as part of the insurer's normal underwriting requirements.

Selected Statutes – Chapter 168 Motor Vehicle Registration

168.346 Privacy of Personal Information

Subdivision 1. Vehicle registration data; federal compliance.

(a) Data on an individual provided to register a vehicle shall be treated as provided by United States Code, title 18, section 2721, as in effect on May 23, 2005, and shall be disclosed as required or permitted by that section.

(b) The registered owner of a vehicle who is an individual may consent in writing to the commissioner to disclose the individual's personal information exempted by United States Code, title 18, section 2721, to any person who makes a written request for the personal information. If the registered owner is an individual and so authorizes disclosure, the commissioner shall implement the request.

(c) If authorized by the registered owner as indicated in paragraph

(d) the registered owner's personal information may be used, rented, or sold solely for bulk distribution by organizations for business purposes including surveys, marketing, or solicitation.

Selected Statutes – Chapter 168 Motor Vehicle Registration

Subdivision 2. Personal information disclosure for public safety.
The commissioner shall disclose personal information when the use is related to the operation or use of a vehicle or to public safety. The use of personal information is related to public safety if it concerns the physical safety or security of drivers, vehicles, pedestrians, or property. The commissioner may refuse to disclose data under this subdivision when the commissioner concludes that the requester is likely to use the data for illegal, improper, or noninvestigative purposes.

Subdivision 3. Privacy classification for personal safety.
The registered owner of a vehicle who is an individual may request, in writing, that the registered owner's residence address or name and residence address be classified as "private data on individuals," as defined in section 13.02, subdivision 12 . The commissioner shall grant the classification on receipt of a signed statement by the registered owner that the classification is required for the safety of the registered owner or the registered owner's family, if the statement also provides a valid, existing address where the registered owner consents to receive service of process. The commissioner shall use the service of process mailing address in place of the registered owner's residence address in all documents and notices pertaining to the vehicle. The residence address or name and residence address and any information provided in the classification request, other than the individual's service for process mailing address, are private data on individuals but may be provided to requesting law enforcement agencies, probation and parole agencies, and public authorities, as defined in section 518A.26, subdivision 18.

Selected Statutes – Chapter 169 Towing Vehicles/Notice to Victims

169.042 Towing; Notice to Victim of Vehicle Theft

Subdivision 1. Notification.
The law enforcement agency that originally received the report of a vehicle theft shall make a reasonable and good-faith effort to notify the victim of the reported vehicle theft within 48 hours after recovering the vehicle or receiving notification that the vehicle has been recovered. 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 is recovered, where the vehicle is located, and when the vehicle can be released to the owner.

Subdivision 2. Violation dismissal.
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.

Selected Statutes – Chapter 243 Corrections/Adults

243.05 Commissioner of Corrections; Powers, Limitations

Subdivision 1b. Victim's rights.

(a) This subdivision applies to parole decisions relating to inmates convicted of first degree murder who are described in subdivision 1, clauses (a) and (b). As used in this subdivision, "victim" means the murder victim's surviving spouse or next of kin.

(b) The commissioner shall make reasonable efforts to notify the victim, in advance, of the time and place of the 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.

Selected Statutes – Chapter 244 Criminal Sentencing

244.05 Supervised Release Term

Subdivision 5. Supervised release, life sentence.

(a) The commissioner of corrections may, under rules promulgated by the commissioner, give supervised release to an inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); 609.109, subdivision 3; 609.3455, subdivision 3 or 4; or 609.385 after the inmate has served the minimum term of imprisonment specified in subdivision 4.

Selected Statutes – Chapter 244 Criminal Sentencing

(b) The commissioner shall require the preparation of a community investigation report and shall consider the findings of the report when making a supervised release decision under this subdivision. The report shall reflect the sentiment of the various elements of the community toward the inmate, both at the time of the offense and at the present time. The report shall include the views of the sentencing judge, the prosecutor, any law enforcement personnel who may have been involved in the case, and any successors to these individuals who may have information relevant to the supervised release decision. The report shall also include the views of the victim and the victim's family unless the victim or the victim's family chooses not to participate.

(c) The commissioner shall make reasonable efforts to notify the victim, 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.

(d) When considering whether to give supervised release to an inmate serving a life sentence under section 609.3455, subdivision 3 or 4, the commissioner shall consider, at a minimum, the following: the risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration. The commissioner may not give supervised release to the inmate unless:

(1) while in prison:

(a) the inmate has successfully completed appropriate sex offender treatment;

(b) the inmate has been assessed for chemical dependency needs and, if appropriate, has successfully completed chemical dependency treatment; and

(c) the inmate has been assessed for mental health needs and, if appropriate, has successfully completed mental health treatment; and

(2) a comprehensive individual release plan is in place for the inmate that ensures that, after release, the inmate will have suitable housing and receive appropriate aftercare and community-based treatment. The comprehensive plan also must include a post-prison employment or education plan for the inmate.

(e) As used in this subdivision, "victim" means 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.

244.052 Predatory Offenders; Notice

Subdivision 1. Definitions.
As used in this section:

(1) "confinement" means confinement in a state correctional facility or a state treatment facility;

(2) "immediate household" means any and all individuals who live in the same household as the offender;

(3) "law enforcement agency" means the law enforcement agency having primary jurisdiction over the location where the offender expects to reside upon release;

(4) "residential facility" means a facility that is licensed as a residential program, as defined in section 245A.02, subdivision 14, by the commissioner of human services under chapter 245A, or the commissioner of corrections under section 241.021, whose staff are trained in the supervision of sex offenders; and

(5) "predatory offender" and "offender" mean a person who is required to register as a predatory offender under section 243.166. However, the terms do not include persons required to register based solely on a delinquency adjudication.

Subdivision 2. Risk assessment scale.
By January 1, 1997, the commissioner of corrections shall develop a risk assessment scale which assigns weights to the various risk factors listed in subdivision 3, paragraph (g), and specifies the risk level to which offenders with various risk assessment scores shall be assigned. In developing this scale, the commissioner shall consult with county attorneys, treatment professionals, law enforcement officials, and probation officers.

Subdivision 3. End-of-confinement review committee.
(a) The commissioner of corrections shall establish and

Selected Statutes – Chapter 244 Criminal Sentencing

administer end-of-confinement review committees at each state correctional facility and at each state treatment facility where predatory offenders are confined. The committees shall assess on a case-by-case basis the public risk posed by predatory offenders who are about to be released from confinement.

(b) Each committee shall be a standing committee and shall consist of the following members appointed by the commissioner:

(1) the chief executive officer or head of the correctional or treatment facility where the offender is currently confined, or that person's designee;

(2) a law enforcement officer;

(3) a treatment professional who is trained in the assessment of sex offenders;

(4) a caseworker experienced in supervising sex offenders; and

(5) a victim's services professional. Members of the committee, other than the facility's chief executive officer or head, shall be appointed by the commissioner to two-year terms. The chief executive officer or head of the facility or designee shall act as chair of the committee and shall use the facility's staff, as needed, to administer the committee, obtain necessary information from outside sources, and prepare risk assessment reports on offenders.

(c) The committee shall have access to the following data on a predatory offender only for the purposes of its assessment and to defend the committee's risk assessment determination upon administrative review under this section:

(1) private medical data under section 13.384 or 144.335, or welfare data under section 13.46 that relate to medical treatment of the offender;

(2) private and confidential court services data under section 13.84;

(3) private and confidential corrections data under section 13.85; and

(4) private criminal history data under section 13.87.

Data collected and maintained by the committee under this paragraph may not be disclosed outside the committee, except as provided under section 13.05, subdivision 3 or 4. The predatory offender has access to data on the offender collected and maintained by the committee, unless the data are confidential data received under this paragraph.

(d) (Missing text)

(1) Except as otherwise provided in items (ii), (iii), and (iv), at least 90 days before a predatory offender is to be released from confinement, the commissioner of corrections shall convene the appropriate end-of-confinement review committee for the purpose of assessing the risk presented by the offender and determining the risk level to which the offender shall be assigned under paragraph (e). The offender and the law enforcement agency that was responsible for the charge resulting in confinement shall be notified of the time and place of the committee's meeting. The offender has a right to be present and be heard at the meeting. The law enforcement agency may provide material in writing that is relevant to the offender's risk level to the chair of the committee. The committee shall use the risk factors described in paragraph (g) and the risk assessment scale developed under subdivision 2 to determine the offender's risk assessment score and risk level. Offenders scheduled for release from confinement shall be assessed by the committee established at the facility from which the offender is to be released.

(2) If an offender is received for confinement in a facility with less than 90 days remaining in the offender's term of confinement, the offender's risk shall be assessed at the first regularly scheduled end of confinement review committee that convenes after the appropriate documentation for the risk assessment is assembled by the committee. The commissioner shall make reasonable efforts to ensure that offender's risk is assessed and a risk level is assigned or reassigned at least 30 days before the offender's release date.

(3) If the offender is subject to a mandatory life sentence under section 609.3455, subdivision 3 or 4, the commissioner of corrections shall convene the appropriate end-of-confinement review committee at least nine months before the offender's minimum term of imprisonment has been served. If the offender is received for confinement in a facility with less than nine months remaining before the offender's minimum term of imprisonment has been served, the committee shall conform its procedures to those outlined in item (ii) to the extent practicable.

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(4) If the offender is granted supervised release, the commissioner of corrections shall notify the appropriate end-of-confinement review committee that it needs to review the offender's previously determined risk level at its next regularly scheduled meeting. The commissioner shall make reasonable efforts to ensure that the offender's earlier risk level determination is reviewed and the risk level is confirmed or reassigned at least 60 days before the offender's release date. The committee shall give the report to the offender and to the law enforcement agency at least 60 days before an offender is released from confinement.

(e) The committee shall assign to risk level I a predatory offender whose risk assessment score indicates a low risk of reoffense. The committee shall assign to risk level II an offender whose risk assessment score indicates a moderate risk of reoffense. The committee shall assign to risk level III an offender whose risk assessment score indicates a high risk of reoffense.

(f) Before the predatory offender is released from confinement, the committee shall prepare a risk assessment report which specifies the risk level to which the offender has been assigned and the reasons underlying the committee's risk assessment decision. Except for an offender subject to a mandatory life sentence under section 609.3455, subdivision 3 or 4, who has not been granted supervised release, the committee shall give the report to the offender and to the law enforcement agency at least 60 days before an offender is released from confinement. If the offender is subject to a mandatory life sentence and has not yet served the entire minimum term of imprisonment, the committee shall give the report to the offender and to the commissioner at least six months before the offender is first eligible for release. If the risk assessment is performed under the circumstances described in paragraph (d), item (ii), the report shall be given to the offender and the law enforcement agency as soon as it is available. The committee also shall inform the offender of the availability of review under subdivision 6.

(g) As used in this subdivision, "risk factors" includes, but is not limited to, the following factors:

(1) the seriousness of the offense should the offender reoffend. This factor includes consideration of the following:

(i) the degree of likely force or harm;

(ii) the degree of likely physical contact; and

(iii) the age of the likely victim;

(2) the offender's prior offense history. This factor includes consideration of the following:

(i) the relationship of prior victims to the offender;

(ii) the number of prior offenses or victims;

(iii) the duration of the offender's prior offense history;

(iv) the length of time since the offender's last prior offense while the offender was at risk to commit offenses; and

(v) the offender's prior history of other antisocial acts;

(3) the offender's characteristics. This factor includes consideration of the following:

(i) the offender's response to prior treatment efforts; and

(ii) the offender's history of substance abuse;

(4) the availability of community supports to the offender. This factor includes consideration of the following:

(i) the availability and likelihood that the offender will be involved in therapeutic treatment;

(ii) the availability of residential supports to the offender, such as a stable and supervised living arrangement in an appropriate location;

(iii) the offender's familial and social relationships, including the nature and length of these relationships and the level of support that the offender may receive from these persons; and

(iv) the offender's lack of education or employment stability;

(5) whether the offender has indicated or credible evidence in the record indicates that the offender will reoffend if released into the community; and

(6) whether the offender demonstrates a physical condition that minimizes the risk of reoffense, including but not limited to, advanced age or a debilitating illness or physical condition.

(h) Upon the request of the law enforcement agency or the offender's corrections agent, the commissioner may reconvene the end-of-confinement review committee for the purpose of reassessing the risk level to which an offender has been assigned under paragraph (e). In a request for a reassessment, the law enforcement agency which was responsible for the charge resulting in confinement or agent shall list the facts and circumstances arising after

the initial assignment or facts and circumstances known to law enforcement or the agent but not considered by the committee under paragraph (e) which support the request for a reassessment. The request for reassessment by the law enforcement agency must occur within 30 days of receipt of the report indicating the offender's risk level assignment. The offender's corrections agent, in consultation with the chief law enforcement officer in the area where the offender resides or intends to reside, may request a review of a risk level at any time if substantial evidence exists that the offender's risk level should be reviewed by an end-of-confinement review committee. This evidence includes, but is not limited to, evidence of treatment failures or completions, evidence of exceptional crime-free community adjustment or lack of appropriate adjustment, evidence of substantial community need to know more about the offender or mitigating circumstances that would narrow the proposed scope of notification, or other practical situations articulated and based in evidence of the offender's behavior while under supervision. Upon review of the request, the end-of-confinement review committee may reassign an offender to a different risk level. If the offender is reassigned to a higher risk level, the offender has the right to seek review of the committee's determination under subdivision 6.

(i) An offender may request the end-of-confinement review committee to reassess the offender's assigned risk level after three years have elapsed since the committee's initial risk assessment and may renew the request once every two years following subsequent denials. In a request for reassessment, the offender shall list the facts and circumstances which demonstrate that the offender no longer poses the same degree of risk to the community. In order for a request for a risk level reduction to be granted, the offender must demonstrate full compliance with supervised release conditions, completion of required post-release treatment programming, and full compliance with all registration requirements as detailed in section 243.166. The offender must also not have been convicted of any felony, gross misdemeanor, or misdemeanor offenses subsequent to the assignment of the original risk level. The committee shall follow the process outlined in paragraphs (a) to (c) in the reassessment. An offender who is incarcerated may not request a reassessment under this paragraph.

(j) Offenders returned to prison as release violators shall not have a right to a subsequent risk reassessment by the end-of-confinement review committee unless substantial evidence indicates that the offender's risk to the public has increased.

(k) If the committee assigns a predatory offender to risk level III, the committee shall determine whether residency restrictions shall be included in the conditions of the offender's release based on the offender's pattern of offending behavior.

Subdivision 3a. Offenders from other states and offenders released from federal facilities.

(a) Except as provided in paragraph (b), the commissioner shall establish an end-of-confinement review committee to assign a risk level:

(1) to offenders who are released from a federal correctional facility in Minnesota or a federal correctional facility in another state and who intend to reside in Minnesota;

(2) to offenders who are accepted from another state under the interstate compact authorized by section 243.16 or 243.1605 or any other authorized interstate agreement; and

(3) to offenders who are referred to the committee by local law enforcement agencies under paragraph (f).

(b) This subdivision does not require the commissioner to convene an end-of-confinement review committee for a person coming into Minnesota who is subject to probation under another state's law. The probation or court services officer and law enforcement officer shall manage such cases in accordance with section 244.10, subdivision 8.

(c) The committee shall make reasonable efforts to conform to the same timelines applied to offenders released from a Minnesota correctional facility and shall collect all relevant information and records on offenders assessed and assigned a risk level under this subdivision. However, for offenders who were assigned the most serious risk level by another state, the committee must act promptly to collect the information required under this paragraph. The end-of-confinement review committee must proceed in accordance with all requirements set forth in this section and follow all policies and procedures applied to offenders released from a Minnesota correctional facility in reviewing information and assessing the risk level of offenders covered by this subdivision, unless restrictions caused by the nature of federal or interstate transfers prevent such

conformance. All of the provisions of this section apply to offenders who are assessed and assigned a risk level under this subdivision.

(d) If a local law enforcement agency learns or suspects that a person who is subject to this section is living in Minnesota and a risk level has not been assigned to the person under this section, the law enforcement agency shall provide this information to the Bureau of Criminal Apprehension and the commissioner of corrections within three business days.

(e) If the commissioner receives reliable information from a local law enforcement agency or the bureau that a person subject to this section is living in Minnesota and a local law enforcement agency so requests, the commissioner must determine if the person was assigned a risk level under a law comparable to this section. If the commissioner determines that the law is comparable and public safety warrants, the commissioner, within three business days of receiving a request, shall notify the local law enforcement agency that it may, in consultation with the department, proceed with notification under subdivision 4 based on the person's out-of-state risk level. However, if the commissioner concludes that the offender is from a state with a risk level assessment law that is not comparable to this section, the extent of the notification may not exceed that of a risk level II offender under subdivision 4, paragraph (b), unless the requirements of paragraph (f) have been met. If an assessment is requested from the end-of-confinement review committee under paragraph (f), the local law enforcement agency may continue to disclose information under subdivision 4 until the committee assigns the person a risk level. After the committee assigns a risk level to an offender pursuant to a request made under paragraph (f), the information disclosed by law enforcement shall be consistent with the risk level assigned by the end-of-confinement review committee. The commissioner of corrections, in consultation with legal advisers, shall determine whether the law of another state is comparable to this section.

(f) If the local law enforcement agency wants to make a broader disclosure than is authorized under paragraph (e), the law enforcement agency may request that an end-of-confinement review committee assign a risk level to the offender. The local law enforcement agency shall provide to the committee all information concerning the offender's criminal history, the risk the offender poses to the community, and other relevant information. The department shall attempt to obtain other information relevant to determining which risk level to assign the offender. The committee shall promptly assign a risk level to an offender referred to the committee under this paragraph.

Subdivision 4. Law enforcement agency; disclosure of information to public.

(a) The law enforcement agency in the area where the predatory offender resides, expects to reside, is employed, or is regularly found, shall disclose to the public any information regarding the offender contained in the report forwarded to the agency under subdivision 3, paragraph (f), that is relevant and necessary to protect the public and to counteract the offender's dangerousness, consistent with the guidelines in paragraph (b). The extent of the information disclosed and the community to whom disclosure is made must relate to the level of danger posed by the offender, to the offender's pattern of offending behavior, and to the need of community members for information to enhance their individual and collective safety.

(b) The law enforcement agency shall employ the following guidelines in determining the scope of disclosure made under this subdivision:

(1) if the offender is assigned to risk level I, the agency may maintain information regarding the offender within the agency and may disclose it to other law enforcement agencies. Additionally, the agency may disclose the information to any victims of or witnesses to the offense committed by the offender. The agency shall disclose the information to victims of the offense committed by the offender who have requested disclosure and to adult members of the offender's immediate household;

(2) if the offender is assigned to risk level II, the agency also may disclose the information to agencies and groups that the offender is likely to encounter for the purpose of securing those institutions and protecting individuals in their care while they are on or near the premises of the institution. These agencies and groups include the staff members of public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender. The agency also may disclose the information to individuals the agency believes are likely to be victimized by the offender. The agency's belief shall

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be based on the offender's pattern of offending or victim preference as documented in the information provided by the department of corrections or human services;

(3) if the offender is assigned to risk level III, the agency shall disclose the information to the persons and entities described in clauses (1) and (2) and to other members of the community whom the offender is likely to encounter, unless the law enforcement agency determines that public safety would be compromised by the disclosure or that a more limited disclosure is necessary to protect the identity of the victim. Notwithstanding the assignment of a predatory offender to risk level II or III, a law enforcement agency may not make the disclosures permitted or required by clause (2) or (3), if: the offender is placed or resides in a residential facility. However, if an offender is placed or resides in a residential facility, the offender and the head of the facility shall designate the offender's likely residence upon release from the facility and the head of the facility shall notify the commissioner of corrections or the commissioner of human services of the offender's likely residence at least 14 days before the offender's scheduled release date. The commissioner shall give this information to the law enforcement agency having jurisdiction over the offender's likely residence. The head of the residential facility also shall notify the commissioner of corrections or human services within 48 hours after finalizing the offender's approved relocation plan to a permanent residence. Within five days after receiving this notification, the appropriate commissioner shall give to the appropriate law enforcement agency all relevant information the commissioner has concerning the offender, including information on the risk factors in the offender's history and the risk level to which the offender was assigned. After receiving this information, the law enforcement agency shall make the disclosures permitted or required by clause (2) or (3), as appropriate.

(c) As used in paragraph (b), clauses (2) and (3), "likely to encounter" means that:

(1) the organizations or community members are in a location or in close proximity to a location where the offender lives or is employed, or which the offender visits or is likely to visit on a regular basis, other than the location of the offender's outpatient treatment program; and

(2) the types of interaction which ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably certain.

(d) A law enforcement agency or official who discloses information under this subdivision shall make a good faith effort to make the notification within 14 days of receipt of a confirmed address from the Department of Corrections indicating that the offender will be, or has been, released from confinement, or accepted for supervision, or has moved to a new address and will reside at the address indicated. If a change occurs in the release plan, this notification provision does not require an extension of the release date.

(e) A law enforcement agency or official who discloses information under this subdivision shall not disclose the identity or any identifying characteristics of the victims of or witnesses to the offender's offenses.

(f) A law enforcement agency shall continue to disclose information on an offender as required by this subdivision for as long as the offender is required to register under section 243.166. This requirement on a law enforcement agency to continue to disclose information also applies to an offender who lacks a primary address and is registering under section 243.166, subdivision 3a .

(g) A law enforcement agency that is disclosing information on an offender assigned to risk level III to the public under this subdivision shall inform the commissioner of corrections what information is being disclosed and forward this information to the commissioner within two days of the agency's determination. The commissioner shall post this information on the Internet as required in subdivision 4b.

(h) A city council may adopt a policy that addresses when information disclosed under this subdivision must be presented in languages in addition to English. The policy may address when information must be presented orally, in writing, or both in additional languages by the law enforcement agency disclosing the information. The policy may provide for different approaches based on the prevalence of non-English languages in different neighborhoods.

(i) An offender who is the subject of a community notification meeting held pursuant to this section may not attend the meeting.

(j) When a school, day care facility, or other entity or program that primarily educates or serves children receives notice under paragraph (b), clause (3), that a level III predatory

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offender resides or works in the surrounding community, notice to parents must be made as provided in this paragraph. If the predatory offender identified in the notice is participating in programs offered by the facility that require or allow the person to interact with children other than the person's children, the principal or head of the entity must notify parents with children at the facility of the contents of the notice received pursuant to this section. The immunity provisions of subdivision 7 apply to persons disclosing information under this paragraph.

Subdivision 4a. Level III offenders; location of residence.

(a) When an offender assigned to risk level III is released from confinement or a residential facility to reside in the community or changes residence while on supervised or conditional release, the agency responsible for the offender's supervision shall take into consideration the proximity of the offender's residence to that of other level III offenders and proximity to schools and, to the greatest extent feasible, shall mitigate the concentration of level III offenders and concentration of level III offenders near schools.

(b) If the owner or property manager of a hotel, motel, lodging establishment, or apartment building has an agreement with an agency that arranges or provides shelter for victims of domestic abuse, the owner or property manager may not knowingly rent rooms to both level III offenders and victims of domestic abuse at the same time. If the owner or property manager has an agreement with an agency to provide housing to domestic abuse victims and discovers or is informed that a tenant is a level III offender after signing a lease or otherwise renting to the offender, the owner or property manager may evict the offender.

Subdivision 4b. Level III offenders; mandatory posting of information on Internet.

The commissioner of corrections shall create and maintain an Internet Web site and post on the site the information about offenders assigned to risk level III forwarded by law enforcement agencies under subdivision 4, paragraph (g). This information must be updated in a timely manner to account for changes in the offender's address and maintained for the period of time that the offender remains subject to community notification as a level III offender.

Subdivision 4c. Law enforcement agency; disclosure of information to a health care facility.

(a) The law enforcement agency in the area where a health care facility is located shall disclose the registrant status of any predatory offender registered under section 243.166 to the health care facility if the registered offender is receiving inpatient care in that facility.

(b) As used in this section, "health care facility" means a hospital or other entity licensed under sections 144.50 to 144.58, a nursing home licensed to serve adults under section 144A.02, or a group residential housing facility or an intermediate care facility for the developmentally disabled licensed under chapter 245A.

Subdivision 5. Relevant information provided to law enforcement.

At least 60 days before a predatory offender is released from confinement, the Department of Corrections or the Department of Human Services, in the case of a person who was committed under section 253B.185 or Minnesota Statutes 1992, section 526.10, shall give to the law enforcement agency that investigated the offender's crime of conviction or, where relevant, the law enforcement agency having primary jurisdiction where the offender was committed, all relevant information that the departments have concerning the offender, including information on risk factors in the offender's history. Within five days after receiving the offender's approved release plan from the hearings and release unit, the appropriate department shall give to the law enforcement agency having primary jurisdiction where the offender plans to reside all relevant information the department has concerning the offender, including information on risk factors in the offender's history and the risk level to which the offender was assigned. If the offender's risk level was assigned under the circumstances described in subdivision 3, paragraph (d), item (ii), the appropriate department shall give the law enforcement agency all relevant information that the department has concerning the offender, including information on the risk factors in the offender's history and the offender's risk level within five days of the risk level assignment or reassignment.

Subdivision 6. Administrative review.

(a) An offender assigned or reassigned to risk level II or III under subdivision 3, paragraph (e) or (h), has the right to seek administrative review of an end-of-confinement review committee's risk assessment determination. The offender must exercise this right within 14 days of receiving notice of the committee's decision by notifying the chair of the committee. Upon receiving the request for administrative review, the chair shall notify:

(1) the offender;

(2) the victim or victims of the offender's offense who have requested disclosure or their designee;

(3) the law enforcement agency that investigated the offender's crime of conviction or, where relevant, the law enforcement agency having primary jurisdiction where the offender was committed;

(4) the law enforcement agency having jurisdiction where the offender expects to reside, providing that the release plan has been approved by the hearings and release unit of the department of corrections; and

(5) any other individuals the chair may select. The notice shall state the time and place of the hearing. A request for a review hearing shall not interfere with or delay the notification process under subdivision 4 or 5, unless the administrative law judge orders otherwise for good cause shown.

(b) An offender who requests a review hearing must be given a reasonable opportunity to prepare for the hearing. The review hearing shall be conducted on the record before an administrative law judge. The review hearing shall be conducted at the correctional facility in which the offender is currently confined. If the offender no longer is incarcerated, the administrative law judge shall determine the place where the review hearing will be conducted. The offender has the burden of proof to show, by a preponderance of the evidence, that the end-of-confinement review committee's risk assessment determination was erroneous. The attorney general or a designee shall defend the end-of-confinement review committee's determination. The offender has the right to be present and be represented by counsel at the hearing, to present evidence in support of the offender's position, to call supporting witnesses and to cross-examine witnesses testifying in support of the committee's determination. Counsel for indigent offenders shall be provided by the Legal Advocacy Project of the state public defender's office.

(c) After the hearing is concluded, the administrative law judge shall decide whether the end-of-confinement review committee's risk assessment determination was erroneous and, based on this decision, shall either uphold or modify the review committee's determination. The judge's decision shall be in writing and shall include the judge's reasons for the decision. The judge's decision shall be final and a copy of it shall be given to the offender, the victim, the law enforcement agency, and the chair of the end-of-confinement review committee.

(d) The review hearing is subject to the contested case provisions of chapter 14.

(e) The administrative law judge may seal any portion of the record of the administrative review hearing to the extent necessary to protect the identity of a victim of or witness to the offender's offense.

Subdivision 7. Immunity from liability.

(a) A state or local agency or official, or a private organization or individual authorized to act on behalf of a state or local agency or official, is not criminally liable for disclosing or failing to disclose information as permitted by this section.

(b) A state or local agency or official, or a private organization or individual authorized to act on behalf of a state or local agency or official, is not civilly liable for failing to disclose information under this section.

(c) A state or local agency or official, or a private organization or individual authorized to act on behalf of a state or local agency or official, is not civilly liable for disclosing information as permitted by this section. However, this paragraph applies only to disclosure of information that is consistent with the offender's conviction history. It does not apply to disclosure of information relating to conduct for which the offender was not convicted.

Subdivision 8. Limitation on scope.

Nothing in this section imposes a duty upon a person licensed under chapter 82, or an employee of the person, to disclose information regarding an offender who is required to register under section 243.166, or about whom notification is made under this section.

244.053 Notice of Release of Certain Offenders

Subdivision 1. Notice of impending release.

At least 60 days before the release of any inmate convicted of an offense requiring registration under section 243.166, the commissioner of corrections shall send written notice of the impending release to the sheriff of the county and the police chief of the city in which the inmate will reside or in which placement will be made in a work release program. The sheriff of the county where the offender was convicted also shall be notified of the inmate's impending release.

Subdivision 2. Additional notice.

The same notice shall be sent to the following persons concerning a specific inmate convicted of an offense requiring registration under section 243.166:

(1) the victim of the crime for which the inmate was convicted or a deceased victim's next of kin if the victim or deceased victim's next of kin requests the notice in writing;

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(2) any witnesses who testified against the inmate in any court proceedings involving the offense, if the witness requests the notice in writing; and

(3) any person specified in writing by the prosecuting attorney.

The notice sent to victims under clause (1) must inform the person that the person has the right to request and receive information about the offender authorized for disclosure under the community notification provisions of section 244.052. If the victim or witness is under the age of 16, the notice required by this section shall be sent to the parents or legal guardian of the child. The commissioner shall send the notices required by this provision to the last address provided to the commissioner by the requesting party. The requesting party shall furnish the commissioner with a current address. Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are private data on individuals, as defined in section 13.02, subdivision 12, and are not available to the inmate. The notice to victims provided under this subdivision does not limit the victim's right to request notice of release under section 611A.06.

Subdivision 3. No extension of release date.
The existence of the notice requirements contained in this section shall in no event require an extension of the release date.

244.10 Sentencing Hearing; Deviation from Guidelines

Subdivision 1. Sentencing hearing.
Whenever a person is convicted of a felony, the court, upon motion of either the defendant or the state, shall hold a sentencing hearing. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issue of sentencing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the sentencing hearing. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report. At the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

Subdivision 2. Deviation from guidelines.
Whether or not a sentencing hearing is requested pursuant to subdivision 1, the district court shall make written findings of fact as to the reasons for departure from the Sentencing Guidelines in each case in which the court imposes or stays a sentence that deviates from the Sentencing Guidelines applicable to the case.

Subdivision 2a. [Repealed, 2005 c 136 art 16 s 16; Renumbered subd 8]

Subdivision 3. [Repealed, 2005 c 136 art 16 s 16; Renumbered subd 9]

Subdivision 4. Aggravated departures.
In bringing a motion for an aggravated sentence, the state is not limited to factors specified in the Sentencing Guidelines provided the state provides reasonable notice to the defendant and the district court prior to sentencing of the factors on which the state intends to rely.

Subdivision 5. Procedures in cases where state intends to seek an aggravated departure.

(a) When the prosecutor provides reasonable notice under subdivision 4, the district court shall allow the state to prove beyond a reasonable doubt to a jury of 12 members the factors in support of the state's request for an aggravated departure from the Sentencing Guidelines or the state's request for an aggravated sentence under any sentencing enhancement statute or the state's request for a mandatory minimum under section 609.11 as provided in paragraph (b) or (c).

(b) The district court shall allow a unitary trial and final argument to a jury regarding both evidence in support of the elements of the offense and evidence in support of aggravating factors when the evidence in support of the aggravating factors:

(1) would be admissible as part of the trial on the elements of the offense; or

(2) would not result in unfair prejudice to the defendant.

The existence of each aggravating factor shall be determined by use of a special verdict form. Upon the request of the prosecutor, the court shall allow bifurcated argument and jury deliberations.

(c) The district court shall bifurcate the proceedings, or impanel a resentencing jury, to allow for the production of evidence, argument, and deliberations on the existence

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of factors in support of an aggravated departure after the return of a guilty verdict when the evidence in support of an aggravated departure:

(1) includes evidence that is otherwise inadmissible at a trial on the elements of the offense; and

(2) would result in unfair prejudice to the defendant.

Subdivision 6. Defendants to present evidence and argument.
In either a unitary or bifurcated trial under subdivision 5, a defendant shall be allowed to present evidence and argument to the jury or factfinder regarding whether facts exist that would justify an aggravated departure or an aggravated sentence under any sentencing enhancement statute or a mandatory minimum sentence under section 609.11. A defendant is not allowed to present evidence or argument to the jury or factfinder regarding facts in support of a mitigated departure during the trial, but may present evidence and argument in support of a mitigated departure to the judge as factfinder during a sentencing hearing.

Subdivision 7. Waiver of jury determination.
The defendant may waive the right to a jury determination of whether facts exist that would justify an aggravated sentence. Upon receipt of a waiver of a jury trial on this issue, the district court shall determine beyond a reasonable doubt whether the factors in support of the state's motion for aggravated departure or an aggravated sentence under any sentencing enhancement statute or a mandatory minimum sentence under section 609.11 exist.

Subdivision 8. Notice of information regarding predatory offenders.

(a) Subject to paragraph

(b) in any case in which a person is convicted of an offense and the presumptive sentence under the Sentencing Guidelines is commitment to the custody of the commissioner of corrections, if the court grants a dispositional departure and stays imposition or execution of sentence, the probation or court services officer who is assigned to supervise the offender shall provide in writing to the following the fact that the offender is on probation and the terms and conditions of probation:

(1) a victim of and any witnesses to the offense committed by the offender, if the victim or the witness has requested notice; and

(2) the chief law enforcement officer in the area where the offender resides or intends to reside. The law enforcement officer, in consultation with the offender's probation officer, may provide all or part of this information to any of the following agencies or groups the offender is likely to encounter: public and private educational institutions, day care establishments, and establishments or organizations that primarily serve individuals likely to be victimized by the offender. The law enforcement officer, in consultation with the offender's probation officer, also may disclose the information to individuals the officer believes are likely to be victimized by the offender. The officer's belief shall be based on the offender's pattern of offending or victim preference as documented in the information provided by the Department of Corrections or Department of Human Services. The probation officer is not required under this subdivision to provide any notice while the offender is placed or resides in a residential facility that is licensed under section 241.021 or 245A.02, subdivision 14, if the facility staff is trained in the supervision of sex offenders.

(b) Paragraph (a) applies only to offenders required to register under section 243.166, as a result of the conviction.

(c) The notice authorized by paragraph (a) shall be limited to data classified as public under section 13.84, subdivision 6, unless the offender provides informed consent to authorize the release of nonpublic data or unless a court order authorizes the release of nonpublic data.

(d) Nothing in this subdivision shall be interpreted to impose a duty on any person to use any information regarding an offender about whom notification is made under this subdivision.

Subdivision 9. Computation of criminal history score.
If the defendant contests the existence of or factual basis for a prior conviction in the calculation of the defendant's criminal history score, proof of it is established by competent and reliable evidence, including a certified court record of the conviction.

244.14 Intensive Community Supervision; Basic Elements

Subdivision 1. Requirements.
This section governs the intensive community supervision programs established under section 244.13. The commissioner shall operate the programs in conformance with this section.

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The commissioner shall administer the programs to further the following goals:

(1) to punish the offender;

(2) to protect the safety of the public;

(3) to facilitate employment of the offender during the intensive community supervision and afterward; and

(4) to require the payment of restitution ordered by the court to compensate the victims of the offender's crime.

Subdivision 2. Good time not available.
An offender serving a sentence on intensive community supervision for a crime committed before August 1, 1993, does not earn good time, notwithstanding section 244.04.

Subdivision 3. Sanctions.
The commissioner shall impose severe and meaningful sanctions for violating the conditions of an intensive community supervision program. The commissioner shall provide for revocation of intensive community supervision of an offender who:

(1) commits a material violation of or repeatedly fails to follow the rules of the program;

(2) commits any misdemeanor, gross misdemeanor, or felony offense; or

(3) presents a risk to the public, based on the offender's behavior, attitude, or abuse of alcohol or controlled substances. The revocation of intensive community supervision is governed by the procedures in the commissioner's rules adopted under section 244.05, subdivision 2. An offender whose intensive community supervision is revoked shall be imprisoned for a time period equal to the offender's term of imprisonment, but in no case for longer than the time remaining in the offender's sentence. "Term of imprisonment" means a time period equal to two-thirds of the sentence originally executed by the sentencing court, minus jail credit, if any.

Subdivision 4. All phases.
Throughout all phases of an intensive community supervision program, the offender shall submit at any time to an unannounced search of the offender's person, vehicle, or premises by an intensive supervision agent. If the offender received a restitution order as part of the sentence, the offender shall make weekly payments as scheduled by the agent until the full amount is paid.

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253B.02 Definitions

Subdivision 7a. Harmful sexual conduct.
(a) "Harmful sexual conduct" means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.

(b) There is a rebuttable presumption that conduct described in the following provisions creates a substantial likelihood that a victim will suffer serious physical or emotional harm: section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), or 609.345 (criminal sexual conduct in the fourth degree). If the conduct was motivated by the person's sexual impulses or was part of a pattern of behavior that had criminal sexual conduct as a goal, the presumption also applies to conduct described in section 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), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 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), 609.713 (terroristic threats), or 609.749, subdivision 3 or 5 (harassment and stalking).

Subdivision 18b. Sexual psychopathic personality.
"Sexual psychopathic personality" means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Subdivision 18c. Sexually dangerous person.
(a) A "sexually dangerous person" means a person who:
(1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;

(2) has manifested a sexual, personality, or other mental disorder or dysfunction; and

(3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.

(b) For purposes of this provision, it is not necessary to prove that the person has an inability to control the person's sexual impulses.

253B.185 Sexual Psychopathic Personality; Sexually Dangerous

Subdivision 1. Commitment generally.
Except as otherwise provided in this section, the provisions of this chapter pertaining to persons who are mentally ill and dangerous to the public apply with like force and effect to persons who are alleged or found to be sexually dangerous persons or persons with a sexual psychopathic personality. Before commitment proceedings are instituted, the facts shall first be submitted to the county attorney, who, if satisfied that good cause exists, will prepare the petition. The county attorney may request a prepetition screening report. The petition is to be executed by a person having knowledge of the facts and filed with the committing court of the county in which the patient has a settlement or is present. If the patient is in the custody of the commissioner of corrections, the petition may be filed in the county where the conviction for which the person is incarcerated was entered. Upon the filing of a petition alleging that a proposed patient is a sexually dangerous person or is a person with a sexual psychopathic personality, the court shall hear the petition as provided in section 253B.18. In commitments under this section, the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

Subdivision 1a. Temporary confinement.
During any hearing held under this section, or pending emergency revocation of a provisional discharge, the court may order the patient or proposed patient temporarily confined in a jail or lockup but only if:

(1) there is no other feasible place of confinement for the patient within a reasonable distance;

(2) the confinement is for less than 24 hours or, if during a hearing, less than 24 hours prior to commencement and after conclusion of the hearing; and

(3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

Subdivision 1b. County attorney access to data.
Notwithstanding sections 144.335; 245.467, subdivision 6 ; 245.4876, subdivision 7; 260B.171; 260B.235, subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13 or other state law, prior to filing a petition for commitment as a sexual psychopathic personality or as a sexually dangerous person, and upon notice to the proposed patient, the county attorney or the county attorney's designee may move the court for an order granting access to any records or data, to the extent it relates to the proposed patient, for the purpose of determining whether good cause exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition. The court may grant the motion if:

(1) the Department of Corrections refers the case for commitment as a sexual psychopathic personality or a sexually dangerous person; or

(2) upon a showing that the requested category of data or records may be relevant to the determination by the county attorney or designee. The court shall decide a motion under this subdivision within 48 hours after a hearing on the motion. Notice to the proposed patient need not be given upon a showing that such notice may result in harm or harassment of interested persons or potential witnesses. Data collected pursuant to this subdivision shall retain their original status and, if not public, are inadmissible in any court proceeding unrelated to civil commitment, unless otherwise permitted.

Subdivision 2. Transfer to correctional facility.

(a) If a person has been committed under this section and later is committed to the custody of the commissioner of corrections for any reason, including but not limited to, being sentenced for a crime or revocation of the person's supervised release or conditional release under section 244.05, 609.108, subdivision 6, or 609.109, subdivision 7 , the person shall be transferred to a facility designated by the commissioner of corrections without regard to the procedures provided in section 253B.18.

(b) If a person is committed under this section after a commitment to the commissioner of corrections, the person shall first serve the sentence in a facility designated by the commissioner of corrections. After the person has served the sentence, the person shall be transferred to a treatment program designated by the commissioner of human services.

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Subdivision 3. Not to constitute defense.
The existence in any person of a condition of a sexual psychopathic personality or the fact that a person is a sexually dangerous person shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge.

Subdivision 4. Statewide judicial panel; commitment proceedings.

(a) The Supreme Court may establish a panel of district judges with statewide authority to preside over commitment proceedings of sexual psychopathic personalities and sexually dangerous persons. Only one judge of the panel is required to preside over a particular commitment proceeding. Panel members shall serve for one-year terms. One of the judges shall be designated as the chief judge of the panel, and is vested with the power to designate the presiding judge in a particular case, to set the proper venue for the proceedings, and to otherwise supervise and direct the operation of the panel. The chief judge shall designate one of the other judges to act as chief judge whenever the chief judge is unable to act.

(b) If the Supreme Court creates the judicial panel authorized by this section, all petitions for civil commitment brought under subdivision 1 shall be filed with the Supreme Court instead of with the district court in the county where the proposed patient is present, notwithstanding any provision of subdivision 1 to the contrary. Otherwise, all of the other applicable procedures contained in this chapter apply to commitment proceedings conducted by a judge on the panel.

Subdivision 5. Financial responsibility.

(a) For purposes of this subdivision, "state facility" has the meaning given in section 246.50.

(b) Notwithstanding sections 246.54, 253B.045, and any other law to the contrary, when a petition is filed for commitment under this section pursuant to the notice required in section 244.05, subdivision 7, the state and county are each responsible for 50 percent of the cost of the person's confinement at a state facility or county jail, prior to commitment.

(c) The county shall submit an invoice to the state court administrator for reimbursement of the state's share of the cost of confinement.

(d) Notwithstanding paragraph (b), the state's responsibility for reimbursement is limited to the amount appropriated for this purpose.

Subdivision 6. Aftercare and case management.
The state, in collaboration with the designated agency, is responsible for arranging and funding the aftercare and case management services for persons under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999.

Subdivision 7. Rights of patients committed under this section.

(a) The commissioner or the commissioner's designee may limit the statutory rights described in paragraph (b) for patients committed to the Minnesota sex offender program under this section or with the commissioner's consent under section 246B.02. The statutory rights described in paragraph (b) may be limited only as necessary to maintain a therapeutic environment or the security of the facility or to protect the safety and well-being of patients, staff, and the public.

(b) The statutory rights that may be limited in accordance with paragraph (a) are those set forth in section 144.651, subdivision 19, personal privacy; section 144.651, subdivision 21, private communications; section 144.651, subdivision 22, retain and use of personal property; section 144.651, subdivision 25, manage personal financial affairs; section 144.651, subdivision 26 , meet with visitors and participate in groups; section 253B.03, subdivision 2, correspond with others; and section 253B.03, subdivision 3, receive visitors and make telephone calls. Other statutory rights enumerated by sections 144.651 and 253B.03, or any other law, may be limited as provided in those sections.

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260B.005 Scope of Victim Rights

The rights granted to victims of crime in sections 611A.01 to 611A.06 are applicable to adult criminal cases, juvenile delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs, and proceedings involving any other act committed by a juvenile that would be a crime as defined in section 609.02, if committed by an adult.

260B.101 Jurisdiction

Subdivision 1. Children who are delinquent.

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Except as provided in sections 260B.125 and 260B.225, 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.

Subdivision 2. No juvenile court jurisdiction over certain offenders.
Notwithstanding any other law to the contrary, the juvenile court lacks jurisdiction over proceedings concerning a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph (b). The district court has original and exclusive jurisdiction in criminal proceedings concerning a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph (b).

Subdivision 3. Jurisdiction over parents and guardians.
A parent, guardian, or custodian of a child who is subject to the jurisdiction of the court is also subject to the jurisdiction of the court in any matter in which that parent, guardian, or custodian has a right to notice under section 260B.151 or 260B.152, or the right to participate under section 260B.163.

260B.103 Transfers from Other Courts

Subdivision 1. Transfers required.
Except where a juvenile court has certified an alleged violation in accordance with the provisions of section 260B.125, the child is alleged to have committed murder in the first degree after becoming 16 years of age, or a court has original jurisdiction of a child who has committed an adult court traffic offense, as defined in section 260B.225, subdivision 1, clause (c), a court other than a juvenile court shall immediately transfer to the juvenile court of the county the case of a minor who appears before the court on a charge of violating any state or local law or ordinance and who is under 18 years of age or who was under 18 years of age at the time of the commission of the alleged offense.

Subdivision 2. Certificate.
The court transfers the case by filing with the judge or court administrator of juvenile court a certificate showing the name, age, and residence of the minor, the names and addresses of the minor's parent or guardian, if known, and the reasons for appearance in court, together with all the papers, documents, and testimony connected therewith. The certificate has the effect of a petition filed in the juvenile court, unless the judge of the juvenile court directs the filing of a new petition, which shall supersede the certificate of transfer.

Subdivision 3. Order to be taken.
The transferring court shall order the minor to be taken immediately to the juvenile court and in no event shall detain the minor for longer than 48 hours after the appearance of the minor in the transferring court. The transferring court may release the minor to the custody of a parent, guardian, custodian, or other person designated by the court on the condition that the minor will appear in juvenile court as directed. The transferring court may require the person given custody of the minor to post such bail or bond as may be approved by the court which shall be forfeited to the juvenile court if the minor does not appear as directed. The transferring court may also release the minor on the minor's own promise to appear in juvenile court.

260B.105 Venue

Subdivision 1. Venue.
Except where otherwise provided, venue for any proceedings under section 260B.101 shall be in the county where the child is found, or the county of the child's residence. If delinquency, a juvenile petty offense, or a juvenile traffic offense is alleged, proceedings shall be brought in the county where the alleged delinquency or juvenile traffic offense occurred.

Subdivision 2. Transfer.
The judge of the juvenile court may transfer any proceedings brought under section 260B.101, to the juvenile court of a county having venue as provided in subdivision 1 in the following manner. When it appears that the best interests of the child, society, or the convenience of proceedings will be served by a transfer, the court may transfer the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found. If delinquency, a juvenile petty offense, or a juvenile traffic offense is alleged, the court shall first hear the case and then may transfer the case to the juvenile court of the county of the child's residence for disposition after a finding or admission of guilt. The court transfers the case by ordering a continuance and by forwarding to the court administrator of the appropriate juvenile court a certified copy of all papers filed, together with an order of transfer.

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Subdivision 3. Involving interstate compact.
Except when a child is alleged to have committed an adult court traffic offense, as defined in section 260B.225, subdivision 1, clause (c), if it appears at any stage of the proceeding that a child before the court is a resident of another state, the court may invoke the provisions of the Interstate Compact on Juveniles or, if it is in the best interests of the child or the public to do so, the court may place the child in the custody of the child's parent, guardian, or custodian, if the parent, guardian, or custodian agrees to accept custody of the child and return the child to the child's state.

260B.125 Certification

Subdivision 1. Order.
When a child is alleged to have committed, after becoming 14 years of age, an offense that would be a felony if committed by an adult, the juvenile court may enter an order certifying the proceeding for action under the laws and court procedures controlling adult criminal violations.

Subdivision 2. Order of certification; requirements.
Except as provided in subdivision 5 or 6, the juvenile court may order a certification only if:

(1) a petition has been filed in accordance with the provisions of section 260B.141;

(2) a motion for certification has been filed by the prosecuting authority;

(3) notice has been given in accordance with the provisions of sections 260B.151 and 260B.152;

(4) a hearing has been held in accordance with the provisions of section 260B.163 within 30 days of the filing of the certification motion, unless good cause is shown by the prosecution or the child as to why the hearing should not be held within this period in which case the hearing shall be held within 90 days of the filing of the motion;

(5) the court finds that there is probable cause, as defined by the Rules of Criminal Procedure promulgated pursuant to section 480.059, to believe the child committed the offense alleged by delinquency petition; and

(6) the court finds either:

(i) that the presumption of certification created by subdivision 3 applies and the child has not rebutted the presumption by clear and convincing evidence demonstrating that retaining the proceeding in the juvenile court serves public safety; or

(ii) that the presumption of certification does not apply and the prosecuting authority has demonstrated by clear and convincing evidence that retaining the proceeding in the juvenile court does not serve public safety. If the court finds that the prosecutor has not demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety, the court shall retain the proceeding in juvenile court.

Subdivision 3. Presumption of certification.
It is presumed that a proceeding involving an offense committed by a child will be certified if:

(1) the child was 16 or 17 years old at the time of the offense; and

(2) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes, or that the child committed any felony offense while using, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm. If the court determines that probable cause exists to believe the child committed the alleged offense, the burden is on the child to rebut this presumption by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety. If the court finds that the child has not rebutted the presumption by clear and convincing evidence, the court shall certify the proceeding.

Subdivision 4. Public safety.
In determining whether the public safety is served by certifying the matter, the court shall consider the following factors:

(1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(2) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;

(3) the child's prior record of delinquency;

(4) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(5) the adequacy of the punishment or programming available in the juvenile justice system; and

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(6) the dispositional options available for the child. In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

Subdivision 5. Prior certification; exception.
Notwithstanding the provisions of subdivisions 2, 3, and 4, the court shall order a certification in any felony case if the prosecutor shows that the child has been previously prosecuted on a felony charge by an order of certification issued pursuant to either a hearing held under subdivision 2 or pursuant to the waiver of the right to such a hearing, other than a prior certification in the same case. This subdivision only applies if the child is convicted of the offense or offenses for which the child was prosecuted pursuant to the order of certification or of a lesser-included offense which is a felony. This subdivision does not apply to juvenile offenders who are subject to criminal court jurisdiction under section 609.055.

Subdivision 6. Adult charged with juvenile offense.
The juvenile court has jurisdiction to hold a certification hearing on motion of the prosecuting authority to certify the matter if:

(1) an adult is alleged to have committed an offense before the adult's 18th birthday; and

(2) a petition is filed under section 260B.141 before expiration of the time for filing under section 628.26. The court may not certify the matter under this subdivision if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage.

Subdivision 7. Effect of order.
When the juvenile court enters an order certifying an alleged violation, the prosecuting authority shall proceed with the case as if the jurisdiction of the juvenile court had never attached.

Subdivision 8. Written findings; options.
The court shall decide whether to order certification within 15 days after the certification hearing was completed, unless additional time is needed, in which case the court may extend the period up to another 15 days. If the juvenile court orders certification, and the presumption described in subdivision 3 does not apply, the order shall contain in writing, findings of fact and conclusions of law as to why public safety is not served by retaining the proceeding in the juvenile court. If the juvenile court, after a hearing conducted pursuant to subdivision 2, decides not to order certification, the decision shall contain, in writing, findings of fact and conclusions of law as to why certification is not ordered. If the juvenile court decides not to order certification in a case in which the presumption described in subdivision 3 applies, the court shall designate the proceeding an extended jurisdiction juvenile prosecution and include in its decision written findings of fact and conclusions of law as to why the retention of the proceeding in juvenile court serves public safety, with specific reference to the factors listed in subdivision 4. If the court decides not to order certification in a case in which the presumption described in subdivision 3 does not apply, the court may designate the proceeding an extended jurisdiction juvenile prosecution, pursuant to the hearing process described in section 260B.130, subdivision 2 .

Subdivision 9. First-degree murder.
When a motion for certification has been filed in a case in which the petition alleges that the child committed murder in the first degree, the prosecuting authority shall present the case to the grand jury for consideration of indictment under chapter 628 within 14 days after the petition was filed.

Subdivision 10. Inapplicability to certain offenders.
This section does not apply to a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph (b).

260B.130 Extended Jurisdiction Juvenile Prosecutions

Subdivision 1. Designation.
A proceeding involving a child alleged to have committed a felony offense is an extended jurisdiction juvenile prosecution if:

(1) the child was 14 to 17 years old at the time of the alleged offense, a certification hearing was held, and the court designated the proceeding an extended jurisdiction juvenile prosecution;

(2) the child was 16 or 17 years old at the time of the alleged offense; the child is alleged to have committed an offense for which the Sentencing Guidelines and applicable statutes presume a commitment to prison or to have committed any felony in which the child allegedly used a firearm; and the prosecutor designated in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution; or

(3) the child was 14 to 17 years old at the time of the alleged offense, the prosecutor requested that the proceeding be designated an extended jurisdiction juvenile prosecution, a hearing was held on the issue of designation, and the court designated the proceeding an extended jurisdiction juvenile prosecution.

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Subdivision 2. Hearing on prosecutor's request.
When a prosecutor requests that a proceeding be designated an extended jurisdiction juvenile prosecution, the court shall hold a hearing under section 260B.163 to consider the request. The hearing must be held within 30 days of the filing of the request for designation, unless good cause is shown by the prosecution or the child as to why the hearing should not be held within this period in which case the hearing shall be held within 90 days of the filing of the request. If the prosecutor shows by clear and convincing evidence that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety, the court shall grant the request for designation. In determining whether public safety is served, the court shall consider the factors specified in section 260B.125, subdivision 4. The court shall decide whether to designate the proceeding an extended jurisdiction juvenile prosecution within 15 days after the designation hearing is completed, unless additional time is needed, in which case the court may extend the period up to another 15 days.

Subdivision 3. Proceedings.
A child who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as described in section 260B.163, subdivision 4.

Subdivision 4. Disposition.
(a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:
(1) impose one or more juvenile dispositions under section 260B.198; and
(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

(b) If a child prosecuted as an extended jurisdiction juvenile after designation by the prosecutor in the delinquency petition is convicted of an offense after trial that is not an offense described in subdivision 1, clause (2), the court shall adjudicate the child delinquent and order a disposition under section 260B.198. If the extended jurisdiction juvenile proceeding results in a guilty plea for an offense not described in subdivision 1, clause (2), the court may impose a disposition under paragraph (a) if the child consents.

Subdivision 5. Execution of adult sentence.
When it appears that a person convicted as an extended jurisdiction juvenile has violated the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may, without notice, revoke the stay and probation and direct that the offender be taken into immediate custody. The court shall notify the offender in writing of the reasons alleged to exist for revocation of the stay of execution of the adult sentence. If the offender challenges the reasons, the court shall hold a summary hearing on the issue at which the offender is entitled to be heard and represented by counsel. After the hearing, if the court finds that reasons exist to revoke the stay of execution of sentence, the court shall treat the offender as an adult and order any of the adult sanctions authorized by section 609.14, subdivision 3, except that no credit shall be given for time served in juvenile facility custody prior to a summary hearing. If the offender was convicted of an offense described in subdivision 1, clause (2), and the court finds that reasons exist to revoke the stay, the court must order execution of the previously imposed sentence unless the court makes written findings regarding the mitigating factors that justify continuing the stay. Upon revocation, the offender's extended jurisdiction status is terminated 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.

Subdivision 6. Inapplicability to certain offenders.
This section does not apply to a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph (b).

260B.163 Hearing

Subdivision 1. General.
(a) Except for hearings arising under section 260B.425, hearings on any matter shall be without a jury and may be conducted in an informal manner, except that a child who is prosecuted as an extended jurisdiction juvenile has the right to a jury trial on the issue of guilt. The rules of evidence promulgated pursuant to section 480.0591 and the law of evidence shall apply in adjudicatory proceedings involving a child alleged to be delinquent, an extended jurisdiction juvenile, or a juvenile petty offender, and hearings conducted pursuant to section 260B.125 except to the extent that the rules themselves provide that they do not apply.

(b) When a continuance or adjournment is ordered in any proceeding, the court may make any interim orders as it

deems in the best interests of the minor in accordance with the provisions of sections 260B.001 to 260B.421.

(c) Except as otherwise provided in this paragraph, the court shall exclude the general public from hearings under this chapter and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court. The court shall permit the victim of a child's delinquent act to attend any related delinquency proceeding, except that the court may exclude the victim:

(1) as a witness under the Rules of Criminal Procedure; and

(2) from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public. The court shall open the hearings to the public in delinquency or extended jurisdiction juvenile proceedings where the child 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 and the child was at least 16 years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(d) In all delinquency cases a person named in the charging clause of the petition as a person directly damaged in person or property shall be entitled, upon request, to be notified by the court administrator in writing, at the named person's last known address, of:

(1) the date of the certification or adjudicatory hearings, and

(2) the disposition of the case.

Subdivision 2. Right to participate in proceedings.
A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition. Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.Any grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition. At the first hearing following the filing of a petition, the court shall ask whether the child has lived with a grandparent within the last two years, except that the court need not make this inquiry if the petition states that the child did not live with a grandparent during this time period. Failure to notify a grandparent of the proceedings is not a jurisdictional defect.

Subdivision 3. Right of alleged victim to presence of supportive person.
Notwithstanding any provision of subdivision 1 to the contrary, in any delinquency proceedings in which the alleged victim of the delinquent act is testifying in court, the victim 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.

Subdivision 4. Appointment of counsel.

(a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court. This right does not apply to a child who is charged with a juvenile petty offense as defined in section 260B.007, subdivision 16, unless the child is charged with a third or subsequent juvenile alcohol or controlled substance offense and may be subject to the alternative disposition described in section 260B.235, subdivision 6.

(b) The court shall appoint counsel, or stand-by counsel if the child waives the right to counsel, for a child who is:

(1) charged by delinquency petition with a gross misdemeanor or felony offense; or

(2) the subject of a delinquency proceeding in which out-of-home placement has been proposed.

(c) If they desire counsel but are unable to employ it, the court shall appoint counsel to represent the child or the parents or guardian in any case in which it feels that such an appointment is appropriate, except a juvenile petty offender who does not have the right to counsel under paragraph (a).

(d) Counsel for the child shall not also act as the child's guardian ad litem.

Subdivision 5. County attorney.
The county attorney shall present the evidence upon request of the court.

Subdivision 6. Guardian ad litem.

(a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incom-

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petent, or that the parent or guardian is indifferent or hostile to the minor's interests. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. The court may appoint separate counsel for the guardian ad litem if necessary.

(b) A guardian ad litem shall carry out the following responsibilities:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

(c) The court may waive the appointment of a guardian ad litem pursuant to paragraph (a), whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected.

(d) In appointing a guardian ad litem pursuant to paragraph (a), the court shall not appoint the party, or any agent or employee thereof, filing a petition pursuant to section 260B.141 and 260C.141.

(e) The following factors shall be considered when appointing a guardian ad litem in a case involving an Indian or minority child:

(1) whether a person is available who is the same racial or ethnic heritage as the child or, if that is not possible;

(2) whether a person is available who knows and appreciates the child's racial or ethnic heritage.

(f) The court shall require a background study for each guardian ad litem as provided under section 518.165. The court shall have access to data collected pursuant to section 245C.32 for purposes of the background study.

Subdivision 7. Parent or guardian must accompany child at hearing.
The custodial parent or guardian of a child who is alleged or found to be delinquent, or is prosecuted as an extended jurisdiction juvenile, must accompany the child at each hearing held during the delinquency or extended jurisdiction juvenile proceedings, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in section 260B.154.

Subdivision 8. Waiving the presence of child, parent.
Except in delinquency proceedings, the court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In a delinquency proceeding, after the child is found to be delinquent, the court may excuse the presence of the child from the hearing when it is in the best interests of the child to do so. In any proceeding the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

Subdivision 9. Rights of parties at hearing.
The minor and the minor's parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing.

Subdivision 10. Waiver.

(a) Waiver of any right which a child has under this chapter must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived.

(b) Waiver of a child's right to be represented by counsel provided under the juvenile court rules must be an express waiver voluntarily and intelligently made by the child after

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the child has been fully and effectively informed of the right being waived. In determining whether a child has voluntarily and intelligently waived the right to counsel, the court shall look to the totality of the circumstances which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend, and the presence and competence of the child's parents, guardian, or guardian ad litem. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision to accept the waiver.

260B.171 Records

Subdivision 1. Records required to be kept.

(a) The juvenile court judge shall keep such minutes and in such manner as the court deems necessary and proper. Except as provided in paragraph (b), the court shall keep and maintain records pertaining to delinquent adjudications until the person reaches the age of 28 years and shall release the records on an individual to another juvenile court that has jurisdiction of the juvenile, to a requesting adult court for purposes of sentencing, or to an adult court or juvenile court as required by the right of confrontation of either the United States Constitution or the Minnesota Constitution. The juvenile court shall provide, upon the request of any other juvenile court, copies of the records concerning adjudications involving the particular child. The court also may provide copies of records concerning delinquency adjudications, on request, to law enforcement agencies, probation officers, and corrections agents if the court finds that providing these records serves public safety or is in the best interests of the child. Juvenile court delinquency proceeding records of adjudications, court transcripts, and delinquency petitions, including any probable cause attachments that have been filed or police officer reports relating to a petition, must be released to requesting law enforcement agencies and prosecuting authorities for purposes of investigating and prosecuting violations of section 609.229, provided that psychological or mental health reports may not be included with those records. The agency receiving the records may release the records only as permitted under this section or authorized by law. The court shall also keep an index in which files pertaining to juvenile matters shall be indexed under the name of the child. After the name of each file shall be shown the file number and, if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed. The court shall also keep a register properly indexed in which shall be listed under the name of the child all documents filed pertaining to the child and in the order filed. The list shall show the name of the document and the date of filing thereof. The juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, findings, orders, decrees, judgments, and motions and such other matters as the court deems necessary and proper. Unless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate, and to the child's parent and guardian.

(b) The court shall retain records of the court finding that a juvenile committed an act that would be a felony or gross misdemeanor level offense until the offender reaches the age of 28. If the offender commits a felony as an adult, or the court convicts a child as an extended jurisdiction juvenile, the court shall retain the juvenile records for as long as the records would have been retained if the offender had been an adult at the time of the juvenile offense. This paragraph does not apply unless the juvenile was provided counsel as required by section 260B.163, subdivision 2.

Subdivision 2. Record of findings.

(a) The juvenile court shall forward to the Bureau of Criminal Apprehension the following data in juvenile petitions involving felony- or gross misdemeanor-level offenses:

(1) the name and birthdate of the juvenile, including any of the juvenile's known aliases or street names;

(2) the act for which the juvenile was petitioned and date of the offense; and

(3) the date and county where the petition was filed.

(b) Upon completion of the court proceedings, the court shall forward the court's finding and case disposition to the bureau. The court shall specify whether:

(1) the juvenile was referred to a diversion program;

(2) the petition was dismissed, continued for dismissal, or continued without adjudication; or

(3) the juvenile was adjudicated delinquent.

(c) The juvenile court shall forward to the bureau, the Sentencing Guidelines Commission, and the Department of Corrections the following data on individuals convicted as extended jurisdiction juveniles:

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(1) the name and birthdate of the offender, including any of the juvenile's known aliases or street names;

(2) the crime committed by the offender and the date of the crime;

(3) the date and county of the conviction; and

(4) the case disposition. The court shall notify the bureau, the Sentencing Guidelines Commission, and the Department of Corrections whenever it executes an extended jurisdiction juvenile's adult sentence under section 260B.130, subdivision 5.

(d) The juvenile court shall forward to the statewide supervision system described in section 241.065 the following data in juvenile petitions for individuals under supervision by probation agencies or in an out-of-home placement:

(1) the name, address, birth date, race, and gender of the juvenile, including any of the juvenile's known aliases or street names;

(2) the act for which the juvenile was petitioned and date of offense;

(3) the date and county where the petition was filed;

(4) county, date of court action, and court file number of any adjudication or continuance;

(5) the case disposition, including any conditions of supervision; and

(6) the discharge or closing date and reason for the case under supervision.

(e) The bureau, Sentencing Guidelines Commission, and the Department of Corrections shall retain the extended jurisdiction juvenile data for as long as the data would have been retained if the offender had been an adult at the time of the offense. Data retained on individuals under this subdivision are private data under section 13.02, except that extended jurisdiction juvenile data becomes public data under section 13.87, subdivision 2, when the juvenile court notifies the bureau that the individual's adult sentence has been executed under section 260B.130, subdivision 5.

Subdivision 3. Disposition order; copy to school.

(a) If a juvenile is enrolled in school, the juvenile's probation officer shall transmit a copy of the court's disposition order to the superintendent of the juvenile's school district or the chief administrative officer of the juvenile's school if the juvenile has been adjudicated delinquent for committing an act on the school's property or an act:

(1) that would be a violation of section 609.185 (first-degree murder); 609.19 (second-degree murder); 609.195 (third-degree murder); 609.20 (first-degree manslaughter); 609.205 (second-degree manslaughter); 609.21 (criminal vehicular homicide and injury); 609.221 (first-degree assault); 609.222 (second-degree assault); 609.223 (third-degree assault); 609.2231 (fourth-degree assault); 609.224 (fifth-degree assault); 609.2242 (domestic assault); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.342 (first-degree criminal sexual conduct); 609.343 (second-degree criminal sexual conduct); 609.344 (third-degree criminal sexual conduct); 609.345 (fourth-degree criminal sexual conduct); 609.3451 (fifth-degree criminal sexual conduct); 609.498 (tampering with a witness); 609.561 (first-degree arson); 609.582, subdivision 1 or 2 (burglary); 609.713 (terroristic threats); or 609.749 (harassment and stalking), if committed by an adult;

(2) that would be a violation of section 152.021 (first-degree controlled substance crime); 152.022 (second-degree controlled substance crime); 152.023 (third-degree controlled substance crime); 152.024 (fourth-degree controlled substance crime); 152.025 (fifth-degree controlled substance crime); 152.0261 (importing a controlled substance); 152.0262 (possession of substances with intent to manufacture methamphetamine); or 152.027 (other controlled substance offenses), if committed by an adult; or

(3) that involved the possession or use of a dangerous weapon as defined in section 609.02, subdivision 6.

When a disposition order is transmitted under this subdivision, the probation officer shall notify the juvenile's parent or legal guardian that the disposition order has been shared with the juvenile's school.

(b) In addition, the juvenile's probation officer may transmit a copy of the court's disposition order to the superintendent of the juvenile's school district or the chief administrative officer of the juvenile's school if the juvenile has been adjudicated delinquent for offenses not listed in paragraph (a) and placed on probation. The probation officer shall notify the superintendent or chief administrative officer when the juvenile is discharged from probation.

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(c) The disposition order must be accompanied by a notice to the school that the school may obtain additional information from the juvenile's probation officer with the consent of the juvenile or the juvenile's parents, as applicable. The disposition order must be maintained, shared, or released only as provided in section 121A.75.

(d) The juvenile's probation officer shall maintain a record of disposition orders released under this subdivision and the basis for the release.

(e) No later than September 1, 2002, the criminal and juvenile justice information policy group, in consultation with representatives of probation officers and educators, shall prepare standard forms for use by juvenile probation officers in forwarding information to schools under this subdivision and in maintaining a record of the information that is released. The group shall provide a copy of any forms or procedures developed under this paragraph to the legislature by January 15, 2003.

(f) As used in this subdivision, "school" means a charter school or a school as defined in section 120A.22, subdivision 4, except a home school.

Subdivision 4. Public inspection of records.

(a) Legal records arising from proceedings or portions of proceedings that are public under section 260B.163, subdivision 1, are open to public inspection.

(b) Except as otherwise provided by this section, none of the records of the juvenile court and none of the records relating to an appeal from a nonpublic juvenile court proceeding, except the written appellate opinion, shall be open to public inspection or their contents disclosed except:
(1) by order of a court; or
(2) as required by chapter 245C or sections 245A.04, 611A.03, 611A.04, 611A.06, and 629.73.

(c) The victim of any alleged delinquent act may, upon the victim's request, obtain the following information, unless it reasonably appears that the request is prompted by a desire on the part of the requester to engage in unlawful activities:
(1) the name and age of the juvenile;
(2) the act for which the juvenile was petitioned and date of the offense; and
(3) the disposition, including, but not limited to, dismissal of the petition, diversion, probation and conditions of probation, detention, fines, or restitution.

(d) The records of juvenile probation officers and county home schools are records of the court for the purposes of this subdivision. Court services data relating to delinquent acts that are contained in records of the juvenile court may be released as allowed under section 13.84, subdivision 6 . This subdivision applies to all proceedings under this chapter, including appeals from orders of the juvenile court, except that this subdivision does not apply to proceedings under section 260B.335 or 260B.425 when the proceeding involves an adult defendant. The court shall maintain the confidentiality of adoption files and records in accordance with the provisions of laws relating to adoptions. In juvenile court proceedings any report or social history furnished to the court shall be open to inspection by the attorneys of record and the guardian ad litem a reasonable time before it is used in connection with any proceeding before the court.

(e) When a judge of a juvenile court, or duly authorized agent of the court, determines under a proceeding under this chapter that a child has violated a state or local law, ordinance, or regulation pertaining to the operation of a motor vehicle on streets and highways, except parking violations, the judge or agent shall immediately report the violation to the commissioner of public safety. The report must be made on a form provided by the Department of Public Safety and must contain the information required under section 169.95.

(f) A county attorney may give a law enforcement agency that referred a delinquency matter to the county attorney a summary of the results of that referral, including the details of any juvenile court disposition.

Subdivision 5. Peace officer records of children.

(a) Except for records relating to an offense where proceedings are public under section 260B.163, subdivision 1, peace officers' records of children who are or may be delinquent or who may be engaged in criminal acts shall be kept separate from records of persons 18 years of age or older and are private data but shall be disseminated:
(1) by order of the juvenile court,
(2) as required by section 121A.28,
(3) as authorized under section 13.82, subdivision 2,
(4) to the child or the child's parent or guardian unless disclosure of a record would interfere with an ongoing investigation,

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(5) to the Minnesota crime victims reparations board as required by section 611A.56, subdivision 2, clause (f), for the purpose of processing claims for crime victims reparations, or

(6) as otherwise provided in this subdivision. Except as provided in paragraph (c), no photographs of a child taken into custody may be taken without the consent of the juvenile court unless the child is alleged to have violated section 169A.20. Peace officers' records containing data about children who are victims of crimes or witnesses to crimes must be administered consistent with section 13.82, subdivisions 2, 3, 6, and 17. Any person violating any of the provisions of this subdivision shall be guilty of a misdemeanor. In the case of computerized records maintained about juveniles by peace officers, the requirement of this subdivision that records about juveniles must be kept separate from adult records does not mean that a law enforcement agency must keep its records concerning juveniles on a separate computer system. Law enforcement agencies may keep juvenile records on the same computer as adult records and may use a common index to access both juvenile and adult records so long as the agency has in place procedures that keep juvenile records in a separate place in computer storage and that comply with the special data retention and other requirements associated with protecting data on juveniles.

(b) Nothing in this subdivision prohibits the exchange of information by law enforcement agencies if the exchanged information is pertinent and necessary for law enforcement purposes.

(c) A photograph may be taken of a child taken into custody pursuant to section 260B.175, subdivision 1, clause (b), provided that the photograph must be destroyed when the child reaches the age of 19 years. The commissioner of corrections may photograph juveniles whose legal custody is transferred to the commissioner. Photographs of juveniles authorized by this paragraph may be used only for institution management purposes, case supervision by parole agents, and to assist law enforcement agencies to apprehend juvenile offenders. The commissioner shall maintain photographs of juveniles in the same manner as juvenile court records and names under this section.

(d) Traffic investigation reports are open to inspection by a person who has sustained physical harm or economic loss as a result of the traffic accident. Identifying information on juveniles who are parties to traffic accidents may be disclosed as authorized under section 13.82, subdivision 4, and accident reports required under section 169.09 may be released under section 169.09, subdivision 13, unless the information would identify a juvenile who was taken into custody or who is suspected of committing an offense that would be a crime if committed by an adult, or would associate a juvenile with the offense, and the offense is not an adult court traffic offense under section 260B.225.

(e) The head of a law enforcement agency or a person specifically given the duty by the head of the law enforcement agency shall notify the superintendent or chief administrative officer of a juvenile's school of an incident occurring within the agency's jurisdiction if:

(1) the agency has probable cause to believe that the juvenile has committed an offense that would be a crime if committed as an adult, that the victim of the offense is a student or staff member of the school, and that notice to the school is reasonably necessary for the protection of the victim; or

(2) the agency has probable cause to believe that the juvenile has committed an offense described in subdivision 3, paragraph (a), clauses (1) to (3), that would be a crime if committed by an adult, regardless of whether the victim is a student or staff member of the school. A law enforcement agency is not required to notify the school under this paragraph if the agency determines that notice would jeopardize an ongoing investigation. For purposes of this paragraph, "school" means a public or private elementary, middle, secondary, or charter school.

(f) In any county in which the county attorney operates or authorizes the operation of a juvenile prepetition or pretrial diversion program, a law enforcement agency or county attorney's office may provide the juvenile diversion program with data concerning a juvenile who is a participant in or is being considered for participation in the program.

(g) Upon request of a local social services agency, peace officer records of children who are or may be delinquent or who may be engaged in criminal acts may be disseminated to the agency to promote the best interests of the subject of the data.

(h) Upon written request, the prosecuting authority shall release investigative data collected by a law enforcement

agency to the victim of a criminal act or alleged criminal act or to the victim's legal representative, except as otherwise provided by this paragraph. Data shall not be released if:

(1) the release to the individual subject of the data would be prohibited under section 13.821; or

(2) the prosecuting authority reasonably believes:

(i) that the release of that data will interfere with the investigation; or

(ii) that the request is prompted by a desire on the part of the requester to engage in unlawful activities.

Subdivision 6. Attorney access to records.
An attorney representing a child, parent, or guardian ad litem in a proceeding under this chapter shall be given access to records, local social services agency files, and reports which form the basis of any recommendation made to the court. An attorney does not have access under this subdivision to the identity of a person who made a report under section 626.556. The court may issue protective orders to prohibit an attorney from sharing a specified record or portion of a record with a client other than a guardian ad litem.

Subdivision 7. Court record released to prosecutor.
If a prosecutor has probable cause to believe that a person has committed a gross misdemeanor violation of section 169A.20, and that a prior juvenile court adjudication forms, in part, the basis for the current violation, the prosecutor may file an application with the court having jurisdiction over the criminal matter attesting to this probable cause determination and seeking the relevant juvenile court records. The court shall transfer the application to the juvenile court where the requested records are maintained, and the juvenile court shall release to the prosecutor any records relating to the person's prior juvenile traffic adjudication, including a transcript, if any, of the court's advisory of the right to counsel and the person's exercise or waiver of that right.

Subdivision 8. Further release of records.
A person who receives access to juvenile court or peace officer records of children that are not accessible to the public may not release or disclose the records to any other person except as authorized by law. This subdivision does not apply to the child who is the subject of the records or the child's parent or guardian.

260B.185 Extension of Detention Period

Subdivision 1. Detention.
Before July 1, 1999, and pursuant to a request from an eight-day temporary holdover facility, as defined in section 241.0221, the commissioner of corrections, or the commissioner's designee, may grant a onetime extension per child to the eight-day limit on detention under this chapter. This extension may allow such a facility to detain a child for up to 30 days including weekends and holidays. Upon the expiration of the extension, the child may not be transferred to another eight-day temporary holdover facility. The commissioner shall develop criteria for granting extensions under this section. These criteria must ensure that the child be transferred to a long-term juvenile detention facility as soon as such a transfer is possible. Nothing in this section changes the requirements in section 260B.178 regarding the necessity of detention hearings to determine whether continued detention of the child is proper.

Subdivision 2. Continued detention.

(a) A delay not to exceed 48 hours may be made if the facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours.

(b) A delay may be made if the facility is located where conditions of safety exist. Time for an appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. "Conditions of safety" include adverse life-threatening weather conditions that do not allow for reasonably safe travel. The continued detention of a child under paragraph (a) or (b) must be reported to the commissioner of corrections.

260B.198 Dispositions; Delinquent Child

Subdivision 1. Court order, findings, remedies, treatment.
If the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:

(a) Counsel the child or the parents, guardian, or custodian;

(b) Place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court including reasonable rules for the child's conduct and the conduct of the child's parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child,

or with the consent of the commissioner of corrections, in a group foster care facility which is under the management and supervision of said commissioner;

(c) Subject to the supervision of the court, transfer legal custody of the child to one of the following:
(1) a child-placing agency; or

(2) the local social services agency; or

(3) a reputable individual of good moral character. No person may receive custody of two or more unrelated children unless licensed as a residential facility pursuant to sections 245A.01 to 245A.16; or

(4) a county home school, if the county maintains a home school or enters into an agreement with a county home school; or

(5) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;

(d) Transfer legal custody by commitment to the commissioner of corrections;

(e) If the child is found to have violated a state or local law or ordinance which has resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage;

(f) Require the child to pay a fine of up to $1,000. The court shall order payment of the fine in accordance with a time payment schedule which shall not impose an undue financial hardship on the child;

(g) If the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided;

(h) If the court believes that it is in the best interests of the child and of public safety that the driver's license of the child be canceled until the child's 18th birthday, the court may recommend to the commissioner of public safety the cancellation of the child's license for any period up to the child's 18th birthday, and the commissioner is hereby authorized to cancel such license without a hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of public safety that the child be authorized to apply for a new license, and the commissioner may so authorize;

(i) If the court believes that it is in the best interest of the child and of public safety that the child is enrolled in school, the court may require the child to remain enrolled in a public school until the child reaches the age of 18 or completes all requirements needed to graduate from high school. Any child enrolled in a public school under this paragraph is subject to the provisions of the Pupil Fair Dismissal Act in chapter 127;

(j) If the child is petitioned and found by the court to have committed a controlled substance offense under sections 152.021 to 152.027, the court shall determine whether the child unlawfully possessed or sold the controlled substance while driving a motor vehicle. If so, the court shall notify the commissioner of public safety of its determination and order the commissioner to revoke the child's driver's license for the applicable time period specified in section 152.0271. If the child does not have a driver's license or if the child's driver's license is suspended or revoked at the time of the delinquency finding, the commissioner shall, upon the child's application for driver's license issuance or reinstatement, delay the issuance or reinstatement of the child's driver's license for the applicable time period specified in section 152.0271. Upon receipt of the court's order, the commissioner is authorized to take the licensing action without a hearing;

(k) If the child is petitioned and found by the court to have committed or attempted to commit an act in violation of section 609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23, or another offense arising out of a delinquency petition based on one or more of those sections, the court shall order an independent professional assessment of the child's need for sex offender treatment. An assessor providing an assessment for the court must be experienced in the evaluation and treatment of juvenile sex offenders. If the assessment indicates that the child is in need of and amenable to sex offender treatment, the court shall include in its disposition order a requirement that the child undergo treatment. Notwithstanding section 13.384, 13.85, 144.335, 260B.171, or 626.556, the assessor has access to the following private or confidential data on the child if access is relevant and necessary for the assessment:

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(1) medical data under section 13.384;

(2) corrections and detention data under section 13.85;

(3) health records under section 144.335;

(4) juvenile court records under section 260B.171; and

(5) local welfare agency records under section 626.556. Data disclosed under this paragraph may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law;

(l) If the child is found delinquent due to the commission of an offense that would be a felony if committed by an adult, the court shall make a specific finding on the record regarding the juvenile's mental health and chemical dependency treatment needs;

(m) Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

(1) why the best interests of the child are served by the disposition ordered; and

(2) what alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case.

Subdivision 2. Possession of firearm or dangerous weapon.

If the child is petitioned and found delinquent by the court, and the court also finds that the child was in possession of a firearm at the time of the offense, in addition to any other disposition the court shall order that the firearm be immediately seized and shall order that the child be required to serve at least 100 hours of community work service unless the child is placed in a residential treatment program or a juvenile correctional facility. If the child is petitioned and found delinquent by the court, and the court finds that the child was in possession of a dangerous weapon in a school zone, as defined in section 152.01, subdivision 14a, clauses (1) and (3), at the time of the offense, the court also shall order that the child's driver's license be canceled or driving privileges denied until the child's 18th birthday. The court shall send a copy of its order to the commissioner of public safety and, upon receipt of the order, the commissioner is authorized to cancel the child's driver's license or deny the child's driving privileges without a hearing.

Subdivision 3. Commitment to secure facility; length of stay; transfers.

An adjudicated juvenile may not be placed in a licensed juvenile secure treatment facility unless the placement is approved by the juvenile court. However, the program administrator may determine the juvenile's length of stay in the secure portion of the facility. The administrator shall notify the court of any movement of juveniles from secure portions of facilities. However, the court may, in its discretion, order that the juveniles be moved back to secure portions of the facility.

Subdivision 4. Placement of juveniles in secure facilities; requirements.

Before a postadjudication placement of a juvenile in a secure treatment facility either inside or outside the state, the court may:

(1) consider whether the juvenile has been adjudicated for a felony offense against the person or that in addition to the current adjudication, the juvenile has failed to appear in court on one or more occasions or has run away from home on one or more occasions;

(2) conduct a subjective assessment to determine whether the child is a danger to self or others or would abscond from a nonsecure facility or if the child's health or welfare would be endangered if not placed in a secure facility;

(3) conduct a culturally appropriate psychological evaluation which includes a functional assessment of anger and abuse issues; and

(4) conduct an educational and physical assessment of the juvenile. In determining whether to order secure placement, the court shall consider the necessity of:

(i) protecting the public;

(ii) protecting program residents and staff; and

(iii) preventing juveniles with histories of absconding from leaving treatment programs.

Subdivision 5. Case plan.

(a) For each disposition ordered for an out-of-home placement potentially exceeding 30 days, the court shall order the appropriate agency to develop a case plan in consultation with the child's parent or parents, guardian or custodian, and other appropriate parties. At a minimum, the case plan must specify:

(1) the actions to be taken by the child and, if appropriate, the child's parent, guardian, or custodian to insure the child's safety, future lawful conduct, and compliance with the court's disposition order; and

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(2) the services to be offered and provided by the agency to the child and, if appropriate, the child's parent, guardian, or custodian.

(b) The court shall review the case plan and, upon approving it, incorporate it into its disposition order. The court may review and modify the terms of the case plan as appropriate. A party has a right to request a court review of the reasonableness of the case plan upon a showing of a substantial change of circumstances.

Subdivision 6. Expungement.
Except when legal custody is transferred under the provisions of subdivision 1, clause (d), the court may expunge the adjudication of delinquency at any time that it deems advisable.

Subdivision 7. Continuance.
When it is in the best interests of the child to do so and when the child has admitted the allegations contained in the petition before the judge or referee, or when a hearing has been held as provided for in section 260B.163 and the allegations contained in the petition have been duly proven but, in either case, before a finding of delinquency has been entered, the court may continue the case for a period not to exceed 90 days on any one order. Such a continuance may be extended for one additional successive period not to exceed 90 days and only after the court has reviewed the case and entered its order for an additional continuance without a finding of delinquency. During this continuance the court may enter an order in accordance with the provisions of subdivision 1, clause (a) or (b), or enter an order to hold the child in detention for a period not to exceed 15 days on any one order for the purpose of completing any consideration, or any investigation or examination ordered in accordance with the provisions of section 260B.157. This subdivision does not apply to an extended jurisdiction juvenile proceeding.

Subdivision 8. Enforcement of restitution orders.
If the court orders payment of restitution and the child fails to pay the restitution in accordance with the payment schedule or structure established by the court or the probation officer, the child's probation officer may, on the officer's own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The child's probation officer shall ask for the hearing if the restitution order has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold this hearing before the child's term of probation expires.

Subdivision 9. Orders for supervision.
All orders for supervision under subdivision 1, clause (b), shall be for an indeterminate period, unless otherwise specified by the court, and shall be reviewed by the court at least annually. All orders under subdivision 1, clause (c), shall be for a specified length of time set by the court. However, before an order has expired and upon the court's own motion or that of any interested party, the court has continuing jurisdiction to renew the order or, after notice to the parties and a hearing, make some other disposition of the case, until the individual becomes 19 years of age. Any person to whom legal custody is transferred shall report to the court in writing at such periods as the court may direct.

Subdivision 10. Transfer of legal custody orders.
When the court transfers legal custody of a child to any licensed child-placing agency, county home school, local social services agency, or the commissioner of corrections, it shall transmit with the order transferring legal custody a copy of its findings and a summary of its information concerning the child.

Subdivision 11. Out-of-state placements.
(a) A court may not place a preadjudicated delinquent, an adjudicated delinquent, or a convicted extended jurisdiction juvenile in a residential or detention facility outside Minnesota unless the commissioner of corrections has certified that the facility:
(1) meets or exceeds the standards for Minnesota residential treatment programs set forth in rules adopted by the commissioner of human services or the standards for juvenile residential facilities set forth in rules adopted by the commissioner of corrections or the standards for juvenile detention facilities set forth in rules adopted by the commissioner of corrections, as provided under paragraph (b); and

(2) provides education, health, dental, and other necessary care equivalent to that which the child would receive if placed in a Minnesota facility licensed by the commissioner of corrections or commissioner of human services.

(b) The interagency licensing agreement between the commissioners of corrections and human services shall be used to determine which rule shall be used for certification purposes under this subdivision.

(c) The commissioner of corrections may charge each facility evaluated a reasonable amount. Money received is annually appropriated to the commissioner of corrections to defray the costs of the certification program.

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Subdivision 12. Placement in juvenile facility.
A person who has reached the age of 20 may not be kept in a residential facility licensed by the commissioner of corrections together with persons under the age of 20. The commissioner may adopt criteria for allowing exceptions to this prohibition.

260B.225 Juvenile Traffic Offender; Procedures; Dispositions

Subdivision 1. Definitions.

(a) For purposes of this section, the following terms have the meanings given them.

(b) "Major traffic offense" includes any violation of a state or local traffic law, ordinance, or regulation, or a federal, state, or local water traffic law not included within the provisions of paragraph (c).

(c) "Adult court traffic offense" means:

(1) a petty misdemeanor violation of a state or local traffic law, ordinance, or regulation, or a petty misdemeanor violation of a federal, state, or local water traffic law; or

(2) a violation of section 169A.20 or any other misdemeanor or gross misdemeanor-level traffic violation committed as part of the same behavioral incident as a violation of section 169A.20.

Subdivision 2. Juvenile highway traffic offender.
A child who commits a major traffic offense shall be adjudicated a "juvenile highway traffic offender" or a "juvenile water traffic offender," as the case may be, and shall not be adjudicated delinquent, unless, as in the case of any other child alleged to be delinquent, a petition is filed in the manner provided in section 260B.141, summons issued, notice given, a hearing held, and the court finds as a further fact that the child is also delinquent within the meaning and purpose of the laws relating to juvenile courts.

Subdivision 3. Adult traffic offense.
Except as provided in subdivision 4, a child who commits an adult court traffic offense and at the time of the offense was at least 16 years old shall be subject to the laws and court procedures controlling adult traffic violators and shall not be under the jurisdiction of the juvenile court. When a child is alleged to have committed an adult court traffic offense and is at least 16 years old at the time of the offense, the peace officer making the charge shall follow the arrest procedures prescribed in section 169.91 and shall make reasonable effort to notify the child's parent or guardian of the nature of the charge.

Subdivision 4. Original jurisdiction; juvenile court.
The juvenile court has original jurisdiction over:

(1) all juveniles age 15 and under alleged to have committed any traffic offense; and

(2) 16- and 17-year-olds alleged to have committed any major traffic offense, except that the adult court has original jurisdiction over:

(i) petty traffic misdemeanors not a part of the same behavioral incident of a misdemeanor being handled in juvenile court; and

(ii) violations of section 169A.20 (driving while impaired), and any other misdemeanor or gross misdemeanor level traffic violations committed as part of the same behavioral incident as a violation of section 169A.20.

Subdivision 5. Major traffic offense procedures.
When a child is alleged to have committed a major traffic offense, the peace officer making the charge shall file a signed copy of the notice to appear, as provided in section 169.91, with the juvenile court of the county in which the violation occurred, and the notice to appear has the effect of a petition and gives the juvenile court jurisdiction. Filing with the court a notice to appear containing the name and address of the child allegedly committing a major traffic offense and specifying the offense charged, the time and place of the alleged violation shall have the effect of a petition and give the juvenile court jurisdiction. Any reputable person having knowledge of a child who commits a major traffic offense may petition the juvenile court in the manner provided in section 260B.141. Whenever a notice to appear or petition is filed alleging that a child is a juvenile highway traffic offender or a juvenile water traffic offender, the court shall summon and notify the persons required to be summoned or notified as provided in sections 260B.151 and 260B.152. However, it is not necessary to

(1) notify more than one parent, or

(2) publish any notice, or

(3) personally serve outside the state.

Subdivision 6. Disposition.
Before making a disposition of any child found to be a juvenile major traffic offender or to have violated a misdemeanor- or gross misdemeanor-level traffic law, the court shall obtain from the department of public safety information of any previous traffic violation by this juvenile. In the case of a juvenile water traffic offender, the court shall obtain from the office where the information is now or hereafter may be kept information of any previous water traffic violation by the juvenile.

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Subdivision 7. Transfer of cases.
If after a hearing the court finds that the welfare of a juvenile major traffic offender or a juvenile water traffic offender or the public safety would be better served under the laws controlling adult traffic violators, the court may transfer the case to any court of competent jurisdiction presided over by a salaried judge if there is one in the county. The juvenile court transfers the case by forwarding to the appropriate court the documents in the court's file together with an order to transfer. The court to which the case is transferred shall proceed with the case as if the jurisdiction of the juvenile court had never attached.

Subdivision 8. Criminal court dispositions; adult court traffic offenders.

(a) A juvenile who is charged with an adult court traffic offense in district court shall be treated as an adult before trial, except that the juvenile may be held in secure, pretrial custody only in a secure juvenile detention facility.

(b) A juvenile who is convicted of an adult court traffic offense in district court shall be treated as an adult for sentencing purposes, except that the court may order the juvenile placed out of the home only in a residential treatment facility or in a juvenile correctional facility.

(c) The disposition of an adult court traffic offender remains with the county in which the adjudication occurred.

Subdivision 9. Juvenile major highway or water traffic offender.
If the juvenile court finds that the child is a juvenile major highway or water traffic offender, it may make any one or more of the following dispositions of the case:

(a) Reprimand the child and counsel with the child and the parents;

(b) Continue the case for a reasonable period under such conditions governing the child's use and operation of any motor vehicles or boat as the court may set;

(c) Require the child to attend a driver improvement school if one is available within the county;

(d) Recommend to the Department of Public Safety suspension of the child's driver's license as provided in section 171.16;

(e) If the child is found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of $100, the court may recommend to the commissioner of public safety or to the licensing authority of another state the cancellation of the child's license until the child reaches the age of 18 years, and the commissioner of public safety is hereby authorized to cancel the license without hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of public safety, or to the licensing authority of another state, that the child's license be returned, and the commissioner of public safety is authorized to return the license;

(f) Place the child under the supervision of a probation officer in the child's own home under conditions prescribed by the court including reasonable rules relating to operation and use of motor vehicles or boats directed to the correction of the child's driving habits;

(g) If the child is found to have violated a state or local law or ordinance and the violation resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for the damage;

(h) Require the child to pay a fine of up to $1,000. The court shall order payment of the fine in accordance with a time payment schedule which shall not impose an undue financial hardship on the child;

(i) If the court finds that the child committed an offense described in section 169A.20, the court shall order that a chemical use assessment be conducted and a report submitted to the court in the manner prescribed in section 169A.70. If the assessment concludes that the child meets the level of care criteria for placement under rules adopted under section 254A.03, subdivision 3, the report must recommend a level of care for the child. The court may require that level of care in its disposition order. In addition, the court may require any child ordered to undergo an assessment to pay a chemical dependency assessment charge of $75. The court shall forward the assessment charge to the commissioner of finance to be credited to the general fund. The state shall reimburse counties for the total cost of the assessment in the manner provided in section 169A.284.

Subdivision 10. Records.
The juvenile court records of juvenile highway traffic offenders and juvenile water traffic offenders shall be kept separate from delinquency matters.

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260B.235 Petty Offenders; Procedures; Dispositions

Subdivision 1. Adjudication.
A petty offender who has committed a juvenile alcohol or controlled substance offense shall be adjudicated a "petty offender," and shall not be adjudicated delinquent, unless, as in the case of any other child alleged to be delinquent, a petition is filed in the manner provided in section 260B.141, summons issued, notice given, a hearing held, and the court finds as a further fact that the child is also delinquent within the meaning and purpose of the laws related to juvenile courts.

Subdivision 2. Procedure.
When a peace officer has probable cause to believe that a child is a petty offender, the officer may issue a notice to the child to appear in juvenile court in the county in which the alleged violation occurred. The officer shall file a copy of the notice to appear with the juvenile court of the county in which the alleged violation occurred. Filing with the court a notice to appear containing the name and address of the child who is alleged to be a petty offender, specifying the offense charged, and the time and place of the alleged violation has the effect of a petition giving the juvenile court jurisdiction. Any reputable person having knowledge that a child is a petty offender may petition the juvenile court in the manner provided in section 260B.141. Whenever a notice to appear or petition is filed alleging that a child is a petty offender, the court shall summon and notify the person or persons having custody or control of the child of the nature of the offense charged and the time and place of hearing. This summons and notice shall be served in the time and manner provided in section 260B.151, subdivision 1. If a child fails to appear in response to the notice provided by this subdivision, the court may issue a summons notifying the child of the nature of the offense alleged and the time and place set for the hearing. If the peace officer finds it necessary to take the child into custody, sections 260B.175 and 260B.176 shall apply.

Subdivision 3. No right to counsel at public expense.
Except as otherwise provided in section 260B.163, subdivision 4, a child alleged to be a juvenile petty offender may be represented by counsel but does not have a right to appointment of a public defender or other counsel at public expense.

Subdivision 4. Dispositions.
If the juvenile court finds that a child is a petty offender, the court may:

(a) require the child to pay a fine of up to $100;

(b) require the child to participate in a community service project;

(c) require the child to participate in a drug awareness program;

(d) order the child to undergo a chemical dependency evaluation and if warranted by this evaluation, order participation by the child in an outpatient chemical dependency treatment program;

(e) place the child on probation for up to six months or, in the case of a juvenile alcohol or controlled substance offense, following a determination by the court that the juvenile is chemically dependent, the court may place the child on probation for a time determined by the court;

(f) order the child to make restitution to the victim; or

(g) perform any other activities or participate in any other outpatient treatment programs deemed appropriate by the court. In all cases where the juvenile court finds that a child has purchased or attempted to purchase an alcoholic beverage in violation of section 340A.503, if the child has a driver's license or permit to drive, and if the child used a driver's license, permit, Minnesota identification card, or any type of false identification to purchase or attempt to purchase the alcoholic beverage, the court shall forward its finding in the case and the child's driver's license or permit to the commissioner of public safety. Upon receipt, the commissioner shall suspend the child's license or permit for a period of 90 days. In all cases where the juvenile court finds that a child has purchased or attempted to purchase tobacco in violation of section 609.685, subdivision 3, if the child has a driver's license or permit to drive, and if the child used a driver's license, permit, Minnesota identification card, or any type of false identification to purchase or attempt to purchase tobacco, the court shall forward its finding in the case and the child's driver's license or permit to the commissioner of public safety. Upon receipt, the commissioner shall suspend the child's license or permit for a period of 90 days. None of the dispositional alternatives described in clauses (a) to (f) shall be imposed by the court in a manner which would cause an undue hardship upon the child.

Subdivision 5. Enhanced dispositions.
If the juvenile court finds that a child has committed a second or subsequent juvenile alcohol or controlled substance offense, the court may impose any of the dispositional alternatives described in paragraphs (a) to (c). If the juvenile court finds that a child has committed a second or subsequent juvenile tobacco offense, the court may impose any of the dispositional alternatives described in paragraphs (a) to (c).

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(a) The court may impose any of the dispositional alternatives described in subdivision 3, clauses (a) to (f).

(b) If the adjudicated petty offender has a driver's license or permit, the court may forward the license or permit to the commissioner of public safety. The commissioner shall revoke the petty offender's driver's license or permit until the offender reaches the age of 18 years or for a period of one year, whichever is longer.

(c) If the adjudicated petty offender has a driver's license or permit, the court may suspend the driver's license or permit for a period of up to 90 days but may allow the offender driving privileges as necessary to travel to and from work.

(d) If the adjudicated petty offender does not have a driver's license or permit, the court may prepare an order of denial of driving privileges. The order must provide that the petty offender will not be granted driving privileges until the offender reaches the age of 18 years or for a period of one year, whichever is longer. The court shall forward the order to the commissioner of public safety. The commissioner shall deny the offender's eligibility for a driver's license under section 171.04, for the period stated in the court order.

Subdivision 6. Alternative disposition.
In addition to dispositional alternatives authorized by subdivision 4, in the case of a third or subsequent finding by the court pursuant to an admission in court or after trial that a child has committed a juvenile alcohol or controlled substance offense, the juvenile court shall order a chemical dependency evaluation of the child and if warranted by the evaluation, the court may order participation by the child in an inpatient or outpatient chemical dependency treatment program, or any other treatment deemed appropriate by the court. In the case of a third or subsequent finding that a child has committed any juvenile petty offense, the court shall order a children's mental health screening be conducted as provided in section 260B.157, subdivision 1, and if indicated by the screening, to undergo a diagnostic assessment, including a functional assessment, as defined in section 245.4871.

Subdivision 7. Findings required.
Any order for disposition authorized by this section shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

(a) Why the best interests of the child are served by the disposition ordered; and

(b) What alternative dispositions were considered by the court and why they were not appropriate in the instant case.

Subdivision 8. Report.
The juvenile court shall report to the office of state court administrator each disposition made under this section and section 260B.198 where placement is made outside of this state's jurisdictional boundaries. Each report shall contain information as to date of placement, length of anticipated placement, program costs, reasons for out of state placement, and any other information as the office requires to determine the number of out of state placements, the reasons for these placements, and the costs involved. The report shall not contain the name of the child. Any information contained in the reports relating to factors identifying a particular child is confidential and may be disclosed only by order of the juvenile court. Any person violating this subdivision as to release of this confidential information is guilty of a misdemeanor.

Subdivision 9. Expungement.
The court may expunge the adjudication of a child as a petty offender at any time it deems advisable.

260B.245 Effect of Juvenile Court Proceedings

Subdivision 1. Effect.

(a) No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime, except as otherwise provided in this section or section 260B.255. An extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines. The disposition of the child or any evidence given by the child in the juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court, except that an adjudication may later be used to determine a proper sentence, nor shall the disposition or evidence disqualify the child in any future civil service examination, appointment, or application.

(b) A person who was adjudicated delinquent for, or convicted as an extended jurisdiction juvenile of, a crime of violence as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm for the

remainder of the person's lifetime. A person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restrictions of this subdivision.

Subdivision 2. Construction.
Nothing contained in this section shall be construed to relate to subsequent proceedings in juvenile court, nor shall preclude the juvenile court, under circumstances other than those specifically prohibited in subdivision 1, from disclosing information to qualified persons if the court considers such disclosure to be in the best interests of the child or of the administration of justice.

260B.255 Juvenile Court Disposition Bars Criminal Proceedings

Subdivision 1. Certain violations not crimes.
A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court:

(1) certifies the matter in accordance with the provisions of section 260B.125;

(2) transfers the matter to a court in accordance with the provisions of section 260B.225; or

(3) convicts the child as an extended jurisdiction juvenile and subsequently executes the adult sentence under section 260B.130, subdivision 5.

Subdivision 2. Penalty.
Except for matters referred to the prosecuting authority under the provisions of this section or to a court in accordance with the provisions of section 260B.225, any peace officer knowingly bringing charges against a child in a court other than a juvenile court for violating a state or local law or ordinance is guilty of a misdemeanor. This subdivision does not apply to complaints brought for the purposes of extradition.

260B.245 Effect of Juvenile Court Proceedings

Subdivision 1. Effect.

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(b) A person who was adjudicated delinquent for, or convicted as an extended jurisdiction juvenile of, a crime of violence as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime. A person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restrictions of this subdivision.

Subdivision 2. Construction.
Nothing contained in this section shall be construed to relate to subsequent proceedings in juvenile court, nor shall preclude the juvenile court, under circumstances other than those specifically prohibited in subdivision 1, from disclosing information to qualified persons if the court considers such disclosure to be in the best interests of the child or of the administration of justice.

260B.255 Juvenile Court Disposition Bars Criminal Proceeding

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A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court:

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(3) convicts the child as an extended jurisdiction juvenile and subsequently executes the adult sentence under section 260B.130, subdivision 5.

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Except for matters referred to the prosecuting authority under the provisions of this section or to a court in accordance with the provisions of section 260B.225, any peace officer knowingly

bringing charges against a child in a court other than a juvenile court for violating a state or local law or ordinance is guilty of a misdemeanor. This subdivision does not apply to complaints brought for the purposes of extradition.

260B.331 Costs of Care

Subdivision 1. Care, examination, or treatment.

(a) (Missing Text)

(1) Whenever legal custody of a child is transferred by the court to a local social services agency, or

(2) whenever legal custody is transferred to a person other than the local social services agency, but under the supervision of the local social services agency, and

(3) whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the child, these costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court.

(b) The court shall order, and the local social services agency shall require, the parents or custodian of a child, while the child is under the age of 18, to use the total income and resources attributable to the child for the period of care, examination, or treatment, except for clothing and personal needs allowance as provided in section 256B.35, to reimburse the county for the cost of care, examination, or treatment. Income and resources attributable to the child include, but are not limited to, Social Security benefits, supplemental security income (SSI), veterans benefits, railroad retirement benefits and child support. When the child is over the age of 18, and continues to receive care, examination, or treatment, the court shall order, and the local social services agency shall require, reimbursement from the child for the cost of care, examination, or treatment from the income and resources attributable to the child less the clothing and personal needs allowance.

(c) If the income and resources attributable to the child are not enough to reimburse the county for the full cost of the care, examination, or treatment, the court shall inquire into the ability of the parents to support the child and, after giving the parents a reasonable opportunity to be heard, the court shall order, and the local social services agency shall require, the parents to contribute to the cost of care, examination, or treatment of the child. Except in delinquency cases where the victim is a member of the child's immediate family, when determining the amount to be contributed by the parents, the court shall use a fee schedule based upon ability to pay that is established by the local social services agency and approved by the commissioner of human services. In delinquency cases where the victim is a member of the child's immediate family, the court shall use the fee schedule but may also take into account the seriousness of the offense and any expenses which the parents have incurred as a result of the offense. The income of a stepparent who has not adopted a child shall be excluded in calculating the parental contribution under this section.

(d) The court shall order the amount of reimbursement attributable to the parents or custodian, or attributable to the child, or attributable to both sources, withheld under chapter 518A from the income of the parents or the custodian of the child. A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used.

(e) If the court orders a physical or mental examination for a child, the examination is a medically necessary service for purposes of determining whether the service is covered by a health insurance policy, health maintenance contract, or other health coverage plan. Court-ordered treatment shall be subject to policy, contract, or plan requirements for medical necessity. Nothing in this paragraph changes or eliminates benefit limits, conditions of coverage, co-payments or deductibles, provider restrictions, or other requirements in the policy, contract, or plan that relate to coverage of other medically necessary services.

Subdivision 2. Cost of group foster care.

Whenever a child is placed in a group foster care facility as provided in section 260B.198, subdivision 1, clause (b) or (c), item (5), the cost of providing the care shall, upon certification by the juvenile court, be paid from the welfare fund of the county in which the proceedings were held. To reimburse the counties for the costs of providing group foster care for delinquent children and to promote the establishment of suitable group foster homes, the state shall quarterly, from funds appropriated for that purpose, reimburse counties 50 percent of the costs not paid by federal and other available state aids and grants. Reimbursement shall be prorated if the appropriation

is insufficient. The commissioner of corrections shall establish procedures for reimbursement and certify to the commissioner of finance each county entitled to receive state aid under the provisions of this subdivision. Upon receipt of a certificate the commissioner of finance shall issue a state warrant to the county treasurer for the amount due, together with a copy of the certificate prepared by the commissioner of corrections.

Subdivision 3. Court expenses.
The following expenses are a charge upon the county in which proceedings are held upon certification of the judge of juvenile court or upon such other authorization provided by law:

(a) The fees and mileage of witnesses, and the expenses and mileage of officers serving notices and subpoenas ordered by the court, as prescribed by law.

(b) The expense of transporting a child to a place designated by a child-placing agency for the care of the child if the court transfers legal custody to a child-placing agency.

(c) The expense of transporting a minor to a place designated by the court.

(d) Reasonable compensation for an attorney appointed by the court to serve as counsel, except in the Eighth Judicial District where the state courts shall pay for counsel to a guardian ad litem until the recommendations of the task force created in Laws 1999, chapter 216, article 7, section 42, are implemented. The state courts shall pay for guardian ad litem expenses.

Subdivision 4. Legal settlement.
The county charged with the costs and expenses under subdivisions 1 and 2 may recover these costs and expenses from the county where the minor has legal settlement for general assistance purposes by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. If a dispute relating to general assistance settlement arises, the local social services agency of the county denying legal settlement shall send a detailed statement of the facts upon which the claim is denied together with a copy of the detailed statement of the facts upon which the claim is based to the commissioner of human services. The commissioner shall immediately investigate and determine the question of general assistance settlement and shall certify findings to the local social services agency of each county. The decision of the commissioner is final and shall be complied with unless, within 30 days thereafter, action is taken in district court as provided in section 256.045.

Subdivision 5. Attorneys fees.
In proceedings in which the court has appointed counsel pursuant to section 260B.163, subdivision 4, for a minor unable to employ counsel, the court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees.

Subdivision 6. Guardian ad litem fees.

(a) In proceedings in which the court appoints a guardian ad litem pursuant to section 260B.163, subdivision 6, clause (a), the court may inquire into the ability of the parents to pay for the guardian ad litem's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay guardian fees.

(b) In each fiscal year, the commissioner of finance shall deposit guardian ad litem reimbursements in the general fund and credit them to a separate account with the trial courts. The balance of this account is appropriated to the trial courts and does not cancel but is available until expended. Expenditures by the state court administrator's office from this account must be based on the amount of the guardian ad litem reimbursements received by the state from the courts in each judicial district.

260B.335 Civil Jurisdiction Over Persons Contributing to Delinquency or Status as a Juvenile Petty Offender; Court Orders

Subdivision 1. Jurisdiction.
The juvenile court has civil jurisdiction over persons contributing to the delinquency or status as a juvenile petty offender under the provisions of this section.

Subdivision 2. Petition; order to show cause.
A request for jurisdiction over a person described in subdivision 1 shall be initiated by the filing of a verified petition by the county attorney having jurisdiction over the place where the child is found, resides, or where the alleged act of contributing occurred. A prior or pending petition alleging that the child is delinquent or a juvenile petty offender is not a prerequisite to a petition under this section. The petition shall allege the factual basis for the claim that the person is contributing to the child's delinquency or status as a juvenile petty offender. If the court determines, upon review of the verified petition, that probable cause exists to believe that the person has contributed to the child's delinquency or status as a juvenile petty offender, the

court shall issue an order to show cause why the person should not be subject to the jurisdiction of the court. The order to show cause and a copy of the verified petition shall be served personally upon the person and shall set forth the time and place of the hearing to be conducted under subdivision 3.

Subdivision 3. Hearing.

(a) The court shall conduct a hearing on the petition in accordance with the procedures contained in paragraph (b).

(b) Hearings under this subdivision shall be without a jury. The rules of evidence promulgated pursuant to section 480.0591 shall apply. In all proceedings under this section, the court shall admit only evidence that would be admissible in a civil trial. When the respondent is an adult, hearings under this subdivision shall be open to the public. Hearings shall be conducted within five days of personal service of the order to show cause and may be continued for a reasonable period of time if a continuance is in the best interest of the child or in the interests of justice.

(c) At the conclusion of the hearing, if the court finds by a fair preponderance of the evidence that the person has contributed to the child's delinquency or status as a juvenile petty offender as defined in section 260B.425, the court may make any of the following orders:

(1) restrain the person from any further act or omission in violation of section 260B.425;

(2) prohibit the person from associating or communicating in any manner with the child;

(3) require the person to participate in evaluation or services determined necessary by the court to correct the conditions that contributed to the child's delinquency or status as a juvenile petty offender;

(4) require the person to provide supervision, treatment, or other necessary care;

(5) require the person to pay restitution to a victim for pecuniary damages arising from an act of the child relating to the child's delinquency or status as a juvenile petty offender;

(6) require the person to pay the cost of services provided to the child or for the child's protection; or

(7) require the person to provide for the child's maintenance or care if the person is responsible for the maintenance or care, and direct when, how, and where money for the maintenance or care shall be paid. If the person is receiving public assistance for the child's maintenance or care, the court shall authorize the public agency responsible for administering the public assistance funds to make payments directly to vendors for the cost of food, shelter, medical care, utilities, and other necessary expenses.

(d) An order issued under this section shall be for a fixed period of time, not to exceed one year. The order may be renewed or modified prior to expiration upon notice and motion when there has not been compliance with the court's order or the order continues to be necessary to eliminate the contributing behavior or to mitigate its effect on the child.

Subdivision 4. Criminal proceedings.

The county attorney may bring both a criminal proceeding under section 260B.425 and a civil action under this section.

260B.411 New Evidence

A child whose status has been adjudicated by a juvenile court, or the child's parent, guardian, custodian or spouse may, at any time within 15 days of the filing of the court's order, petition the court for a rehearing on the grounds that new evidence has been discovered affecting the advisability of the court's original adjudication or disposition. Upon a showing that such evidence does exist, the court shall order that a new hearing be held within 30 days, unless the court extends this time period for good cause shown within the 30-day period, and shall make such disposition of the case as the facts and the best interests of the child warrant.

260B.415 Appeal

Subdivision 1. Persons entitled to appeal; procedure.

(a) An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including, but not limited to, an order adjudging a child to be delinquent or a juvenile traffic offender. The appeal shall be taken within 30 days of the filing of the appealable order. The court administrator shall notify the person having legal custody of the minor of the appeal. Failure to notify the person having legal custody of the minor shall not affect the jurisdiction of the appellate court. The order of the juvenile court shall stand, pending the determination of the appeal, but the reviewing court may in its discretion and upon application stay the order.

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(b) An appeal may be taken by an aggrieved person from an order of the juvenile court on the issue of certification of a matter for prosecution under the laws and court procedures controlling adult criminal violations. Certification appeals shall be expedited as provided by applicable rules.

Subdivision 2. Appeal.
The appeal from a juvenile court is taken to the court of appeals as in civil cases, except as provided in subdivision 1.

260B.421 Contempt

Any person knowingly interfering with an order of the juvenile court is in contempt of court. However, a child who is under the continuing jurisdiction of the court for reasons other than having committed a delinquent act or a juvenile petty offense may not be adjudicated as a delinquent solely on the basis of having knowingly interfered with or disobeyed an order of the court.

260B.425 Criminal Jurisdiction for Contributing to Status as a Juvenile Petty Offender or Delinquency

Subdivision 1. Crimes.

(a) Any person who by act, word, or omission encourages, causes, or contributes to delinquency of a child or to a child's status as a juvenile petty offender, is guilty of a gross misdemeanor.

(b) This section does not apply to licensed social services agencies and outreach workers who, while acting within the scope of their professional duties, provide services to runaway children.

Subdivision 2. Complaint; venue.
A complaint under this section may be filed by the county attorney having jurisdiction where the child is found, resides, or where the alleged act of contributing occurred. The complaint may be filed in either the juvenile or criminal divisions of the district court. A prior or pending petition alleging that the child is delinquent, a juvenile petty offender, or in need of protection or services is not a prerequisite to a complaint or a conviction under this section.

Subdivision 3. Affirmative defense.
If the child is alleged to be delinquent or a juvenile petty offender, it is an affirmative defense to a prosecution under subdivision 1 if the defendant proves, by a preponderance of the evidence, that the defendant took reasonable steps to control the child's conduct.

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260C.148 Procedure; Domestic Child Abuse

Subdivision 1. Petition.
The local welfare agency may bring an emergency petition on behalf of minor family or household members seeking relief from acts of domestic child abuse. The petition shall be brought according to section 260C.141 and shall allege the existence of or immediate and present danger of domestic child abuse. The court has jurisdiction over the parties to a domestic child abuse matter notwithstanding that there is a parent in the child's household who is willing to enforce the court's order and accept services on behalf of the family.

Subdivision 2. Temporary order.

(a) If it appears from the notarized petition that there are reasonable grounds to believe the child is in immediate and present danger of domestic child abuse, the court may grant an ex parte temporary order for protection, pending a hearing pursuant to section 260C.151, which must be held not later than 14 days after service of the ex parte order on the respondent. The court may grant relief as it deems proper, including an order:

(1) restraining any party from committing acts of domestic child abuse; or

(2) excluding the alleged abusing party from the dwelling which the family or household members share or from the residence of the child.

(b) No order excluding the alleged abusing party from the dwelling may be issued unless the court finds that:

(1) the order is in the best interests of the child or children remaining in the dwelling; and

(2) a parent remaining in the child's household is able to care adequately for the child or children in the absence of the excluded party and to seek appropriate assistance in enforcing the provisions of the order.

(c) Before the temporary order is issued, the local welfare agency shall advise the court and the other parties who are present that appropriate social services will be provided to the family or household members during the effective period of the order. The petition shall identify the parent remaining in the child's household under paragraph (b), clause (2).An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. The court may renew the temporary order for protection one

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time for a fixed period not to exceed 14 days if the court determines, upon informal review of the case file, that the renewal is appropriate. If the court determines that the petition states a prima facie case that there are reasonable grounds to believe that the child is in immediate danger of domestic child abuse or child abuse without the court's order, at the hearing pursuant to section 260C.151, the court may continue its order issued under this subdivision pending trial under section 260C.163.

Subdivision 3. Service and execution of order.
Any order issued under this section or section 260C.201, subdivision 3, shall be served personally upon the respondent. Where necessary, the court shall order the sheriff to assist in service or execution of the order.

Subdivision 4. Modification of order.
Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection issued under this section or section 260C.201, subdivision 3.

Subdivision 5. Right to apply for relief.
The local welfare agency's right to apply for relief on behalf of a child shall not be affected by the child's leaving the dwelling or household to avoid abuse.

Subdivision 6. Real estate.
Nothing in this section or section 260C.201, subdivision 3, shall affect the title to real estate.

Subdivision 7. Other remedies available.
Any relief ordered under this section or section 260C.201, subdivision 3, shall be in addition to other available civil or criminal remedies.

Subdivision 8. Copy to law enforcement agency.
An order for protection granted pursuant to this section or section 260C.201, subdivision 3, shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the child. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system of verification, information as to the existence and status of any order for protection issued pursuant to this section or section 260C.201, subdivision 3.

260C.165 Certain Out-of-Court Statements Admissible

An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible in evidence in any child in need of protection or services, neglected and in foster care, or domestic child abuse proceeding or any proceeding for termination of parental rights if:

(a) the statement was made by a child under the age of ten years or by a child ten years of age or older who is mentally impaired, as defined in section 609.341, subdivision 6;

(b) the statement alleges, explains, denies, or describes:
  (1) any act of sexual penetration or contact performed with or on the child;
  (2) any act of sexual penetration or contact with or on another child observed by the child making the statement;
  (3) any act of physical abuse or neglect of the child by another; or
  (4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies other parties of an intent to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence, to provide the parties with a fair opportunity to meet the statement. For purposes of this section, an out-of-court statement includes a video, audio, or other recorded statement.

260C.405 Violation of an Order for Protection

Subdivision 1. Violation; penalty.
Whenever an order for protection is granted pursuant to section 260C.148 or 260C.201, subdivision 3, restraining the person or excluding the person from the residence, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor.

Subdivision 2. Arrest.
A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to section 260C.148 or 260C.201, subdivision 3, restraining the person or excluding the person from the residence, if the existence of the order can be verified by the officer.

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Subdivision 3. Contempt.
A violation of an order for protection shall also constitute contempt of court and the person violating the order shall be subject to the penalties for contempt.

Subdivision 4. Order to show cause.
Upon the filing of an affidavit by the agency or any peace officer, alleging that the respondent has violated an order for protection granted pursuant to section 260C.148 or 260C.201, subdivision 3, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court. The hearing may be held by the court in any county in which the child or respondent temporarily or permanently resides at the time of the alleged violation. A peace officer is not liable under section 609.43, clause (1), for failure to perform a duty required by subdivision 2.

260C.425 Criminal Jurisdiction for Contributing to Need for Protection or Services

Subdivision 1. Crimes.

(a) Any person who by act, word, or omission encourages, causes, or contributes to the need for protection or services is guilty of a gross misdemeanor.

(b) This section does not apply to licensed social services agencies and outreach workers who, while acting within the scope of their professional duties, provide services to runaway children.

Subdivision 2. Complaint; venue.
A complaint under this section may be filed by the county attorney having jurisdiction where the child is found, resides, or where the alleged act of contributing occurred. The complaint may be filed in either the juvenile or criminal divisions of the district court. A prior or pending petition alleging that the child is delinquent, a juvenile petty offender, or in need of protection or services is not a prerequisite to a complaint or a conviction under this section.

Subdivision 3. Affirmative defense.
If the child's conduct is the basis for the child's need for protection services, it is an affirmative defense to a prosecution under subdivision 1 if the defendant proves, by a preponderance of the evidence, that the defendant took reasonable steps to control the child's conduct.

Selected Statutes – Chapter 357 Witness Fees

357.22 Witnesses

The fees to be paid to witnesses shall be as follows:

(1) for attending in any action or proceeding in any court or before any officer, person, or board authorized to take the examination of witnesses, $20 for each day;

(2) for travel to and 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 it, if without the state, 28 cents per mile. No person is obliged to attend as a witness in any civil case unless one day's attendance and travel fees are paid or tendered the witness in advance.

357.24 Criminal Cases

Witnesses for the state in criminal cases and witnesses attending on behalf of any defendant represented by a public defender or an attorney performing public defense work for a public defense corporation under section 611.216, shall receive the same fees for travel and attendance as provided in section 357.22. Judges also may allow like fees to witnesses attending in behalf of any other defendant. In addition these witnesses shall receive reasonable expenses actually incurred for meals, loss of wages and child care, not to exceed $60 per day. When a defendant is represented by a public defender or an attorney performing public defense work for a public defense corporation under section 611.216, neither the defendant nor the public defender shall be charged for any subpoena fees or for service of subpoenas by a public official. The compensation and reimbursement shall be paid out of the county treasury.

357.241 Juvenile Court Witnesses

Witnesses in juvenile proceedings shall receive the same fees for travel and attendance as provided in section 357.22. In addition these witnesses shall receive reasonable expenses actually incurred for meals, loss of wages, and child care, not to exceed $60 per day.

357.242 Parents of Juveniles

In any proceeding where a parent or guardian attends the proceeding with a minor witness and the parent or guardian

is not a witness, one parent or guardian shall be compensated in those cases where witness compensation is mandatory under section 357.22, 357.24, or 357.241, and may be compensated at the discretion of the judge when the minor is a witness on behalf of a defendant in a criminal case or on behalf of a juvenile in a juvenile court proceeding. The court shall award no more than a combined total of $60 to the parent or guardian and the minor witness.

Selected Statutes – Chapter 388 County Attorney

388.051 Duties

Subdivision 1. General provisions.
The county attorney shall:

(a) appear in all cases in which the county is a party;

(b) give opinions and advice, upon the request of the county board or any county officer, upon all matters in which the county is or may be interested, or in relation to the official duties of the board or officer;

(c) prosecute felonies, including the drawing of indictments found by the grand jury, and, to the extent prescribed by law, gross misdemeanors, misdemeanors, petty misdemeanors, and violations of municipal ordinances, charter provisions and rules or regulations;

(d) attend before the grand jury, give them legal advice, and examine witnesses in their presence;

(e) request the court administrator to issue subpoenas to bring witnesses before the grand jury or any judge or judicial officer before whom the county attorney is conducting a criminal hearing;

(f) attend any inquest at the request of the coroner; and

(g) appear, when requested by the attorney general, for the state in any case instituted by the attorney general in the county attorney's county or before the United States Land Office in case of application to preempt or locate any public lands claimed by the state and assist in the preparation and trial.

Subdivision 2. Special provisions.

(a) In Anoka, Carver, Dakota, Hennepin, Scott, and Washington counties, only the county attorney shall prosecute gross misdemeanor violations of sections 289A.63, subdivisions 1, 2, 4, subdivision 6; 297B.10; 609.255, subdivision 3; 609.377; 609.378; 609.41; and 617.247.

(b) In Ramsey County, only the county attorney shall prosecute gross misdemeanor violations of sections 609.255, subdivision 3; 609.377; and 609.378.

(c) The county attorney shall prosecute failure to report physical or sexual child abuse or neglect as provided under section 626.556, subdivision 6, violations of fifth-degree criminal sexual conduct under section 609.3451, and environmental law violations under sections 115.071, 299F.098, and 609.671.

Subdivision 3. Charging and plea negotiation policies and practices; written guidelines required.

(a) On or before January 1, 1995, each county attorney shall adopt written guidelines governing the county attorney's charging and plea negotiation policies and practices. The guidelines shall address, but need not be limited to, the following matters:

(1) the circumstances under which plea negotiation agreements are permissible;

(2) the factors that are considered in making charging decisions and formulating plea agreements; and

(3) the extent to which input from other persons concerned with a prosecution, such as victims and law enforcement officers, is considered in formulating plea agreements.

(b) Plea negotiation policies and procedures adopted under this subdivision are public data, as defined in section 13.02.

Selected Statutes – Chapter 40 Judicial Training

480.30 Judicial Training

Subdivision 1. Child abuse; domestic abuse; harassment.
The Supreme Court's judicial education program must include ongoing training for district court judges on child and adolescent sexual abuse, domestic abuse, harassment, stalking, and related civil and criminal court issues. The program must include the following:

Selected Statutes – Chapter 40 Judicial Training

(1) information about the specific needs of victims;

(2) education on the causes of sexual abuse and family violence;

(3) education on culturally responsive approaches to serving victims;

(4) education on the impacts of domestic abuse and domestic abuse allegations on children and the importance of considering these impacts when making parenting time and child custody decisions under chapter 518; and

(5) information on alleged and substantiated reports of domestic abuse, including, but not limited to, Department of Human Services survey data. The program also must emphasize the need for the coordination of court and legal victim advocacy services and include education on sexual abuse and domestic abuse programs and policies within law enforcement agencies and prosecuting authorities as well as the court system.

Subdivision 2. Sexual violence.
The Supreme Court's judicial education program must include ongoing training for judges, judicial officers, court services personnel, and sex offender assessors on the specific sentencing statutes and Sentencing Guidelines applicable to persons convicted of sex offenses and other crimes that are sexually motivated. The training shall focus on the sentencing provisions applicable to repeat sex offenders and patterned sex offenders.

Subdivision 3. Bail evaluations.
The Supreme Court's judicial education program also must include training for judges, judicial officers, and court services personnel on how to assure that their bail evaluations and decisions are racially and culturally neutral.

Selected Statutes – Chapter 518 Marriage Dissolution

518.10 Requisites of Petition

The petition for dissolution of marriage or legal separation shall state and allege:

(a) the name, address, and, in circumstances in which child support or spousal maintenance will be addressed, Social Security number of the petitioner and any prior or other name used by the petitioner;

(b) the name and, if known, the address and, in circumstances in which child support or spousal maintenance will be addressed, Social Security number of the respondent and any prior or other name used by the respondent and known to the petitioner;

(c) he place and date of the marriage of the parties;

(d) in the case of a petition for dissolution, that either the petitioner or the respondent or both:

(1) has resided in this state for not less than 180 days immediately preceding the commencement of the proceeding, or

(2) has been a member of the armed services and has been stationed in this state for not less than 180 days immediately preceding the commencement of the proceeding, or

(3) has been a domiciliary of this state for not less than 180 days immediately preceding the commencement of the proceeding;

(e) the name at the time of the petition and any prior or other name, Social Security number, age, and date of birth of each living minor or dependent child of the parties born before the marriage or born or adopted during the marriage and a reference to, and the expected date of birth of, a child of the parties conceived during the marriage but not born;

(f) whether or not a separate proceeding for dissolution, legal separation, or custody is pending in a court in this state or elsewhere;

(g) in the case of a petition for dissolution, that there has been an irretrievable breakdown of the marriage relationship;

(h) in the case of a petition for legal separation, that there is a need for a decree of legal separation;

(i) any temporary or permanent maintenance, child support, child custody, disposition of property, attorneys' fees, costs and disbursements applied for without setting forth the amounts; and

(j) whether an order for protection under chapter 518B or a similar law of another state that governs the parties or a party and a minor child of the parties is in effect and, if so, the district court or similar jurisdiction in which it was entered. The petition shall be verified by the petitioner or petitioners, and its allegations established by competent evidence.

Selected Statutes – Chapter 518 Marriage Dissolution

518.175 Parenting Time

Subdivision 1. General.

(a) In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child. If the court finds, after a hearing, that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the parent prior to the commencement of the proceeding. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time.

(b) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time.

(c) Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.

(d) The court administrator shall provide a form for a pro se motion regarding parenting time disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the parenting time expeditor process under section 518.1751. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

(e) In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child. For purposes of this paragraph, the percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Subdivision 1a. Domestic abuse; supervised parenting time.

(a) If a parent requests supervised parenting time under subdivision 1 or 5 and an order for protection under chapter 518B or a similar law of another state is in effect against the other parent to protect the parent with whom the child resides or the child, the judge or judicial officer must consider the order for protection in making a decision regarding parenting time.

(b) The state court administrator, in consultation with representatives of parents and other interested persons, shall develop standards to be met by persons who are responsible for supervising parenting time. Either parent may challenge the appropriateness of an individual chosen by the court to supervise parenting time.

Subdivision 2. Rights of children and parents.

Upon the request of either parent, the court may inform any child of the parties, if eight years of age or older, or otherwise of an age of suitable comprehension, of the rights of the child and each parent under the order or decree or any substantial amendment thereof. The parent with whom the child resides shall present the child for parenting time with the other parent, at such times as the court directs.

Subdivision 3. Move to another state.

(a) The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other parent by the decree, the court shall not permit the child's residence to be moved to another state.

(b) he court shall apply a best interests standard when considering the request of the parent with whom the child resides to move the child's residence to another state. The factors the court must consider in determining the child's best interests include, but are not limited to:

(1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;

(2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;

(3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;

(4) the child's preference, taking into consideration the age and maturity of the child;

(5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;

(6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;

(7) the reasons of each person for seeking or opposing the relocation; and

(8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

(C) The burden of proof is upon the parent requesting to move the residence of the child to another state, except that if the court finds that the person requesting permission to move has been a victim of domestic abuse by the other parent, the burden of proof is upon the parent opposing the move. The court must consider all of the factors in this subdivision in determining the best interests of the child.

Subdivision 4. [Repealed, 1996 c 391 art 1 s 6]

Subdivision 5. Modification of parenting plan or order for parenting time.

If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence. Except as provided in section 631.52, the court may not restrict parenting time unless it finds that:

(1) parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development; or

(2) the parent has chronically and unreasonably failed to comply with court-ordered parenting time. If a parent makes specific allegations that parenting time by the other parent places the parent or child in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time. Consistent with subdivision 1a, the court may require a third party, including the local social services agency, to supervise the parenting time or may restrict a parent's parenting time if necessary to protect the other parent or child from harm. If there is an existing order for protection governing the parties, the court shall consider the use of an independent, neutral exchange location for parenting time.

Subdivision 6. Remedies.

(a) The court may provide for one or more of the following remedies for denial of or interference with court-ordered parenting time as provided under this subdivision. All parenting time orders must include notice of the provisions of this subdivision.

(b) If the court finds that a person has been deprived of court-ordered parenting time, the court shall order the parent who has interfered to allow compensatory parenting time to the other parent or the court shall make specific findings as to why a request for compensatory parenting time is denied. If compensatory parenting time is awarded, additional parenting time must be:

(1) at least of the same type and duration as the deprived parenting time and, at the discretion of the court, may be in excess of or of a different type than the deprived parenting time;

(2) taken within one year after the deprived parenting time; and

(3) at a time acceptable to the parent deprived of parenting time.

(c) If the court finds that a party has wrongfully failed to comply with a parenting time order or a binding agreement or decision under section 518.1751, the court may:

(1) impose a civil penalty of up to $500 on the party;

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance;

(3) award reasonable attorney's fees and costs;

(4) require the party who violated the parenting time order

or binding agreement or decision of the parenting time expeditor to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or

(5) award any other remedy that the court finds to be in the best interests of the children involved. A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a parenting time expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.

(d) If the court finds that a party has been denied parenting time and has incurred expenses in connection with the denied parenting time, the court may require the party who denied parenting time to post a bond in favor of the other party in the amount of prepaid expenses associated with upcoming planned parenting time.

(e) Proof of an unwarranted denial of or interference with duly established parenting time may constitute contempt of court and may be sufficient cause for reversal of custody.

Subdivision 7. [Renumbered 518.1752]

Subdivision 8. Additional parenting time for child care parent.
The court may allow additional parenting time to a parent to provide child care while the other parent is working if this arrangement is reasonable and in the best interests of the child, as defined in section 518.17, subdivision 1. In addition, the court shall consider:

(1) the ability of the parents to cooperate;

(2) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and

(3) whether domestic abuse, as defined in section 518B.01, has occurred between the parties.

518.179 Participation in a Parenting Plan When Person Convicted of Certain Offenses

Subdivision 1. Seeking custody or parenting time.
Notwithstanding any contrary provision in section 518.17 or 518.175, if a person seeking child custody or parenting time has been convicted of a crime described in subdivision 2, the person seeking custody or parenting time has the burden to prove that custody or parenting time by that person is in the best interests of the child if:

(1) the conviction occurred within the preceding five years;

(2) the person is currently incarcerated, on probation, or under supervised release for the offense; or

(3) the victim of the crime was a family or household member as defined in section 518B.01, subdivision 2 . If this section applies, the court may not grant custody or parenting time to the person unless it finds that the custody or parenting time is in the best interests of the child. If the victim of the crime was a family or household member, the standard of proof is clear and convincing evidence. A guardian ad litem must be appointed in any case where this section applies.

Subdivision 2. Applicable crimes.
This section applies to the following crimes or similar crimes under the laws of the United States, or any other state:

(1) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(2) manslaughter in the first degree under section 609.20;

(3) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(4) kidnapping under section 609.25;

(5) depriving another of custodial or parental rights under section 609.26;

(6) soliciting, inducing, promoting, or receiving profit derived from prostitution involving a minor under section 609.322;

(7) criminal sexual conduct in the first degree under section 609.342;

(8) criminal sexual conduct in the second degree under section 609.343;

(9) criminal sexual conduct in the third degree under section 609.344, subdivision 1, paragraph (c), (f), or (g);

(10) solicitation of a child to engage in sexual conduct under section 609.352;

(11) incest under section 609.365;

(12) malicious punishment of a child under section 609.377;

(13) neglect of a child under section 609.378;

(14) terroristic threats under section 609.713; or

(15) felony harassment or stalking under section 609.749, subdivision 4.

Selected Statutes – Chapter 518B Domestic Abuse

518B.01 Domestic Abuse Act

Subdivision 1. Short title.
This section may be cited as the Domestic Abuse Act.

Subdivision 2. Definitions.
As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

(b) "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. Issuance of an order for protection on the ground in clause (6) does not affect a determination of paternity under sections 257.51 to 257.74. In determining whether persons are or have been involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

(c) "Qualified domestic violence-related offense" has the meaning given in section 609.02, subdivision 16.

Subdivision 3. Court jurisdiction.
An application for relief under this section may be filed in the court having jurisdiction over dissolution actions, in the county of residence of either party, in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or in the county in which the alleged domestic abuse occurred. There are no residency requirements that apply to a petition for an order for protection. In a jurisdiction which utilizes referees in dissolution actions, the court or judge may refer actions under this section to a referee to take and report the evidence in the action in the same manner and subject to the same limitations provided in section 518.13. Actions under this section shall be given docket priorities by the court.

Subdivision 3a. Filing fee.
The filing fees for an order for protection under this section are waived for the petitioner. The court administrator, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff or other law enforcement or corrections officer is unavailable or if service is made by publication, without requiring the petitioner to make application under section 563.01. The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.

Subdivision 3b. Information on petitioner's location or residence.
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.

Subdivision 4. Order for protection.
There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member personally or by a family or household member, a guardian as defined in section 524.1-201, clause (20), or, if the court finds that it is in

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the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age 16 or older may make a petition on the minor's own behalf against a spouse or former spouse, or a person with whom the minor has a child in common, if the court determines that the minor has sufficient maturity and judgment and that it is in the best interests of the minor.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief must state whether the petitioner has ever had an order for protection in effect against the respondent.

(d) A petition for relief must state whether there is an existing order for protection in effect under this chapter governing both the parties and whether there is a pending lawsuit, complaint, petition or other action between the parties under chapter 257, 518, 518A, 518B, or 518C. The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A subsequent order in a separate action under this chapter may modify only the provision of an existing order that grants relief authorized under subdivision 6, paragraph (a), clause (1). A petition for relief may be granted, regardless of whether there is a pending action between the parties.

(e) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(f) The court shall advise a petitioner under paragraph (e) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to section 563.01 and shall assist with the writing and filing of the motion and affidavit.

(g) The court shall advise a petitioner under paragraph (e) of the right to serve the respondent by published notice under subdivision 5, paragraph (b), if the respondent is avoiding personal service by concealment or otherwise, and shall assist with the writing and filing of the affidavit.

(h) The court shall advise the petitioner of the right to seek restitution under the petition for relief.

(i) The court shall advise the petitioner of the right to request a hearing under subdivision 7, paragraph (c). If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing.

(j) The court shall advise the petitioner of the right to request supervised parenting time, as provided in section 518.175, subdivision 1a.

Subdivision 5. Hearing on application; notice.

(a) Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order for hearing unless an ex parte order is issued.

(b) If an ex parte order has been issued under subdivision 7 and the petitioner seeks only the relief under subdivision 7, paragraph (a), a hearing is not required unless:
(1) the court declines to order the requested relief; or

(2) one of the parties requests a hearing.

(c) If an ex parte order has been issued under subdivision 7 and the petitioner seeks relief beyond that specified in subdivision 7, paragraph (a), or if the court declines to order relief requested by the petitioner, a hearing must be held within seven days. Personal service of the ex parte order may be made upon the respondent at any time up to 12 hours prior to the time set for the hearing, provided that the respondent at the hearing may request a continuance of up to five days if served fewer than five days prior to the hearing which continuance shall be granted unless there are compelling reasons not to.

(d) If an ex parte order has been issued only granting relief under subdivision 7, paragraph (a), and the respondent requests a hearing, the hearing shall be held within ten days of the court's receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date no more than five days later.

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(e) If for good cause shown either party is unable to proceed at the initial hearing and requests a continuance and the court finds that a continuance is appropriate, the hearing may be continued. Unless otherwise agreed by the parties and approved by the court, the continuance shall be for no more than five days. If the court grants the requested continuance, the court shall also issue a written order continuing all provisions of the ex parte order pending the issuance of an order after the hearing.

(f) Notwithstanding the preceding provisions of this subdivision, service on the respondent may be made by one week published notice, as provided under section 645.11, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a sheriff or other law enforcement or corrections officer was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven days after publication. The court shall set a new hearing date if necessary to allow the respondent the five-day minimum notice required under paragraph (d).

Subdivision 6. Relief by the court.

(a) Upon notice and hearing, the court may provide relief as follows:

(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 dwelling or residence, which area shall be described specifically in the order;

(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. Findings under section 257.025, 518.17, or 518.175 are not required with respect to the particular best interest factors not considered by the court. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan under section 518.1705 as part of an action for an order for protection;

(5) on the same basis as is provided in chapter 518 or 518A, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518A;

(6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;

(7) order the abusing party to participate in treatment or counseling services, including requiring the abusing party to successfully complete a domestic abuse counseling program or educational program under section 518B.02;

(8) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) order the abusing party to pay restitution to the petitioner;

(11) order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation; and

(12) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or other law enforcement or corrections officer as provided by this section.

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(b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate. When a referee presides at the hearing on the petition, the order granting relief becomes effective upon the referee's signature.

(c) An order granting the relief authorized in paragraph (a), clause (1), may not be vacated or modified in a proceeding for dissolution of marriage or legal separation, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

(d) An order granting the relief authorized in paragraph (a), clause (2) or (3), is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

(e) If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the order for protection to the court with jurisdiction over the dissolution or separation proceeding for inclusion in its file.

(f) An order for restitution issued under this subdivision is enforceable as civil judgment.

Subdivision 6a. Subsequent orders and extensions. Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order. The court may extend the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(1) the respondent has violated a prior or existing order for protection;

(2) the petitioner is reasonably in fear of physical harm from the respondent;

(3) the respondent has engaged in acts of harassment or stalking within the meaning of section 609.749, subdivision 2; or

(4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

Subdivision 7. Ex parte order.

(a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:

(1) restraining the abusing party from committing acts of domestic abuse;

(2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court;

(3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and

(4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

(b) A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.

(c) Subject to paragraph (d), an ex parte order for protection shall be effective for a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until modified or vacated by the court pursuant to a hearing. When signed by a referee, the ex parte order becomes effective upon the referee's signature. Upon request, a hearing, as provided by this section, shall be set. Except as provided in paragraph (d), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this subdivision must include a notice advising the respondent of the right to request a hearing, must be accompanied by a form that can be used by the respondent to request a hearing and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

(d) Service of the ex parte order may be made by published notice, as provided under subdivision 5, provided that the petitioner files the affidavit required under that subdivision.

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If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in paragraph (c). Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

(e) If the petitioner seeks relief under subdivision 6 other than the relief described in paragraph (a), the petitioner must request a hearing to obtain the additional relief.

(f) Nothing in this subdivision affects the right of a party to seek modification of an order under subdivision 11.

Subdivision 8. Service; alternate service; publication; notice.

(a) The petition and any order issued under this section shall be served on the respondent personally. In lieu of personal service of an order for protection, a law enforcement officer may serve a person with a short form notification as provided in subdivision 8a.

(b) When service is made out of this state and in the United States, it may be proved by the affidavit of the person making the service. When service is made outside the United States, it may be proved by the affidavit of the person making the service, taken before and certified by any United States minister, charge d'affaires, commissioner, consul, or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in the other country, including all deputies or other representatives of the officer authorized to perform their duties; or before an office authorized to administer an oath with the certificate of an officer of a court of record of the country in which the affidavit is taken as to the identity and authority of the officer taking the affidavit.

(c) If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means, or by publication, which publication must be made as in other actions. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons. The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent. The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Service shall be deemed complete 14 days after mailing or 14 days after court-ordered publication.

(d) A petition and any order issued under this section, including the short form notification, must include a notice to the respondent that if an order for protection is issued to protect the petitioner or a child of the parties, upon request of the petitioner in any parenting time proceeding, the court shall consider the order for protection in making a decision regarding parenting time.

Subdivision 8a. Short form notification.

(a) In lieu of personal service of an order for protection under subdivision 8, a law enforcement officer may serve a person with a short form notification. The short form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the date and county in which the ex parte order for protection or order for protection was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order. The short form notification must be in bold print in the following form: The order for protection is now enforceable. You must report to your nearest sheriff office or county court to obtain a copy of the order for protection. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the order for protection or this short form notification.

(b) Upon verification of the identity of the respondent and the existence of an unserved order for protection against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short form notification.

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(c) When service is made by short form notification, it may be proved by the affidavit of the law enforcement officer making the service.

(d) For service under this section only, service upon an individual may occur at any time, including Sundays, and legal holidays.

(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

Subdivision 9. Assistance of sheriff in service or execution.
When an order is issued under this section upon request of the petitioner, the court shall order the sheriff to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection. If the application for relief is brought in a county in which the respondent is not present, the sheriff shall forward the pleadings necessary for service upon the respondent to the sheriff of the county in which the respondent is present. This transmittal must be expedited to allow for timely service.

Subdivision 9a. Service by others.
Peace officers licensed by the state of Minnesota and corrections officers, including, but not limited to, probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve an order for protection.

Subdivision 10. Right to apply for relief.

(a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems necessary in exceptional cases.

Subdivision 11. Modification of order.
Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Subdivision 12. Real estate.
Nothing in this section shall affect the title to real estate.

Subdivision 13. Copy to law enforcement agency.

(a) An order for protection and any continuance of an order for protection granted pursuant to this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order for protection issued pursuant to this section.

(b) If the applicant notifies the court administrator of a change in the applicant's residence so that a different local law enforcement agency has jurisdiction over the residence, the order for protection and any continuance of an order for protection must be forwarded by the court administrator to the new law enforcement agency within 24 hours of the notice. If the applicant notifies the new law enforcement agency that an order for protection has been issued under this section and the applicant has established a new residence within that agency's jurisdiction, within 24 hours the local law enforcement agency shall request a copy of the order for protection from the court administrator in the county that issued the order.

(c) When an order for protection is granted, the applicant for an order for protection must be told by the court that:

(1) notification of a change in residence should be given immediately to the court administrator and to the local law enforcement agency having jurisdiction over the new residence of the applicant;

(2) the reason for notification of a change in residence is to forward an order for protection to the proper law enforcement agency; and

(3) the order for protection must be forwarded to the law enforcement agency having jurisdiction over the new residence within 24 hours of notification of a change in residence, whether notification is given to the court administrator or to the local law enforcement agency having jurisdiction over the applicant's new residence. An order for protection is enforceable even if the applicant does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

Subdivision 14. Violation of an order for protection.

(a) A person who violates an order for protection issued by a judge or referee is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), whenever an order for protection is granted by a judge or referee or pursuant to a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, and the respondent or person to be restrained knows of the existence of the order,

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violation of the order for protection is a misdemeanor. Upon a misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence. A violation of an order for protection shall also constitute contempt of court and be subject to the penalties provided in chapter 588.

(c) A person is guilty of a gross misdemeanor who knowingly violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of ten days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both, if the person knowingly violates this subdivision:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency; or

(2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6. Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for felony convictions.

(e) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The probable cause required under this paragraph includes probable cause that the person knows of the existence of the order. If the order has not been served, the officer shall immediately serve the order whenever reasonably safe and possible to do so. An order for purposes of this subdivision, includes the short form order described in subdivision 8a. When the order is first served upon the person at a location at which, under the terms of the order, the person's presence constitutes a violation, the person shall not be arrested for violation of the order without first being given a reasonable opportunity to leave the location in the presence of the peace officer. A person arrested under this paragraph shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

(f) If the court finds that the respondent has violated an order for protection and that there is reason to believe that the respondent will commit a further violation of the provisions of the order restraining the respondent from committing acts of domestic abuse or excluding the respondent from the petitioner's residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed $10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the court shall commit the respondent to the county jail during the term of the order for protection or until the respondent complies with the order under this paragraph. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued under this paragraph, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this paragraph is appealable.

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(g) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated any order for protection granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation, or in the county in which the alleged violation occurred, if the petitioner and respondent do not reside in this state. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

(h) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under subdivision 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year, except when the court determines a longer fixed period is appropriate.

(i) The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection. A peace officer is not liable under section 609.43, clause (1), for a failure to perform a duty required by paragraph (e).

(j) When a person is convicted under paragraph (b) or (c) of violating an order for protection and the court determines that the person used a firearm in any way during commission of the violation, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(k) Except as otherwise provided in paragraph (j), when a person is convicted under paragraph (b) or (c) of violating an order for protection, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(l) Except as otherwise provided in paragraph (j), a person is not entitled to possess a pistol if the person has been convicted under paragraph (b) or (c) after August 1, 1996, of violating an order for protection, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(m) If the court determines that a person convicted under paragraph (b) or (c) of violating an order for protection owns or possesses a firearm and used it in any way during the commission of the violation, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

Subdivision 15. Admissibility of testimony in criminal proceeding.
Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.

Subdivision 16. Other remedies available.
Any proceeding under this section shall be in addition to other civil or criminal remedies.

Subdivision 17. Effect on custody proceedings.
In a subsequent custody proceeding the court must consider a finding in a proceeding under this chapter or under a similar law of another state that domestic abuse has occurred between the parties.

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Subdivision 18. Notices.
Each order for protection granted under this chapter must contain a conspicuous notice to the respondent or person to be restrained that:

(1) violation of an order for protection is either:
  (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to $1,000, or both,
  (ii) a gross misdemeanor punishable by imprisonment of up to one year or a fine of up to $3,000, or both, or
  (iii) a felony punishable by imprisonment of up to five years or a fine of up to $10,000, or both;

(2) the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person; in no event is the order for protection voided;

(3) a peace officer must arrest without warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from a residence; and

(4) pursuant to the Violence Against Women Act of 1994, United States Code, title 18, section 2265, the order is enforceable in all 50 states, the District of Columbia, tribal lands, and United States territories, that violation of the order may also subject the respondent to federal charges and punishment under United States Code, title 18, sections 2261 and 2262, and that if a final order is entered against the respondent after the hearing, the respondent may be prohibited from possessing, transporting, or accepting a firearm under the 1994 amendment to the Gun Control Act, United States Code, title 18, section 922(g)(8).

Subdivision 19. Recording required.
Proceedings under this section must be recorded.

Subdivision 19a. Entry and enforcement of foreign protective orders.

(a) As used in this subdivision, "foreign protective order" means an order for protection entered by a court of another state; an order by an Indian tribe or United States territory that would be a protective order entered under this chapter; a temporary or permanent order or protective order to exclude a respondent from a dwelling; or an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault if it had been entered in Minnesota.

(b) A person for whom a foreign protection order has been issued or the issuing court or tribunal may provide a certified or authenticated copy of a foreign protective order to the court administrator in any county that would have venue if the original action was being commenced in this state or in which the person in whose favor the order was entered may be present, for filing and entering of the same into the state order for protection database.

(c) The court administrator shall file and enter foreign protective orders that are not certified or authenticated, if supported by an affidavit of a person with personal knowledge, subject to the penalties for perjury. The person protected by the order may provide this affidavit.

(d) The court administrator shall provide copies of the order as required by this section.

(e) A valid foreign protective order has the same effect and shall be enforced in the same manner as an order for protection issued in this state whether or not filed with a court administrator or otherwise entered in the state order for protection database.

(f) A foreign protective order is presumed valid if it meets all of the following:
  (1) the order states the name of the protected individual and the individual against whom enforcement is sought;
  (2) the order has not expired;
  (3) the order was issued by a court or tribunal that had jurisdiction over the parties and subject matter under the law of the foreign jurisdiction; and
  (4) the order was issued in accordance with the respondent's due process rights, either after the respondent was provided with reasonable notice and an opportunity to be heard before the court or tribunal that issued the order, or in the case of an ex parte order, the respondent was granted notice and an opportunity to be heard within a reasonable time after the order was issued.

(g) Proof that a foreign protective order failed to meet all of the factors listed in paragraph (f) is an affirmative defense in any action seeking enforcement of the order.

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(h) A peace officer shall treat a foreign protective order as a valid legal document and shall make an arrest for a violation of the foreign protective order in the same manner that a peace officer would make an arrest for a violation of a protective order issued within this state.

(i) The fact that a foreign protective order has not been filed with the court administrator or otherwise entered into the state order for protection database shall not be grounds to refuse to enforce the terms of the order unless it is apparent to the officer that the order is invalid on its face.

(j) A peace officer acting reasonably and in good faith in connection with the enforcement of a foreign protective order is immune from civil and criminal liability in any action arising in connection with the enforcement.

(k) Filing and service costs in connection with foreign protective orders are waived.

Subdivision 20. Statewide application.
An order for protection granted under this section applies throughout this state.

Subdivision 21. Order for protection forms.
The state court administrator, in consultation with the Advisory Council on Battered Women and Domestic Abuse, city and county attorneys, and legal advocates who work with victims, shall develop a uniform order for protection form that will facilitate the consistent enforcement of orders for protection throughout the state.

Subdivision 22. Domestic abuse no contact order.

(a) A domestic abuse no contact order is an order issued by a court against a defendant in a criminal proceeding for:
(1) domestic abuse;
(2) harassment or stalking charged under section 609.749 and committed against a family or household member;
(3) violation of an order for protection charged under subdivision 14; or
(4) violation of a prior domestic abuse no contact order charged under this subdivision. It includes pretrial orders before final disposition of the case and probationary orders after sentencing.

(b) A person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.

(c) A person is guilty of a gross misdemeanor who knowingly violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

(d) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a domestic abuse no contact order, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

Subdivision 23. Prohibition against employer retaliation.

(a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this chapter. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

Note: Subdivision 19a, as added by Laws 2006, chapter 260, article 5, section 48, is effective August 1, 2006, for protective orders issued by a tribal court in Minnesota and August 1, 2007, for all other foreign protective orders. Laws 2006, chapter 260, article 5, section 48, as amended by Laws 2006, chapter 280, article 45.

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518B.02 Domestic Abuse Counseling Program or Educational Program Required

Subdivision 1. Court-ordered domestic abuse counseling program or educational program.
If the court stays imposition or execution of a sentence for a domestic abuse offense and places the offender on probation, the court shall order that, as a condition of the stayed sentence, the offender participate in and successfully complete a domestic abuse counseling program or educational program.

Subdivision 2. Standards for domestic abuse counseling programs and domestic abuse educational programs.

(a) Domestic abuse counseling or educational programs that provide group or class sessions for court-ordered domestic abuse offenders must provide documentation to the probation department or the court on program policies and how the program meets the criteria contained in paragraphs (b) to (l).

(b) Programs shall require offenders and abusing parties to attend a minimum of 24 sessions or 36 hours of programming, unless a probation agent has recommended fewer sessions. The documentation provided to the probation department or the court must specify the length of the program that offenders are required to complete.

(c) Programs must have a written policy requiring that counselors and facilitators report to the court and to the offender's probation or corrections officer any threats of violence made by the offender or abusing party, acts of violence by the offender or abusing party, violation of court orders by the offender or abusing party, and violation of program rules that resulted in the offender's or abusing party's termination from the program. Programs shall have written policies requiring that counselors and facilitators hold offenders and abusing parties solely responsible for their behavior. Programs shall have written policies requiring that counselors and facilitators be violence free in their own lives.

(d) Each program shall conduct an intake process with each offender or abusing party. This intake process shall look for chemical dependency problems and possible risks the offender or abusing party might pose to self or others. The program must have policies regarding referral of a chemically dependent offender or abusing party to a chemical dependency treatment center. If the offender or abusing party poses a risk to self or others, the program shall report this information to the court, the probation or corrections officer, and the victim.

(e) If the offender or abusing party 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.

(f) Programs shall require court-ordered offenders and abusing parties to sign a release of information authorizing communication regarding the offender's or abusing party's progress in the program to the court, the offender's probation or corrections officer, other providers, and the victim. The offender or abusing party may not enter the program if the offender does not sign a release.

(g) If a counselor or facilitator contacts the victim, the counselor or facilitator must not elicit any information that the victim does not want to provide. A counselor or facilitator who contacts a victim shall

(1) notify the victim of the right not to provide any information,

(2) notify the victim of how any information provided will be used and with whom it will be shared, and

(3) obtain the victim's permission before eliciting information from the victim or sharing information with anyone other than staff of the counseling program. Programs shall have written policies requiring that counselors and facilitators inform victims of the confidentiality of information as provided by this subdivision. Programs must maintain separate files for information pertaining to the offender or abusing party and to the victim. If a counselor or facilitator contacts a victim, the counselor or facilitator shall provide the victim with referral information for support services.

(h) Programs shall have written policies forbidding program staff from disclosing any confidential communication made by the offender or abusing party without the consent of the offender or abusing party, except that programs must warn a potential victim of imminent danger based upon information provided by an offender or abusing party.

(i) The counseling program or educational program must provide services in a group setting, unless the offender or abusing party would be inappropriate in a group setting. Programs must provide separate sessions for male and female offenders and abusing parties.

(j) Programs shall have written policies forbidding program staff from offering or referring marriage or couples

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counseling until the offender or abusing party has completed a domestic abuse counseling program or educational program for the minimum number of court-ordered sessions and the counselor or facilitator reasonably believes that the violence, intimidation, and coercion has ceased and the victim feels safe to participate.

(k) Programs must have written policies requiring that the counselor or facilitator report when the court-ordered offender or abusing party has completed the program to the court and the offender's probation or corrections officer.

(l) Programs must have written policies to coordinate with the court, probation and corrections officers, battered women's and domestic abuse programs, child protection services, and other providers on promotion of victim safety and offender accountability.

Subdivision 3. Program accountability.
The Minnesota Center for Crime Victim Services will consult with domestic abuse counseling and educational programs, the court, probation departments, and the interagency task force on the prevention of domestic and sexual abuse on acceptable measures to ensure program accountability. By December 30, 2001, the center shall make recommendations to the house and senate committees and divisions with jurisdiction over criminal justice policy and funding on agreed upon accountability measures including outcome studies.

Selected Statutes – Chapter 540 Parents' Liability for Damages

540.18 Damage by Minor; Responsibility of Parent, Guardian, and Minor

Subdivision 1. Liability rule.
The parent or guardian of a minor who is under the age of 18 and who is living with the parent or guardian and who willfully or maliciously causes injury to any person or damage to any property is jointly and severally liable with such minor for such injury or damage to an amount not exceeding $1,000, if such minor would have been liable for such injury or damage if the minor had been an adult. Nothing in this subdivision shall be construed to relieve such minor from personal liability for such injury or damage. The liability provided in this subdivision is in addition to and not in lieu of any other liability which may exist at law. Recovery under this section shall be limited to special damages.

Subdivision 2. Not applicable to certain persons.
This section shall not apply to persons having custody or charge of any minor under the authority of the Human Services or Corrections Department of the state.

Selected Statutes – Chapter 541 Limitation of Time, Commencement of Actions

541.073 Actions for Damages Due to Sexual Abuse; Special Provisions

Subdivision 1. Definition.
As used in this section, "sexual abuse" means conduct described in sections 609.342 to 609.345.

Subdivision 2. Limitations period.
(a) An action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.

(b) The plaintiff need not establish which act in a continuous series of sexual abuse acts by the defendant caused the injury.

(c) The knowledge of a parent or guardian may not be imputed to a minor.

(d) This section does not affect the suspension of the statute of limitations during a period of disability under section 541.15.

Subdivision 3. Applicability.
This section applies to an action for damages commenced against a person who caused the plaintiff's personal injury either by (1) committing sexual abuse against the plaintiff, or (2) negligently permitting sexual abuse against the plaintiff to occur.

541.13 Absence from State

When a cause of action accrues against a person who is out of the state and while out of the state is not subject to process under the laws of this state or after diligent search the person cannot be found for the purpose of personal service when personal service is required, an action may be commenced within the times herein limited after the person's return to the state; and if, after a cause of action accrues, the person departs from and resides out of the state and while out of the state is not subject to process under the laws of this state or after diligent search the person cannot be found for the purpose of personal

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service when personal service is required, the time of the person's absence is not part of the time limited for the commencement of the action.

541.15 Periods of Disability not Counted

(a) Except as provided in paragraph (b), any of the following grounds of disability, existing at the time when a cause of action accrued or arising anytime during the period of limitation, shall suspend the running of the period of limitation until the same is removed; provided that such period, except in the case of infancy, shall not be extended for more than five years, nor in any case for more than one year after the disability ceases:

(1) that the plaintiff is within the age of 18 years;

(2) the plaintiff's insanity;

(3) is an alien and the subject or citizen of a country at war with the United States;

(4) when the beginning of the action is stayed by injunction or by statutory prohibition. If two or more disabilities shall coexist, the suspension shall continue until all are removed.

(b) In actions alleging malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, the ground of disability specified in paragraph (a), clause (1), suspends the period of limitation until the disability is removed. The suspension may not be extended for more than seven years, or for more than one year after the disability ceases. For purposes of this paragraph, health care provider means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

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595.02 Testimony of Witnesses

Subdivision 1. Competency of witnesses.
Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal

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representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections 626.556 and 626.557.

(h) An interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(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. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557. "Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works

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under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(l) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

(m) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

(n) A communication assistant for a telecommunications relay system for communication-impaired persons shall not, without the consent of the person making the communication, be allowed to disclose communications made to the communication assistant for the purpose of relaying.

Subdivision 1a. Alternative dispute resolution privilege. No person presiding at any alternative dispute resolution proceeding established pursuant to law, court rule, or by an agreement to mediate, shall be competent to testify, in any subsequent civil proceeding or administrative hearing, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to any statement or conduct that could:

(1) constitute a crime;

(2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or

(3) constitute professional misconduct.

Subdivision 2. Exceptions.

(a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245A.08, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

(1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and

(2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought. No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

Subdivision 3. Certain out-of-court statements admissible. An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

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(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement. For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

Subdivision 4. Court order.

(a) In a proceeding in which a child less than 12 years of age is alleging, denying, or describing:

(1) an act of physical abuse or an act of sexual contact or penetration performed with or on the child or any other person by another; or

(2) an act that constitutes a crime of violence committed against the child or any other person, the court may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

(b) At the taking of testimony under this subdivision, only the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 or a dissolution or custody proceeding under chapter 518, the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

(1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or

(2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

(d) As used in this subdivision, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and includes violations of section 609.26.

Subdivision 5. Waiver of privilege for health care providers. A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party. A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order. For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

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609.02 Definitions

Subdivision 1. Crime.
"Crime" means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.

Subdivision 2. Felony.
"Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed.

Subdivision 2a. Repealed, 1999 c 194 s 11]

Subdivision 3. Misdemeanor.
"Misdemeanor" means 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.

Subdivision 4. Gross misdemeanor.
"Gross misdemeanor" means any crime which is not a felony or misdemeanor. The maximum fine which may be imposed for a gross misdemeanor is $3,000.

Subdivision 4a. Petty misdemeanor.
"Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than $300 may be imposed.

Subdivision 5. Conviction.
"Conviction" means any of the following accepted and recorded by the court:
(1) A plea of guilty; or

(2) A verdict of guilty by a jury or a finding of guilty by the court.

Subdivision 6. Dangerous weapon.
"Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm. As used in this subdivision, "flammable liquid" means any liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit but does not include intoxicating liquor as defined in section 340A.101. As used in this subdivision, "combustible liquid" is a liquid having a flash point at or above 100 degrees Fahrenheit.

Subdivision 7. Bodily harm.
"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Subdivision 7a. Substantial bodily harm.
"Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

Subdivision 8. Great bodily harm.
"Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

Subdivision 9. Mental state.
(1) When criminal intent is an element of a crime in this chapter, such intent is indicated by the term "intentionally," the phrase "with intent to," the phrase "with intent that," or some form of the verbs "know" or "believe."

(2) "Know" requires only that the actor believes that the specified fact exists.

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result. In addition, except as provided in clause (6), the actor must have knowledge of those facts which are necessary to make the actor's conduct criminal and which are set forth after the word "intentionally."

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.

(5) Criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which the actor is prosecuted or the scope or meaning of the terms used in that statute.

(6) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

Subdivision 10. Assault. "Assault" is:
(1) an act done with intent to cause fear in another of immediate bodily harm or death; or

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(2) the intentional infliction of or attempt to inflict bodily harm upon another.

Subdivision 11. Second or subsequent violation or offense.
"Second or subsequent violation" or "second or subsequent offense" means that prior to the commission of the violation or offense, the actor has been adjudicated guilty of a specified similar violation or offense.

Subdivision 12. Repealed, 1993 c 326 art 2 s 34]

Subdivision 13. Repealed, 1993 c 326 art 2 s 34]

Subdivision 14. Electronic monitoring device.
As used in sections 609.135, subdivision 5a, 611A.07, and 629.72, subdivision 2a, "electronic monitoring device" means a radio frequency transmitter unit that is worn at all times on the person of a defendant in conjunction with a receiver unit that is located in the victim's residence or on the victim's person. The receiver unit emits an audible and visible signal whenever the defendant with a transmitter unit comes within a designated distance from the receiver unit.

Subdivision 15. Probation.
"Probation" means a court-ordered sanction imposed upon an offender for a period of supervision no greater than that set by statute. It is imposed as an alternative to confinement or in conjunction with confinement or intermediate sanctions. The purpose of probation is to deter further criminal behavior, punish the offender, help provide reparation to crime victims and their communities, and provide offenders with opportunities for rehabilitation.

Subdivision 16. Qualified domestic violence-related offense.
"Qualified domestic violence-related offense" includes the following offenses: sections 518B.01, subdivision 14 (violation of domestic abuse order for protection); 518B.01, subdivision 22 (violation of domestic abuse no contact order); 609.221 (first-degree assault); 609.222 (second-degree assault); 609.223 (third-degree assault); 609.2231 (fourth-degree assault); 609.224 (fifth-degree assault); 609.2242 (domestic assault); 609.2247 (domestic assault by strangulation); 609.342 (first-degree criminal sexual conduct); 609.343 (second-degree criminal sexual conduct); 609.344 (third-degree criminal sexual conduct); 609.345 (fourth-degree criminal sexual conduct); 609.377 (malicious punishment of a child); 609.713 (terroristic threats); 609.748, subdivision 6 (violation of harassment restraining order); 609.749 (harassment/stalking); and 609.78, subdivision 2 (interference with an emergency call); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

609.10 Sentences Available

Subdivision 1. Sentences available.
Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence, may sentence the defendant to the extent authorized by law as follows:

(1) to life imprisonment; or

(2) to imprisonment for a fixed term of years set by the court; or

(3) to both imprisonment for a fixed term of years and payment of a fine; or

(4) to payment of a fine without imprisonment or to imprisonment for a fixed term of years if the fine is not paid; or

(5) to payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both; or

(6) to payment of a local correctional fee as authorized under section 609.102 in addition to any other sentence imposed by the court.

Subdivision 2. Restitution.

(a) As used in this section, "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." Restitution" includes payment of compensation to a government entity that incurs loss as a direct result of a crime.

(b) When the defendant does not pay the entire amount of court-ordered restitution and the fine at the same time, the court may order that all restitution shall be paid before the fine is paid.

609.101 Surcharge on Fines, Assessments; Minimum Fines

Subdivision 1. Repealed, 1998 c 367 art 8 s 26]

Subdivision 2. Minimum fines.
Notwithstanding any other law, when a court sentences a person convicted of violating section 609.221, 609.222, 609.223,

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609.2231, 609.224, 609.2242, 609.267, 609.2671, 609.2672, 609.342, 609.343, 609.344, or 609.345, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law. The court shall collect the portion of the fine mandated by this subdivision and forward 70 percent of it to a local victim assistance program that provides services locally in the county in which the crime was committed. The court shall forward the remaining 30 percent to the commissioner of finance to be credited to the general fund. If more than one victim assistance program serves the county in which the crime was committed, the court may designate on a case-by-case basis which program will receive the fine proceeds, giving consideration to the nature of the crime committed, the types of victims served by the program, and the funding needs of the program. If no victim assistance program serves that county, the court shall forward 100 percent of the fine proceeds to the commissioner of finance to be credited to the general fund. Fine proceeds received by a local victim assistance program must be used to provide direct services to crime victims. The minimum fine required by this subdivision is in addition to the surcharge or assessment required by section 357.021, subdivision 6, and is in addition to any sentence of imprisonment or restitution imposed or ordered by the court. As used in this subdivision, "victim assistance program" means victim witness programs within county attorney offices or any of the following programs: crime victim crisis centers, victim-witness programs, battered women shelters and nonshelter programs, and sexual assault programs.

Subdivision 3. Controlled substance offenses; minimum fines.

(a) Notwithstanding any other law, when a court sentences a person convicted of a controlled substance crime under sections 152.021 to 152.025 and 152.0262, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law.

(b) The minimum fine required by this subdivision is in addition to the surcharge or assessment required by section 357.021, subdivision 6, and is in addition to any sentence of imprisonment or restitution imposed or ordered by the court.

(c) The court shall collect the fine mandated by this subdivision and forward 70 percent of it to a local drug abuse prevention program existing or being implemented in the county in which the crime was committed. The court shall forward the remaining 30 percent to the commissioner of finance to be credited to the general fund. If more than one drug abuse prevention program serves the county in which the crime was committed, the court may designate on a case-by-case basis which program will receive the fine proceeds, giving consideration to the community in which the crime was committed, the funding needs of the program, the number of peace officers in each community certified to teach the program, and the number of children served by the program in each community. If no drug abuse prevention program serves communities in that county, the court shall forward 100 percent of the fine proceeds to the commissioner of finance to be credited to the general fund.

(d) The minimum fines required by this subdivision shall be collected as are other fines. Fine proceeds received by a local drug abuse prevention program must be used to support that program, and may be used for salaries of peace officers certified to teach the program. The drug abuse resistance education program must report receipt and use of money generated under this subdivision as prescribed by the Drug Abuse Resistance Education Advisory Council.

(e) As used in this subdivision, "drug abuse prevention program" and "program" include:

(1) the drug abuse resistance education program described in sections 299A.33 and 299A.331; and

(2) any similar drug abuse education and prevention program that includes the following components:

(a) instruction for students enrolled in kindergarten through grade six that is designed to teach students to recognize and resist pressures to experiment with controlled substances and alcohol;

(b) provisions for parental involvement;

(c) classroom instruction by uniformed law enforcement personnel;

(d) the use of positive student leaders to influence younger students not to use drugs; and

(e) an emphasis on activity-oriented techniques designed to encourage student-generated responses to problem-solving situations.

Subdivision 4. Minimum fines; other crimes.

Notwithstanding any other law:

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(1) when a court sentences a person convicted of a felony that is not listed in subdivision 2 or 3, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law; and

(2) when a court sentences a person convicted of a gross misdemeanor or misdemeanor that is not listed in subdivision 2, it must impose a fine of not less than 30 percent of the maximum fine authorized by law nor more than the maximum fine authorized by law, unless the fine is set at a lower amount on a uniform fine schedule established by the Judicial Council in consultation with affected state and local agencies. This schedule shall be promulgated not later than September 1 of each year and shall become effective on January 1 of the next year unless the legislature, by law, provides otherwise. The minimum fine required by this subdivision is in addition to the surcharge or assessment required by section 357.021, subdivision 6, and is in addition to any sentence of imprisonment or restitution imposed or ordered by the court. The court shall collect the fines mandated in this subdivision and, except for fines for traffic and motor vehicle violations governed by section 169.871 and section 299D.03 and fish and game violations governed by section 97A.065, forward 20 percent of the revenues to the commissioner of finance for deposit in the general fund.

Subdivision 5. Waiver prohibited; reduction and installment payments.

(a) The court may not waive payment of the minimum fine required by this section.

(b) If the defendant qualifies for the services of a public defender or the court finds on the record that the convicted person is indigent or that immediate payment of the fine would create undue hardship for the convicted person or that person's immediate family, the court may reduce the amount of the minimum fine to not less than $50. Additionally, the court may permit the defendant to perform community work service in lieu of a fine.

(c) The court also may authorize payment of the fine in installments.

609.115 Presentence Investigation

Subdivision 1. Presentence investigation.

(a) When a defendant has been convicted of a misdemeanor or gross misdemeanor, the court may, and when the defendant has been convicted of a felony, the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused by it to others and to the community. At the request of the prosecutor in a gross misdemeanor case, the court shall order that a presentence investigation and report be prepared. The investigation shall be made by a probation officer of the court, if there is one; otherwise it shall be made by the commissioner of corrections. The officer conducting the presentence or predispositional investigation shall make reasonable and good faith efforts to contact and provide the victim with the information required under section 611A.037, subdivision 2 . Presentence investigations shall be conducted and summary hearings held upon reports and upon the sentence to be imposed upon the defendant in accordance with this section, section 244.10, and the Rules of Criminal Procedure.

(b) When the crime is a violation of sections 609.561 to 609.563, 609.5641, or 609.576 and involves a fire, the report shall include a description of the financial and physical harm the offense has had on the public safety personnel who responded to the fire. For purposes of this paragraph, "public safety personnel" means the state fire marshal; employees of the Division of the State Fire Marshal; firefighters, regardless of whether the firefighters receive any remuneration for providing services; peace officers, as defined in section 626.05, subdivision 2; individuals providing emergency management services; and individuals providing emergency medical services.

(c) When the crime is a felony violation of chapter 152 involving the sale or distribution of a controlled substance, the report shall include a description of any adverse social or economic effects the offense has had on persons who reside in the neighborhood where the offense was committed.

(d) The report shall also include the information relating to crime victims required under section 611A.037, subdivision 1. If the court directs, the report shall include an estimate of the prospects of the defendant's rehabilitation and recommendations as to the sentence which should be imposed. In misdemeanor cases the report may be oral.

(e) When a defendant has been convicted of a felony, and before sentencing, the court shall cause a sentencing

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worksheet to be completed to facilitate the application of the Minnesota Sentencing Guidelines. The worksheet shall be submitted as part of the presentence investigation report.

(f) When a person is convicted of a felony for which the Sentencing Guidelines presume that the defendant will be committed to the commissioner of corrections under an executed sentence and no motion for a sentencing departure has been made by counsel, the court may, when there is no space available in the local correctional facility, commit the defendant to the custody of the commissioner of corrections, pending completion of the presentence investigation and report. When a defendant is convicted of a felony for which the Sentencing Guidelines do not presume that the defendant will be committed to the commissioner of corrections, or for which the Sentencing Guidelines presume commitment to the commissioner but counsel has moved for a sentencing departure, the court may commit the defendant to the commissioner with the consent of the commissioner, pending completion of the presentence investigation and report. The county of commitment shall return the defendant to the court when the court so orders.

Subdivision 1a. Contents of worksheet.
The Supreme Court shall promulgate rules uniformly applicable to all district courts for the form and contents of sentencing worksheets. These rules shall be promulgated by and effective on January 2, 1982.

Subdivision 1b. [Repealed, 1987 c 331 s 13]

Subdivision 1c. [Repealed, 1987 c 331 s 13]

Subdivision 2. Life imprisonment report.
If the defendant has been convicted of a crime for which a mandatory sentence of life imprisonment is provided by law, the probation officer of the court, if there is one, otherwise the commissioner of corrections, shall forthwith make a post-sentence investigation and make a written report as provided by subdivision 1.

Subdivision 2a. Sentencing worksheet; sentencing guidelines commission.
If the defendant has been convicted of a felony, including a felony for which a mandatory life sentence is required by law, the court shall cause a sentencing worksheet as provided in subdivision 1 to be completed and forwarded to the Sentencing Guidelines Commission. For the purpose of this section, "mandatory life sentence" means a sentence under section 609.106, subdivision 2; 609.109, subdivision 3; 609.185; 609.3455; or 609.385, subdivision 2 , and governed by section 244.05.

Subdivision 3. Criminal justice agency disclosure requirements.
All criminal justice agencies shall make available at no cost to the probation officer or the commissioner of corrections the criminal record and other relevant information relating to the defendant which they may have, when requested for the purposes of subdivisions 1 and 2.

Subdivision 4. Confidential sources of information.
Any report made pursuant to subdivision 1 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.

Subdivision 5. Report to commissioner or local correctional agency.
If the defendant is sentenced to the commissioner of corrections, a copy of any report made pursuant to this section and not made by the commissioner shall accompany the commitment. If the defendant is sentenced to a local correctional agency or facility, a copy of the report must be provided to that agency or facility.

Subdivision 6. Report disclosure prohibited.
Except as provided in subdivisions 4 and 5 or as otherwise directed by the court any report made pursuant to this section shall not be disclosed.

Subdivision 7. Stay of imposition of sentence.
If imposition of sentence is stayed by reason of an appeal taken or to be taken, the presentence investigation provided for in this section shall not be made until such stay has expired or has otherwise been terminated.

Subdivision 8. Chemical use assessment required.
(a) If a person is convicted of a felony, the probation officer shall determine in the report prepared under subdivision 1 whether or not alcohol or drug use was a contributing factor to the commission of the offense. If so, the report shall contain the results of a chemical use assessment

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conducted in accordance with this subdivision. The probation officer shall make an appointment for the defendant to undergo the chemical use assessment if so indicated.

(b) The chemical use assessment report must include a recommended level of care for the defendant in accordance with the criteria contained in rules adopted by the commissioner of human services under section 254A.03, subdivision 3. The assessment must be conducted by an assessor qualified under rules adopted by the commissioner of human services under section 254A.03, subdivision 3. An assessor providing a chemical use assessment may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. If an independent assessor is not available, the probation officer may use the services of an assessor authorized to perform assessments for the county social services agency under a variance granted under rules adopted by the commissioner of human services under section 254A.03, subdivision 3.

Subdivision 9. Compulsive gambling assessment required.

(a) If a person is convicted of theft under section 609.52, embezzlement of public funds under section 609.54, or forgery under section 609.625, 609.63, or 609.631, the probation officer shall determine in the report prepared under subdivision 1 whether or not compulsive gambling contributed to the commission of the offense. If so, the report shall contain the results of a compulsive gambling assessment conducted in accordance with this subdivision. The probation officer shall make an appointment for the offender to undergo the assessment if so indicated.

(b) The compulsive gambling assessment report must include a recommended level of treatment for the offender if the assessor concludes that the offender is in need of compulsive gambling treatment. The assessment must be conducted by an assessor qualified under section 245.98, subdivision 2a, to perform these assessments or to provide compulsive gambling treatment. An assessor providing a compulsive gambling assessment may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. If an independent assessor is not available, the probation officer may use the services of an assessor with a financial interest or referral relationship as authorized under rules adopted by the commissioner of human services under section 245.98, subdivision 2a.

(c) The commissioner of human services shall reimburse the assessor for the costs associated with a compulsive gambling assessment at a rate established by the commissioner up to a maximum of $100 for each assessment. The commissioner shall reimburse these costs after receiving written verification from the probation officer that the assessment was performed and found acceptable.

609.125 Sentence for Misdemeanor or Gross Misdemeanor

Subdivision 1. Sentences available.

Upon conviction of a misdemeanor or gross misdemeanor the court, if sentence is imposed, may, to the extent authorized by law, sentence the defendant:

(1) to imprisonment for a definite term; or

(2) to payment of a fine, or to imprisonment for a specified term if the fine is not paid; or

(3) to both imprisonment for a definite term and payment of a fine; or

(4) to payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both; or

(5) to payment of a local correctional fee as authorized under section 609.102 in addition to any other sentence imposed by the court; or

(6) to perform work service in a restorative justice program in addition to any other sentence imposed by the court.

Subdivision 2. Restitution.

(a) As used in this section, "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. "Restitution" includes payment of compensation to a government entity that incurs loss as a direct result of a crime.

(b) When the defendant does not pay the entire amount of court-ordered restitution and the fine at the same time, the court may order that all restitution shall be paid before the fine is paid.

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609.135 Stay of Imposition or Execution of Sentence

Subdivision 1. Terms and conditions.

(a) Except when a sentence of life imprisonment is required by law, or when a mandatory minimum sentence is required by section 609.11, any court may stay imposition or execution of sentence and:

(1) may order intermediate sanctions without placing the defendant on probation; or

(2) may place the defendant on probation with or without supervision and on the terms the court prescribes, including intermediate sanctions when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony or gross misdemeanor, by the commissioner of corrections, or in any case by some other suitable and consenting person. Unless the court directs otherwise, state parole and probation agents and probation officers may impose community work service or probation violation sanctions, consistent with section 243.05, subdivision 1; sections 244.196 to 244.199; or 401.02, subdivision 5. No intermediate sanction may be ordered performed at a location that fails to observe applicable requirements or standards of chapter 181A or 182, or any rule promulgated under them.

(b) For purposes of this subdivision, subdivision 6, and section 609.14, the term "intermediate sanctions" includes but is not limited to incarceration in a local jail or workhouse, home detention, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling, restitution, fines, day-fines, community work service, work service in a restorative justice program, work in lieu of or to work off fines and, with the victim's consent, work in lieu of or to work off restitution.

(c) A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169A.20.

Subdivision 1a. Failure to pay restitution or fine.
If the court orders payment of restitution or a fine as a condition of probation and if the defendant fails to pay the restitution or a fine in accordance with the payment schedule or structure established by the court or the probation officer, the prosecutor or the defendant's probation officer may, on the prosecutor's or the officer's own motion or at the request of the victim, ask the court to hold a hearing to determine whether or not the conditions of probation should be changed or probation should be revoked. The defendant's probation officer shall ask for the hearing if the restitution or fine ordered has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold this hearing and take appropriate action, including action under subdivision 2, paragraph (g), before the defendant's term of probation expires.

Subdivision 1b. [Repealed, 1987 c 384 art 1 s 52]

Subdivision 1c. Failure to complete court-ordered treatment.
If the court orders a defendant to undergo treatment as a condition of probation and if the defendant fails to successfully complete treatment at least 60 days before the term of probation expires, the prosecutor or the defendant's probation officer may ask the court to hold a hearing to determine whether the conditions of probation should be changed or probation should be revoked. The court shall schedule and hold this hearing and take appropriate action, including action under subdivision 2, paragraph (h), before the defendant's term of probation expires.

Subdivision 2. Stay of sentence maximum periods.

(a) If the conviction is for a felony other than section 609.21, subdivision 2, 2a, or 4, the stay shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.

(b) If the conviction is for a gross misdemeanor violation of section 169A.20 or 609.21, subdivision 2b , or for a felony described in section 609.21, subdivision 2, 2a, or 4, the stay shall be for not more than six years. The court shall provide for unsupervised probation for the last year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last year.

(c) If the conviction is for a gross misdemeanor not specified in paragraph (b), the stay shall be for not more than two years.

(d) If the conviction is for any misdemeanor under section 169A.20; 609.746, subdivision 1; 609.79; or 617.23; or for a misdemeanor under section 609.2242 or 609.224, subdivision 1 , in which the victim of the crime was a family or household member as defined in section 518B.01, the stay shall be for not more than two years. The court shall provide for unsupervised probation for the second year of the stay unless the court finds that the defendant needs supervised probation for all or part of the second year.

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(e) If the conviction is for a misdemeanor not specified in paragraph (d), the stay shall be for not more than one year.

(f) The defendant shall be discharged six months after the term of the stay expires, unless the stay has been revoked or extended under paragraph (g), or the defendant has already been discharged.

(g) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (f), a court may extend a defendant's term of probation for up to one year if it finds, at a hearing conducted under subdivision 1a, that:

(1) the defendant has not paid court-ordered restitution or a fine in accordance with the payment schedule or structure; and

(2) the defendant is likely to not pay the restitution or fine the defendant owes before the term of probation expires. This one-year extension of probation for failure to pay restitution or a fine may be extended by the court for up to one additional year if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution or fine that the defendant owes.

(h) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (f), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that:

(1) the defendant has failed to complete court-ordered treatment successfully; and

(2) the defendant is likely not to complete court-ordered treatment before the term of probation expires.

Subdivision 3. Motor vehicle offense report.
The court shall report to the commissioner of public safety any stay of imposition or execution granted in the case of a conviction for an offense in which a motor vehicle, as defined in section 169.01, subdivision 3, is used.

Subdivision 4. Jail as condition of probation.
The court may, as a condition of probation, require the defendant to serve up to one year incarceration in a county jail, a county regional jail, a county workfarm, county workhouse or other local correctional facility, or require the defendant to pay a fine, or both. The court may allow the defendant the work release privileges of section 631.425 during the period of incarceration.

Subdivision 5. Assaulting spouse stay conditions.
If a person is convicted of assaulting a spouse or other person with whom the person resides, and the court stays imposition or execution of sentence and places the defendant on probation, the court must condition the stay upon the defendant's participation in counseling or other appropriate programs selected by the court.

Subdivision 5a. Domestic abuse victims; electronic monitoring.

(a) Until the commissioner of corrections has adopted standards governing electronic monitoring devices used to protect victims of domestic abuse, the court, as a condition of a stay of imposition or execution of a sentence, may not order an offender convicted of a crime described in paragraph (b) to use an electronic monitoring device to protect a victim's safety.

(b) This subdivision applies to the following crimes, if committed by the defendant against a family or household member as defined in section 518B.01, subdivision 2:

(1) violations of orders for protection issued under chapter 518B;

(2) assault in the first, second, third, or fifth degree under section 609.221, 609.222, 609.223, or 609.224; or domestic assault under section 609.2242;

(3) criminal damage to property under section 609.595;

(4) disorderly conduct under section 609.72;

(5) harassing telephone calls under section 609.79;

(6) burglary under section 609.582;

(7) trespass under section 609.605;

(8) criminal sexual conduct in the first, second, third, fourth, or fifth degree under section 609.342, 609.343, 609.344, 609.345, or 609.3451; and

(9) terroristic threats under section 609.713.

(c) Notwithstanding paragraph (a), the judges in the Tenth Judicial District may order, as a condition of a stay of imposition or execution of a sentence, a defendant convicted of a crime described in paragraph (b), to use an electronic monitoring device to protect the victim's safety. The judges shall make data on the use of electronic monitoring devices to protect a victim's safety in the Tenth Judicial District available to the commissioner of corrections to evaluate and to aid in development of standards for the use of devices to protect victims of domestic abuse.

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Subdivision 6. Preference for intermediate sanctions.
A court staying imposition or execution of a sentence that does not include a term of incarceration as a condition of the stay shall order other intermediate sanctions where practicable.

Subdivision 7. Demand of execution of sentence.
An offender may not demand execution of sentence in lieu of a stay of imposition or execution of sentence if the offender will serve less than nine months at the state institution. This subdivision does not apply to an offender who will be serving the sentence consecutively or concurrently with a previously imposed executed felony sentence.

Subdivision 8. Fine and surcharge collection.
A defendant's obligation to pay court-ordered fines, surcharges, court costs, and fees shall survive for a period of six years from the date of the expiration of the defendant's stayed sentence for the offense for which the fines, surcharges, court costs, and fees were imposed, or six years from the imposition or due date of the fines, surcharges, court costs, and fees, whichever is later. Nothing in this subdivision extends the period of a defendant's stay of sentence imposition or execution.

609.1351 Petition for Civil Commitment

When a court sentences a person under section 609.342, 609.343, 609.344, 609.345, 609.3453, or 609.3455, subdivision 3a, the court shall make a preliminary determination whether in the court's opinion a petition under section 253B.185 may be appropriate and include the determination as part of the sentencing order. If the court determines that a petition may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the county attorney.

609.2244 Presentence Domestic Abuse Investigations

Subdivision 1. Investigation.
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;

(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) section 609.79, subdivision 1; or (d) section 609.713, subdivision 1.

Subdivision 2. Report.

(a) The Department of Corrections shall establish minimum standards for the report, including the circumstances of the offense, impact on the victim, the defendant's prior record, characteristics and history of alcohol and chemical use problems, and amenability to domestic abuse programs. The report is classified as private data on individuals as defined in section 13.02, subdivision 12. Victim impact statements are confidential.

(b) The report must include:

(1) a recommendation on any limitations on contact with the victim and other measures to ensure the victim's safety;

(2) a recommendation for the defendant to enter and successfully complete domestic abuse programming and any aftercare found necessary by the investigation, including a specific recommendation for the defendant to complete a domestic abuse counseling program or domestic abuse educational program under section 518B.02;

(3) a recommendation for chemical dependency evaluation and treatment as determined by the evaluation whenever alcohol or drugs were found to be a contributing factor to the offense;

(4) recommendations for other appropriate remedial action or care or a specific explanation why no level of care or action is recommended; and

(5) consequences for failure to abide by conditions set up by the court.

Subdivision 3. Corrections agents standards; rules; investigation time limits.
A domestic abuse investigation required by this section must be conducted by the local Corrections Department or the commissioner of corrections. The corrections agent shall have access to any police reports or other law enforcement data relating to the current offense or previous offenses that are necessary to complete the evaluation. A corrections agent conducting an investigation under this section may not have any direct or shared financial interest or referral relationship

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resulting in shared financial gain with a treatment provider. An appointment for the defendant to undergo the investigation must be made by the court, a court services probation officer, or court administrator as soon as possible.

Subdivision 4. [Repealed, 1Sp2001 c 8 art 10 s 20]

609.347 Evidence in Criminal Sexual Conduct Cases

Subdivision 1. Victim testimony; corroboration unnecessary. In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, the testimony of a victim need not be corroborated.

Subdivision 2. Showing of resistance unnecessary. In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, there is no need to show that the victim resisted the accused.

Subdivision 3. Previous sexual conduct. In a prosecution under sections 609.109, 609.342 to 609.3451, 609.3453, or 609.365, 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 subdivision 4. The evidence can be admitted only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the circumstances set out in paragraphs (a) and (b). For the evidence to be admissible under paragraph (a), subsection (i), the judge must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true. For the evidence to be admissible under paragraph (a), subsection (ii) or paragraph (b), the judge must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true, as provided under Rule 901 of the Rules of Evidence.

(a) When consent of the victim is a defense in the case, the following evidence is admissible:

(i) evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue. 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; and

(ii) evidence of the victim's previous sexual conduct with the accused.

(b) 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.

Subdivision 4. Accused offer of evidence. The accused may not offer evidence described in subdivision 3 except pursuant to the following procedure:

(a) A motion shall be made by the accused at least three business days prior to trial, unless later for good cause shown, setting out with particularity the offer of proof of the evidence that the accused intends to offer, relative to the previous sexual conduct of the victim;

(b) If the court deems the offer of proof sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the accused to make a full presentation of the offer of proof;

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the accused regarding the previous sexual conduct of the victim is admissible under subdivision 3 and that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court shall make an order stating the extent to which evidence is admissible. The accused may then offer evidence pursuant to the order of the court;

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in subdivision 3 admissible, the accused may make an offer of proof pursuant to clause (a) and the court shall order an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Subdivision 5. Prohibiting instructing jury on certain points. In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, the court shall not instruct the jury to the effect that:

(a) It may be inferred that a victim who has previously consented to sexual intercourse with persons other than the accused would be therefore more likely to consent to sexual intercourse again; or

(b) The victim's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the victim; or

(c) Criminal sexual conduct is a crime easily charged by a victim but very difficult to disprove by an accused because of the heinous nature of the crime; or

(d) The jury should scrutinize the testimony of the victim any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

Subdivision 6. Psychotherapy evidence.

(a) In a prosecution under sections 609.109, 609.342 to 609.3451, or 609.3453, involving a psychotherapist and patient, evidence of the patient's personal or medical history is not admissible except when:

(1) the accused requests a hearing at least three business days prior to trial and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial value.

(b) The court shall allow the admission only of specific information or examples of conduct of the victim that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other evidence of the history may be introduced.

(c) Violation of the terms of the order is grounds for mistrial but does not prevent the retrial of the accused.

Subdivision 7. Effect of statute on rules.

Rule 412 of the Rules of Evidence is superseded to the extent of its conflict with this section.

609.3471 Records Pertaining to Victim Identity Confidential

Notwithstanding any provision of law to the contrary, no data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.342, 609.343, 609.344, 609.345, or 609.3453, which specifically identifies a victim who is a minor shall 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.

609.35 Costs of Medical Examination

(a) Costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a victim of criminal sexual conduct when the examination is performed for the purpose of gathering evidence shall be paid by the county in which the criminal sexual conduct occurred. These costs include, but are not limited to, full cost of the rape kit examination, associated tests relating to the complainant's sexually transmitted disease status, and pregnancy status.

(b) Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private. However, a county may seek insurance reimbursement from the victim's insurer only if authorized by the victim. This authorization may only be sought after the examination is performed. When seeking this authorization, the county shall inform the victim that if the victim does not authorize this, the county is required by law to pay for the examination and that the victim is in no way liable for these costs or obligated to authorize the reimbursement.

(c) The applicability of this section does not depend upon whether the victim reports the offense to law enforcement or the existence or status of any investigation or prosecution.

609.498 Tampering with a Witness

Subdivision 1. Tampering with a witness in the first degree. Whoever does any of the following is guilty of tampering with a witness in the first degree and may be sentenced as provided in subdivision 1a:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of force or threats of injury to any person or property, a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(c) intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry or within a year following the actor's release from incarceration, whichever is later;

(d) intentionally prevents or dissuades or attempts to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime;

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(e) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities; or

(f) intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information or within a year of the actor's release from incarceration, whichever is later.

Subdivision 1a. Penalty.
Whoever violates subdivision 1 may be sentenced to imprisonment for not more than five years or to payment of a fine not to exceed $10,000.

Subdivision 1b. Aggravated first-degree witness tampering.
(a) A person is guilty of aggravated first-degree witness tampering if the person causes or, by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another in the course of committing any of the following acts intentionally:

(1) preventing or dissuading or attempting to prevent or dissuade a person who is or may become a witness from attending or testifying at any criminal trial or proceeding;

(2) coercing or attempting to coerce a person who is or may become a witness to testify falsely at any criminal trial or proceeding;

(3) retaliating against a person who was summoned as a witness at any criminal trial or proceeding within a year following that trial or proceeding or within a year following the actor's release from incarceration, whichever is later;

(4) preventing or dissuading or attempting to prevent or dissuade a person from providing information to law enforcement authorities concerning a crime;

(5) coercing or attempting to coerce a person to provide false information concerning a crime to law enforcement authorities; or

(6) retaliating against any person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information or within a year of the actor's release from incarceration, whichever is later.

(b) A person convicted of committing any act prohibited by paragraph (a) may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $30,000, or both.

Subdivision 2. Tampering with a witness in the second degree.
Whoever does any of the following is guilty of tampering with a witness in the second degree and may be sentenced as provided in subdivision 3:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), intentionally coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(c) intentionally prevents or dissuades or attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a person from providing information to law enforcement authorities concerning a crime; or

(d) by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities.

Subdivision 3. Sentence.
Whoever violates subdivision 2 may be sentenced to imprisonment for not more than one year or to payment of a fine not to exceed $3,000.

Subdivision 4. No bar to conviction.
Notwithstanding section 609.035 or 609.04, a prosecution for or conviction of the crime of aggravated first-degree witness tampering is not a bar to conviction of or punishment for any other crime.

609.527 Identity Theft

Subdivision 4. Restitution; items provided to victim.
(a) A direct or indirect victim of an identity theft crime shall be considered a victim for all purposes, including any

rights that accrue under chapter 611A and rights to court-ordered restitution.

(b) The court shall order a person convicted of violating subdivision 2 to pay restitution of not less than $1,000 to each direct victim of the offense.

609.748 Harassment; Restraining Order

Subdivision 1. Definition.
For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes:

(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.

(b) "Respondent" includes any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

(c) "Targeted residential picketing" includes the following acts when committed on more than one occasion:

(1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Subdivision 2. Restraining order; jurisdiction.
A person who is a victim of harassment may seek a restraining order from the district court in the manner provided in this section. The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor.

Subdivision 3. Contents of petition; hearing; notice.

(a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.
The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01.
The court shall advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a sheriff was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

(c) Regardless of the method of service, if the respondent is a juvenile, whenever possible, the court also shall have notice of the pendency of the case and of the time and

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place of the hearing served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner.

(d) A request for a hearing under this subdivision must be made within 45 days of the filing or receipt of the petition.

Subdivision 3a. Filing fee; cost of service.
The filing fees for a restraining order under this section are waived for the petitioner if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2 or 3, or sections 609.342 to 609.3451. The court administrator and the sheriff of any county in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff is unavailable or if service is made by publication. The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.

Subdivision 4. Temporary restraining order.

(a) The court may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person or to have no contact with that person if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(b) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

(d) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.

(e) A request for a hearing under this subdivision must be made within 45 days after the temporary restraining order is issued.

Subdivision 5. Restraining order.

(a) The court may grant a restraining order ordering the respondent to cease or avoid the harassment of another person or to have no contact with that person if all of the following occur:

(1) the petitioner has filed a petition under subdivision 3;

(2) the sheriff has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing, or service has been made by publication under subdivision 3, paragraph (b); and

(3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment. A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. Relief granted by the restraining

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order must be for a fixed period of not more than two years. When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

(b) An order issued under this subdivision must be personally served upon the respondent.

Subdivision 6. Violation of restraining order.

(a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who knowingly violates the order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both, if the person knowingly violates the order:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;

(2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

(e) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(f) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(g) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

Subdivision 7. Copy to law enforcement agency.

An order granted under this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this section.

Subdivision 8. Notice.

An order granted under this section must contain a conspicuous notice to the respondent:

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to $1,000, or both, (ii) a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to $3,000, or both, or (iii) a felony punishable by imprisonment for up to five years or a fine of up to $10,000, or both; and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

Subdivision 9. Effect on local ordinances.

Nothing in this section shall supersede or preclude the continuation or adoption of any local ordinance which applies to a broader scope of targeted residential picketing conduct than that described in subdivision 1.

Subdivision 10. Prohibition against employer retaliation.

(a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions,

location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

609.749 Harassment; Stalking; Penalties

Subdivision 1. Definition.
As used in this section, "harass" means to engage in intentional conduct which:

(1) the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and

(2) causes this reaction on the part of the victim.

Subdivision 1a. No proof of specific intent required.
In a prosecution under this section, the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated, or except as otherwise provided in subdivision 3, paragraph (a), clause (4), or paragraph (b) that the actor intended to cause any other result.

Subdivision 2. Harassment and stalking crimes.

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

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

(2) stalks, follows, monitors, or pursues another, whether in person or through technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, or other objects; or

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

(b) The conduct described in paragraph (a), clauses (4) and (5), may be prosecuted at the place where any call is either made or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides. The conduct described in paragraph (a), clause (2), may be prosecuted where the actor or victim resides. The conduct described in paragraph (a), clause (6), may be prosecuted where any letter, telegram, message, package, or other object is either sent or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides.

(c) A peace officer may not make a warrantless, custodial arrest of any person for a violation of paragraph (a), clause (7).

Subdivision 3. Aggravated violations.

(a) A person who commits any of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both:

(1) commits any offense described in subdivision 2 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

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(2) commits any offense described in subdivision 2 by falsely impersonating another;

(3) commits any offense described in subdivision 2 and possesses a dangerous weapon at the time of the offense;

(4) harasses another, as defined in subdivision 1, with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(5) commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim.

(b) A person who commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

Subdivision 4. Second or subsequent violations; felony.

(a) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency, and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

(b) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency, and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

Subdivision 5. Pattern of harassing conduct.

(a) A person who engages in a pattern of harassing conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

(b) For purposes of this subdivision, a "pattern of harassing conduct" means two or more acts within a five-year period that violate or attempt to violate the provisions of any of the following or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories:

(1) this section;

(2) section 609.713;

(3) section 609.224;

(4) section 609.2242;

(5) section 518B.01, subdivision 14;

(6) section 609.748, subdivision 6;

(7) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7);

(8) section 609.79;

(9) section 609.795;

(10) section 609.582;

(11) section 609.595;

(12) section 609.765; or

(13) sections 609.342 to 609.3451.

(c) When acts constituting a violation of this subdivision are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts constituting the pattern.

Subdivision 6. Mental health assessment and treatment.

(a) When a person is convicted of a felony offense under this section, 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 the conviction.

(b) Notwithstanding section 13.384, 13.85, 144.335, 260B.171, or 260C.171, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

(1) medical data under section 13.384;

(2) welfare data under section 13.46;

(3) corrections and detention data under section 13.85;

(4) health records under section 144.335; and

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(5) juvenile court records under sections 260B.171 and 260C.171. Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

(c) If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

(d) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under section 563.01.

Subdivision 7. Exception.
Conduct is not a crime under this section if it is performed under terms of a valid license, to ensure compliance with a court order, or to carry out a specific lawful commercial purpose or employment duty, is authorized or required by a valid contract, or is authorized, required, or protected by state or federal law or the state or federal constitutions. Subdivision 2, clause (2), does not impair the right of any individual or group to engage in speech protected by the federal Constitution, the state Constitution, or federal or state law, including peaceful and lawful handbilling and picketing.

Subdivision 8. Stalking; firearms.

(a) When a person is convicted of a harassment or stalking crime under this section and the court determines that the person used a firearm in any way during commission of the crime, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(b) Except as otherwise provided in paragraph (a), when a person is convicted of a stalking or harassment crime under this section, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(c) Except as otherwise provided in paragraph (a), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of a stalking or harassment crime under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(d) 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 under section 609.5316, subdivision 3.

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609A.01 Criminal Records Expungement

This chapter provides the grounds and procedures for expungement of criminal records under section 13.82; 152.18, subdivision 1; 299C.11, where a petition is authorized under section 609A.02, subdivision 3; or other applicable law. The remedy available is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of records or their return to the subject of the records.

609A.02 Grounds for Order

Subdivision 1. Certain controlled substance offenses.
Upon the dismissal and discharge of proceedings against a person under section 152.18, subdivision 1, for violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, the person may petition under section 609A.03 for the sealing of all records relating to the arrest, indictment or information, trial, and dismissal and discharge.

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Subdivision 2. Juveniles prosecuted as adults.
A petition for the sealing of a conviction record may be filed under section 609A.03 by a person who has been committed to the custody of the commissioner of corrections upon conviction of a crime following certification to district court under section 260B.125, if the person:

(1) is finally discharged by the commissioner; or

(2) has been placed on probation by the court under section 609.135 and has been discharged from probation after satisfactory fulfillment of it.

Subdivision 3. Certain criminal proceedings not resulting in a conviction.
A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if all pending actions or proceedings were resolved in favor of the petitioner. For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner.

Subdivision 4. Expungement prohibited.
Records of a conviction of an offense for which registration is required under section 243.166 may not be expunged.

609A.03 Petition to Expunge Criminal Records

Subdivision 1. Petition; filing fee.
An individual who is the subject of a criminal record who is seeking the expungement of the record shall file a petition under this section and pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1). The filing fee may be waived in cases of indigency and shall be waived in the cases described in section 609A.02, subdivision 3.

Subdivision 2. Contents of petition.

(a) A petition for expungement shall be signed under oath by the petitioner and shall state the following:

(1) the petitioner's full name and all other legal names or aliases by which the petitioner has been known at any time;

(2) the petitioner's date of birth;

(3) all of the petitioner's addresses from the date of the offense or alleged offense in connection with which an expungement order is sought, to the date of the petition;

(4) why expungement is sought, if it is for employment or licensure purposes, the statutory or other legal authority under which it is sought, and why it should be granted;

(5) the details of the offense or arrest for which expungement is sought, including the date and jurisdiction of the occurrence, either the names of any victims or that there were no identifiable victims, whether there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the court file number, and the date of conviction or of dismissal;

(6) in the case of a conviction, what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(7) petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the arrest or conviction for which expungement is sought;

(8) petitioner's criminal charges record indicating all prior and pending criminal charges against the petitioner in this state or another jurisdiction, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion; and

(9) all prior requests by the petitioner, whether for the present offense or for any other offenses, in this state or any other state or federal court, for pardon, return of arrest records, or expungement or sealing of a criminal record, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.

(b) If there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the petitioner shall attach a copy of the order to the petition.

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Subdivision 3. Service of petition and proposed order.

(a) The petitioner shall serve by mail the petition for expungement and a proposed expungement order on the prosecutorial office that had jurisdiction over the offense for which expungement is sought and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each agency and jurisdiction.

(b) The prosecutorial office that had jurisdiction over the offense for which expungement is sought shall serve by mail the petition for expungement and a proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of expungement pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no contact order.

(c) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the expungement hearing described in subdivision 4.

Subdivision 4. Hearing.

A hearing on the petition shall be held no sooner than 60 days after service of the petition. 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 expungement should be granted or denied. The judge shall consider the victim's statement when making a decision.

Subdivision 5. Nature of remedy; standard; firearms restriction.

(a) Except as otherwise provided by paragraph (b), expungement of a criminal record is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:

(1) sealing the record; and

(2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

(b) Except as otherwise provided by this paragraph, if the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 3, the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

(c) If the court issues an expungement order it may require that the criminal record be sealed, the existence of the record not be revealed, and the record not be opened except as required under subdivision 7. Records must not be destroyed or returned to the subject of the record.

Subdivision 5a. Order concerning crimes of violence.

An order expunging the record of a conviction for a crime of violence as defined in section 624.712, subdivision 5, must provide that the person is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime. Any person whose record of conviction is expunged under this section and who thereafter receives a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

Subdivision 6. Order concerning controlled substance offenses.

If the court orders the sealing of the record of proceedings under section 152.18, the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be held guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose.

Subdivision 7. Limitations of order.

(a) Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by the Bureau of Criminal Apprehension and collected under authority other than section 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

(b) Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

(2) an expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order; and

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(3) an expunged record of a conviction may be opened for purposes of a background study under section 245C.08 unless the court order for expungement is directed specifically to the commissioner of human services. Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. For purposes of this section, a "criminal justice agency" means courts or a government agency that performs the administration of criminal justice under statutory authority.

Subdivision 8. Distribution of expungement orders.
The court administrator shall send a copy of an expungement order to each agency and jurisdiction whose records are affected by the terms of the order.

Subdivision 9. Stay of order; appeal.
An expungement order shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period. A person or an agency or jurisdiction whose records would be affected by the order may appeal the order within 60 days of service of notice of filing of the order. An agency or jurisdiction or its officials or employees need not file a cost bond or supersedeas bond in order to further stay the proceedings or file an appeal.

Selected Statutes – Chapter 624 Crime of Violence Definition

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

Selected Statutes – Chapter 626 Mandatory Reporting Requirements

626.52 Reporting of Suspicious Wounds by Health Professionals

Subdivision 1. Definition.
As used in this section, "health professional" means a physician, surgeon, person authorized to engage in the practice of healing, superintendent or manager of a hospital, nurse, or pharmacist.

Subdivision 2. Health professionals required to report.
A health professional shall immediately report, as provided under section 626.53, to the local police department or county sheriff all bullet wounds, gunshot wounds, powder burns, or any other injury arising from, or caused by the discharge of any gun, pistol, or any other firearm, which wound the health professional is called upon to treat, dress, or bandage. A health professional shall report to the proper police authorities any wound that the reporter has reasonable cause to believe has been inflicted on a perpetrator of a crime by a dangerous weapon other than a firearm as defined under section 609.02, subdivision 6.

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Subdivision 3. Reporting burns.
A health professional shall file a written report with the state fire marshal within 72 hours after being notified of a burn injury or wound that the professional is called upon to treat, dress, or bandage, if the victim has sustained second- or third-degree burns to five percent or more of the body, the victim has sustained burns to the upper respiratory tract or sustained laryngeal edema from inhaling superheated air, or the victim has sustained a burn injury or wound that may result in the victim's death. The state fire marshal shall provide the form for the report.

Subdivision 4. Immunity from liability.
Any person reporting in good faith and exercising due care shall have immunity from any liability, civil or criminal, that otherwise might result by reason of the person's actions pursuant to this section or section 626.53. No cause of action may be brought against any person for not making a report pursuant to this section or section 626.53.

626.53 Report by Telephone and Letter

Subdivision 1. Reports to sheriffs and police chiefs.
The report required by section 626.52, subdivision 2, shall be made forthwith by telephone or in person, and shall be promptly supplemented by letter, enclosed in a securely sealed, postpaid envelope, addressed to the sheriff of the county in which the wound is examined, dressed, or otherwise treated; except that, if the place in which the patient is treated for such injury or the patient's wound dressed or bandaged be in a city of the first, second, or third class, such report shall be made and transmitted as herein provided to the chief of police of such city instead of the sheriff. Except as otherwise provided in subdivision 2, the office of any such sheriff and of any such chief of police shall keep the report as a confidential communication and shall not disclose the name of the person making the same, and the party making the report shall not by reason thereof be subpoenaed, examined, or forced to testify in court as a consequence of having made such a report.

Subdivision 2. Reports to Department of Health.
Upon receiving a report of a wound caused by or arising from the discharge of a firearm, the sheriff or chief of police shall forward the information contained in the report to the commissioner of health. The commissioner of health shall keep the report as a confidential communication, as provided under subdivision 1. The commissioner shall maintain a statewide, computerized record system containing summary data, as defined in section 13.02, on information received under this subdivision.

626.54 Application of Sections 626.52 TO 626.55

The requirements of sections 626.52 to 626.55 shall not apply to a nurse employed in a hospital nor to a nurse regularly employed by a physician, surgeon, or other person practicing healing, where the employer has made a proper report in compliance therewith.

626.55 Penalty

Subdivision 1. Gross misdemeanor.
Any person who violates any provision of sections 626.52 to 626.55, other than section 626.52, subdivision 3, is guilty of a gross misdemeanor.

Subdivision 2. [Repealed, 1Sp2001 c 8 art 12 s 18]

626.553 Gunshot Wounds; Peace Officers, Discharging Firearms; Investigations, Reports

Subdivision 1. Report; wounds; investigation.
Upon receipt of the report required in sections 626.52 and 626.53, the sheriff or chief of police receiving the report shall determine the general cause of the wound, and upon determining that the wound was caused by an action connected with the occupation or sport of hunting or shooting the sheriff or chief of police shall immediately conduct a detailed investigation into the facts surrounding the incident or occurrence which occasioned the injury or death reported. The investigating officer shall report the findings of the investigation to the commissioner of natural resources on forms provided by the commissioner for this purpose.

Subdivision 2. Discharge firearm; kill animal.
Whenever a peace officer discharges a firearm in the course of duty, other than for training purposes or the killing of an animal that is sick, injured, or dangerous, notification shall be filed within 30 days of the incident by the officer's department head with the commissioner of public safety. The commissioner of public safety shall forward a copy of the filing to the Board of Peace Officer Standards and Training. The notification shall contain information concerning the reason for and circumstances surrounding discharge of the firearm. The commissioner of public safety shall file a report with the legislature by November 15 of each even-numbered year containing summary information concerning use of firearms by peace officers.

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626.5531 Reporting of Crimes Motivated by Bias

Subdivision 1. Reports required.
A peace officer must report to the head of the officer's department every violation of chapter 609 or a local criminal ordinance if the officer has reason to believe, or if the victim alleges, that the offender was motivated to commit the act by the victim's race, religion, national origin, sex, age, disability, or characteristics identified as sexual orientation. The superintendent of the Bureau of Criminal Apprehension shall adopt a reporting form to be used by law enforcement agencies in making the reports required under this section. The reports must include for each incident all of the following:

(1) the date of the offense;

(2) the location of the offense;

(3) whether the target of the incident is a person, private property, or public property;

(4) the crime committed;

(5) the type of bias and information about the offender and the victim that is relevant to that bias;

(6) any organized group involved in the incident;

(7) the disposition of the case;

(8) whether the determination that the offense was motivated by bias was based on the officer's reasonable belief or on the victim's allegation; and

(9) any additional information the superintendent deems necessary for the acquisition of accurate and relevant data.

Subdivision 2. Use of information collected.
The head of a local law enforcement agency or state law enforcement department that employs peace officers licensed under section 626.843 must file a monthly report describing crimes reported under this section with the Department of Public Safety, Bureau of Criminal Apprehension. The commissioner of public safety must summarize and analyze the information received and file an annual report with the Department of Human Rights and the legislature. The commissioner may include information in the annual report concerning any additional criminal activity motivated by bias that is not covered by this section.

626.556 Reporting of Maltreatment of Minors

Subdivision 1. Public policy.
The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children. In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

Subdivision 2. Definitions.
As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, a person who has a significant

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relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means:

(1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or

(2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

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(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any non-accidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

(2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or

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(3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, sub division 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

Subdivision 3. Persons mandated to report.

(a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; or

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c).The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local

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welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this subdivision, "immediately" means as soon as possible but in no event longer than 24 hours.

Subdivision 3a. Report of deprivation of parental rights or kidnapping.
A person mandated to report under subdivision 3, who knows or has reason to know of a violation of section 609.25 or 609.26, shall report the information to the local police department or the county sheriff. Receipt by a local welfare agency of a report or notification of a report of a violation of section 609.25 or 609.26 shall not be construed to invoke the duties of subdivision 10, 10a, or 10b.

Subdivision 3b. Agency responsible for assessing or investigating reports of maltreatment.
The Department of Education is the agency responsible for assessing or investigating allegations of child maltreatment in schools as defined in sections 120A.05, subdivisions 9, 11, subdivision 13; and 124D.10.

Subdivision 3c. Local welfare agency, Department of Human Services or Department of Health responsible for assessing or investigating reports of maltreatment.

(a) The county local welfare agency is the agency responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, and legally unlicensed child care and in juvenile correctional facilities licensed under section 241.021 located in the local welfare agency's county.

(b) The Department of Human Services is the agency responsible for assessing or investigating allegations of maltreatment in facilities licensed under chapters 245A and 245B, except for child foster care and family child care.

(c) The Department of Health is the agency responsible for assessing or investigating allegations of child maltreatment in facilities licensed under sections 144.50 to 144.58, and in unlicensed home health care.

(d) The commissioners of human services, public safety, and education must jointly submit a written report by January 15, 2007, to the education policy and finance committees of the legislature recommending the most efficient and effective allocation of agency responsibility for assessing or investigating reports of maltreatment and must specifically address allegations of maltreatment that currently are not the responsibility of a designated agency.

Subdivision 3d. Authority to interview.
The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan.

Subdivision 4. Immunity from liability.

(a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

(2) any person with responsibility for performing duties under this section or supervisor employed by a local

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welfare agency, the commissioner of an agency responsible for operating or supervising a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13 ; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19a, complying with subdivision 10d; and

(3) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency, the Department of Education, or a local law enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section 626.5561.

(b) A person who is a supervisor or person with responsibility for performing duties under this section employed by a local welfare agency, the commissioner of human services, or the commissioner of education complying with subdivisions 10 and 11 or section 626.5561 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is

(1) acting in good faith and exercising due care, or

(2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

(c) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

Subdivision 4a. Retaliation prohibited.

(a) An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

(b) The employer of any person required to report under subdivision 3 who retaliates against the person because of a report of abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to $10,000.

(c) There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term "adverse action" refers to action taken by an employer of a person required to report under subdivision 3 which is involved in a report against the person making the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

(1) discharge, suspension, termination, or transfer from the facility, institution, school, or agency;

(2) discharge from or termination of employment;

(3) demotion or reduction in remuneration for services; or

(4) restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

Subdivision 5. Malicious and reckless reports.

Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

Subdivision 6. Failure to report.

(a) A person mandated by this section to report who knows or has reason to believe that a child is neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, and fails to report is guilty of a misdemeanor.

(b) A person mandated by this section to report who knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, as defined in subdivision 2, by the same perpetrator within the preceding ten years, and fails to report is guilty of a gross misdemeanor.

(c) A parent, guardian, or caretaker who knows or reasonably should know that the child's health is in serious danger and who fails to report as required by subdivision 2, paragraph (c), is guilty of a gross misdemeanor if the child suffers substantial or great bodily harm because of the ack of medical care. If the child dies because of the lack of medical care, the person is guilty of a felony and may

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be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $4,000, or both. The provision in section 609.378, subdivision 1, paragraph (a), clause (1), providing that a parent, guardian, or caretaker may, in good faith, select and depend on spiritual means or prayer for treatment or care of a child, does not exempt a parent, guardian, or caretaker from the duty to report under this subdivision.

Subdivision 6a. Failure to notify.
If a local welfare agency receives a report under subdivision 3, paragraph (a) or (b) and fails to notify the local police department or county sheriff as required by subdivision 3, paragraph (a) or (b), the person within the agency who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees. If a local police department or a county sheriff receives a report under subdivision 3, paragraph (a) or (b) and fails to notify the local welfare agency as required by subdivision 3, paragraph (a) or (b), the person within the police department or county sheriff's office who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees.

Subdivision 7. Report.
An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency, unless the appropriate agency has informed the reporter that the oral information does not constitute a report under subdivision 10. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. If requested, the local welfare agency or the agency responsible for assessing or investigating the report shall inform the reporter within ten days after the report is made, either orally or in writing, whether the report was accepted for assessment or investigation. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency or the agency responsible for assessing or investigating the report. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff. A written copy of a report maintained by personnel of agencies, other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject of the report may obtain access to the original report as provided by subdivision 11.

Subdivision 8. Evidence not privileged.
No evidence relating to the neglect or abuse of a child or to any prior incidents of neglect or abuse involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of privilege set forth in section 595.02, subdivision 1, paragraph (a), (d), or (g).

Subdivision 9. Mandatory reporting to a medical examiner or coroner.
When a person required to report under the provisions of subdivision 3 knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the person shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department, or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency. If the child was receiving services or treatment for mental illness, developmentally disabled, chemical dependency, or emotional disturbance from an agency, facility, or program as defined in section 245.91, the medical examiner or coroner shall also notify and report findings to the ombudsman established under sections 245.91 to 245.97.

Subdivision 10. Duties of local welfare agency and local law enforcement agency upon receipt of a report.

(a) Upon receipt of a report, the local welfare agency shall determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment. The local welfare agency:

(1) shall conduct an investigation on reports involving substantial child endangerment;

(2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it

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determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;

(3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response; and

(4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation. If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct a family assessment or investigation as identified in clauses (1) to (4). In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records. If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615. The local welfare agency shall report the determination of the chemical use assessment, and the recommendations and referrals for alcohol and other drug treatment services to the state authority on alcohol and drug abuse.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to 245.97. The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, subdivision 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing or investigating the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, egal custodian, guardian, or school official. For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law

enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 49.02 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosures regarding the nature of the assessment or investigation. Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(e) Where the alleged offender or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(g) The commissioner of human services, the ombudsman for mental health and developmental disabilities, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency responsible for conducting a family assessment shall collect available and relevant

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information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation. Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

(2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse. Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding section 13.384 or 144.335, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13. In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) Upon receipt of a report, the local welfare agency shall conduct a face-to-face contact with the child reported to be maltreated and with the child's primary caregiver sufficient to complete a safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

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(j) When conducting an investigation, the local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. For investigations only, the following interviewing methods and procedures must be used whenever possible when collecting information:

(1) audio recordings of all interviews with witnesses and collateral sources; and

(2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (i), (k), and subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (i) and (k), and subdivision 3d.

Subdivision 10a. Abuse outside family unit.
If the report alleges neglect, physical abuse, or sexual abuse by a person responsible for the child's care functioning outside the family unit in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify the appropriate law enforcement agency, which shall conduct an investigation of the alleged abuse or neglect. The local welfare agency shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

Subdivision 10b. Duties of commissioner; neglect or abuse in facility.

(a) This section applies to the commissioners of human services, health, and education. The commissioner of the agency responsible for assessing or investigating the report shall immediately assess or investigate if the report alleges that:

(1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in that facility, or has been so neglected or abused, or been the victim of maltreatment in a facility by an individual in that facility within the three years preceding the report; or

(2) a child was neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in a facility defined in subdivision 2, while in the care of that facility within the three years preceding the report. The commissioner of the agency responsible for assessing or investigating the report shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j). In conducting assessments or investigations under this subdivision, the commissioner of education shall obtain access to reports and investigative data that are relevant to a report of maltreatment and are in the possession of a school facility as defined in subdivision 2,

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paragraph (i), notwithstanding the classification of the data as educational or personnel data under chapter 13. This includes, but is not limited to, school investigative reports, information concerning the conduct of school personnel alleged to have committed maltreatment of students, information about witnesses, and any protective or corrective action taken by the school facility regarding the school personnel alleged to have committed maltreatment.

(d) The commissioner may request assistance from the local social services agency.

Subdivision 10c. Duties of local social service agency upon receipt of a report of medical neglect.
If the report alleges medical neglect as defined in section 260C.007, subdivision 4, clause (5), the local welfare agency shall, in addition to its other duties under this section, immediately consult with designated hospital staff and with the parents of the infant to verify that appropriate nutrition, hydration, and medication are being provided; and shall immediately secure an independent medical review of the infant's medical charts and records and, if necessary, seek a court order for an independent medical examination of the infant. If the review or examination leads to a conclusion of medical neglect, the agency shall intervene on behalf of the infant by initiating legal proceedings under section 260C.141 and by filing an expedited motion to prevent the withholding of medically indicated treatment.

Subdivision 10d. Notification of neglect or abuse in facility.

(a) When a report is received that alleges neglect, physical abuse, sexual abuse, or maltreatment of a child while in the care of a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed according to sections 144.50 to 144.58; 241.021; or 245A.01 to 245A.16; or chapter 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13 ; and 124D.10; or a nonlicensed personal care provider organization as defined in section 256B.04, subdivision 16, and 256B.0625, subdivision 19a, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency investigating the report shall provide the following information to the parent, guardian, or legal custodian of a child alleged to have been neglected, physically abused, sexually abused, or the victim of maltreatment of a child in the facility: the name of the facility; the fact that a report alleging neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has been received; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; that the agency is conducting an assessment or investigation; any protective or corrective measures being taken pending the outcome of the investigation; and that a written memorandum will be provided when the investigation is completed.

(b) The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may also provide the information in paragraph (a) to the parent, guardian, or legal custodian of any other child in the facility if the investigative agency knows or has reason to believe the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has occurred. In determining whether to exercise this authority, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall consider the seriousness of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the number of children allegedly neglected, physically abused, sexually abused, or victims of maltreatment of a child in the facility; the number of alleged perpetrators; and the length of the investigation. The facility shall be notified whenever this discretion is exercised.

(c) When the commissioner of the agency responsible for assessing or investigating the report or local welfare agency has completed its investigation, every parent, guardian, or legal custodian previously notified of the investigation by the commissioner or local welfare agency shall be provided with the following information in a written memorandum: the name of the facility investigated; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the investigator's name; a summary of the investigation findings; a statement whether maltreatment was found; and the protective or corrective measures that are being or will be taken. The memorandum shall be written in a manner that protects the identity of the reporter and the child and shall not contain the name, or to the extent possible, reveal the identity of the alleged perpetrator or of those interviewed during the investigation. If maltreatment is determined to exist, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child in the facility who had contact with the individual responsible for the maltreatment. When the facility is the responsible party for maltreatment, the commissioner or local welfare agency shall also provide

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the written memorandum to the parent, guardian, or legal custodian of each child who received services in the population of the facility where the maltreatment occurred. This notification must be provided to the parent, guardian, or legal custodian of each child receiving services from the time the maltreatment occurred until either the individual responsible for maltreatment is no longer in contact with a child or children in the facility or the conclusion of the investigation. In the case of maltreatment within a school facility, as defined in sections 120A.05, subdivisions 9, 11, and 13 , and 124D.10, the commissioner of education need not provide notification to parents, guardians, or legal custodians of each child in the facility, but may provide notification to the parent, guardian, or legal custodian of any student alleged to have been maltreated or involved as a witness to alleged maltreatment.

Subdivision 10e. Determinations.

(a) The local welfare agency shall conclude the family assessment or the investigation within 45 days of the receipt of a report. The conclusion of the assessment or investigation may be extended to permit the completion of a criminal investigation or the receipt of expert information requested within 45 days of the receipt of the report.

(b) After conducting a family assessment, the local welfare agency shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent maltreatment.

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed.

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph (i). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of education.

(f) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

(1) physical abuse as defined in subdivision 2, paragraph (g);

(2) neglect as defined in subdivision 2, paragraph (f);

(3) sexual abuse as defined in subdivision 2, paragraph (d);

(4) mental injury as defined in subdivision 2, paragraph (m); or

(5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

(g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1 , to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(i) When determining whether the facility or individual is the responsible party for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription,

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individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(j) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Subdivision 10f. Notice of determinations.
Within 10 working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022.

Subdivision 10g. Interstate data exchange.
All reports and records created, collected, or maintained under this section by a local social service agency or law enforcement agency may be disclosed to a local social service or other child welfare agency of another state when the agency certifies that:

(1) the reports and records are necessary in order to conduct an investigation of actions that would qualify as sexual abuse, physical abuse, or neglect under this section; and

(2) the reports and records will be used only for purposes of a child protection assessment or investigation and will not be further disclosed to any other person or agency. The local social service agency or law enforcement agency in this state shall keep a record of all records or reports disclosed pursuant to this subdivision and of any agency to which the records or reports are disclosed. If in any case records or reports are disclosed before a determination is made under subdivision 10e, or a disposition of any criminal proceedings is reached, the local social service agency or law enforcement agency in this state shall forward the determination or disposition to any agency that has received any report or record under this subdivision.

Subdivision 10h. Child abuse data; release to family court services.
The responsible authority or its designee of a local welfare agency may release private or confidential data on an active case involving assessment or investigation of actions that are defined as sexual abuse, physical abuse, or neglect under this section to a court services agency if:

(1) the court services agency has an active case involving a common client or clients who are the subject of the data; and

(2) the data are necessary for the court services agency to effectively process the court services' case, including investigating or performing other duties relating to the case required by law. The data disclosed under this subdivision may be used only for purposes of the active court services case described in clause (1) and may not be further disclosed to any other person or agency, except as authorized by law.

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Subdivision 10i. Administrative reconsideration of final determination of maltreatment and disqualification based on serious or recurring maltreatment; review panel.

(a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled o a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) Effective January 1, 2002, if an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or the disqualification is not set

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aside under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) Effective January 1, 2002, if a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination shall not be conducted under paragraph (b). When a fine is based on a determination that the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, reconsideration of the maltreatment determination shall not be conducted under this section. If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, "interested person acting on behalf of the child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

Subdivision 10j. Release of data to mandated reporters.
A local social services or child protection agency, or the agency responsible for assessing or investigating the report of maltreatment, may provide relevant private data on individuals obtained under this section to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data, in the best interests of the child. Mandated reporters with ongoing responsibility for the health, education, or welfare of a child affected by the data include the child's teachers or other appropriate school personnel, foster parents, health care providers, respite care workers, therapists, social workers, child care providers, residential care staff, crisis nursery staff, probation officers, and court services personnel. Under this section, a mandated reporter need not have made the report to be considered a person with ongoing responsibility for the health, education, or welfare of a child affected by the data. Data provided under this section must be limited to data pertinent to the individual's responsibility for caring for the child.

Subdivision 10k. Release of certain investigative records to other counties.
Records maintained under subdivision 11c, paragraph (a), may be shared with another local welfare agency that requests the information because it is conducting an investigation under this section of the subject of the records.

Subdivision 10l. Documentation.
When a case is closed that has been open for services, the local welfare agency shall document the outcome of the family assessment or investigation, including a description of services provided and the removal or reduction of risk to the child, if it existed.

Subdivision 10m. Provision of child protective services.
The local welfare agency shall create a written plan, in collaboration with the family whenever possible, within 30 days of the determination that child protective services are needed or upon joint agreement of the local welfare agency and the family that family support and preservation services are needed. Child protective services for a family are voluntary unless ordered by the court.

Subdivision 11. Records.

(a) Except as provided in paragraph (b) or (d) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning,

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or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14 , apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

(d) The investigating agency shall exchange not public data with the Child Maltreatment Review Panel under section 256.022 if the data are pertinent and necessary for a review requested under section 256.022. Upon completion of the review, the not public data received by the review panel must be returned to the investigating agency.

Subdivision 11a. Disclosure of information not required in certain cases.
When interviewing a minor under subdivision 10, an individual does not include the parent or guardian of the minor for purposes of section 13.04, subdivision 2, when the parent or guardian is the alleged perpetrator of the abuse or neglect.

Subdivision 11b. Data received from law enforcement.
Active law enforcement investigative data received by a local welfare agency or agency responsible for assessing or investigating the report under this section are confidential data on individuals. When this data become inactive in the law enforcement agency, the data are private data on individuals.

Subdivision 11c. Welfare, court services agency, and school records maintained.
Notwithstanding sections 138.163 and 138.17, records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, court services agencies, or schools under this section shall be destroyed as provided in paragraphs (a) to (d) by the responsible authority.

(a) For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of four years. Records under this paragraph may not be used for employment, background checks, or purposes other than to assist in future risk and safety assessments.

(b) All records relating to reports which, upon investigation, indicate either maltreatment or a need for child protective

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services shall be maintained for at least ten years after the date of the final entry in the case record.

(c) All records regarding a report of maltreatment, including any notification of intent to interview which was received by a school under subdivision 10, paragraph (d), shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed under this subdivision.

(d) Private or confidential data released to a court services agency under subdivision 10h must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed under this subdivision.

Subdivision 11d. Disclosure in child fatality or near fatality cases.

(a) The definitions in this paragraph apply to this section.

(1) "Child fatality" means the death of a child from suspected abuse, neglect, or maltreatment.

(2) "Near fatality" means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) "Findings and information" means a written summary described in paragraph (c) of actions taken or services rendered by a local social services agency following receipt of a report.

(b) Notwithstanding any other provision of law and subject to this subdivision, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) a person is criminally charged with having caused the child fatality or near fatality; or

(2) a county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's death.

(c) Findings and information disclosed under this subdivision consist of a written summary that includes any of the following information the agency is able to provide:

(1) the dates, outcomes, and results of any actions taken or services rendered;

(2) the results of any review of the state child mortality review panel, a local child mortality review panel, a local community child protection team, or any public agency; and

(3) confirmation of the receipt of all reports, accepted or not accepted, by the local welfare agency for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the agency's determination.

(d) Nothing in this subdivision authorizes access to the private data in the custody of a local social services agency, or the disclosure to the public of the records or content of any psychiatric, psychological, or therapeutic evaluations, or the disclosure of information that would reveal the identities of persons who provided information related to suspected abuse, neglect, or maltreatment of the child.

(e) A person whose request is denied may apply to the appropriate court for an order compelling disclosure of all or part of the findings and information of the public agency. The application must set forth, with reasonable particularity, factors supporting the application. The court has jurisdiction to issue these orders. Actions under this section must be set down for immediate hearing, and subsequent proceedings in those actions must be given priority by the appellate courts.

(f) A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

Subdivision 12. Duties of facility operators.

Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, sexual abuse, or maltreatment of a child in a facility while in the care of that facility may be charged with a violation of section 609.378. The facility operator shall inform all mandated reporters employed by or otherwise

associated with the facility of the duties required of mandated reporters and shall inform all mandatory reporters of the prohibition against retaliation for reports made in good faith under this section.

Subdivision 13. [Repealed, 1988 c 625 s 9]

Subdivision 14. Conflict of interest.

(a) A potential conflict of interest related to assisting in an assessment under this section resulting in a direct or shared financial interest with a child abuse and neglect treatment provider or resulting from a personal or family relationship with a party in the investigation must be considered by the local welfare agency in an effort to prevent unethical relationships.

(b) A person who conducts an assessment under this section or section 626.5561 may not have:

(1) any direct or shared financial interest or referral relationship resulting in a direct shared financial gain with a child abuse and neglect treatment provider; or

(2) a personal or family relationship with a party in the investigation. If an independent assessor is not available, the person responsible for making the determination under this section may use the services of an assessor with a financial interest, referral, or personal or family relationship.

Subdivision 15. Auditing.

The commissioner of human services shall regularly audit for accuracy the data reported by counties on maltreatment of minors.

626.557 Report of Maltreatment of Vulnerable Adults

Subdivision 1. Public policy.

The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated. In addition, it is the policy of this state to require the reporting of suspected maltreatment of vulnerable adults, to provide for the voluntary reporting of maltreatment of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases.

Subdivision 2. [Repealed, 1995 c 229 art 1 s 24]

Subdivision 3. Timing of report.

(a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately report the information to the common entry point. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

(1) the individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility; or

(2) the reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section 626.5572, subdivision 21, clause (4).

(b) A person not required to report under the provisions of this section may voluntarily report as described above.

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the common entry point.

(d) Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

(e) A mandated reporter who knows or has reason to believe that an error under section 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead agency will determine or should determine that the reported error was not neglect according to the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5), the reporter or facility may provide to the common entry point or directly to the lead agency information explaining how the event meets the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5). The lead agency shall consider this information when making an initial disposition of the report under subdivision 9c.

Subdivision 3a. Report not required.

The following events are not required to be reported under this section:

(a) A circumstance where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected maltreatment, unless

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the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative, has consented to disclosure in a manner which conforms to federal requirements. Facilities whose patients or residents are covered by such a federal law shall seek consent to the disclosure of suspected maltreatment from each patient or resident, or a guardian, conservator, or legal representative, upon the patient's or resident's admission to the facility. Persons who are prohibited by federal law from reporting an incident of suspected maltreatment shall immediately seek consent to make a report.

(b) Verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior by these persons does not constitute abuse unless the behavior causes serious harm. The operator of the facility or a designee shall record incidents of aggression and self-abusive behavior to facilitate review by licensing agencies and county and local welfare agencies.

(c) Accidents as defined in section 626.5572, subdivision 3.

(d) Events occurring in a facility that result from an individual's error in the provision of therapeutic conduct to a vulnerable adult, as provided in section 626.5572, subdivision 17, paragraph (c), clause (4).

(e) Nothing in this section shall be construed to require a report of financial exploitation, as defined in section 626.5572, subdivision 9, solely on the basis of the transfer of money or property by gift or as compensation for services rendered.

Subdivision 4. Reporting.

A mandated reporter shall immediately make an oral report to the common entry point. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. To the extent possible, the report must be of sufficient content to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment. A mandated reporter may disclose not public data, as defined in section 13.02, and medical records under section 144.335, to the extent necessary to comply with this subdivision.

Subdivision 4a. Internal reporting of maltreatment.

(a) Each facility shall establish and enforce an ongoing written procedure in compliance with applicable licensing rules to ensure that all cases of suspected maltreatment are reported. If a facility has an internal reporting procedure, a mandated reporter may meet the reporting requirements of this section by reporting internally. However, the facility remains responsible for complying with the immediate reporting requirements of this section.

(b) A facility with an internal reporting procedure that receives an internal report by a mandated reporter shall give the mandated reporter a written notice stating whether the facility has reported the incident to the common entry point. The written notice must be provided within two working days and in a manner that protects the confidentiality of the reporter.

(c) The written response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by the facility on whether to report the incident to the common entry point, then the mandated reporter may report externally.

(d) A facility may not prohibit a mandated reporter from reporting externally, and a facility is prohibited from retaliating against a mandated reporter who reports an incident to the common entry point in good faith. The written notice by the facility must inform the mandated reporter of this protection from retaliatory measures by the facility against the mandated reporter for reporting externally.

Subdivision 5. Immunity; protection for reporters.

(a) A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.

(b) A person employed by a lead agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

(c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is

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immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.

Subdivision 6. Falsified reports.
A person or facility who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons and for punitive damages up to $10,000 and attorney's fees.

Subdivision 7. Failure to report.
A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure. Nothing in this subdivision imposes vicarious liability for the acts or omissions of others.

Subdivision 8. Evidence not privileged.
No evidence regarding the maltreatment of the vulnerable adult shall be excluded in any proceeding arising out of the alleged maltreatment on the grounds of lack of competency under section 595.02.

Subdivision 9. Common entry point designation.

(a) Each county board shall designate a common entry point for reports of suspected maltreatment. Two or more county boards may jointly designate a single common entry point. The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.

(b) The common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment. The common entry point shall use a standard intake form that includes:

(1) the time and date of the report;

(2) the name, address, and telephone number of the person reporting;

(3) the time, date, and location of the incident;

(4) the names of the persons involved, including but not limited to, perpetrators, alleged victims, and witnesses;

(5) whether there was a risk of imminent danger to the alleged victim;

(6) a description of the suspected maltreatment;

(7) the disability, if any, of the alleged victim;

(8) the relationship of the alleged perpetrator to the alleged victim;

(9) whether a facility was involved and, if so, which agency licenses the facility;

(10) any action taken by the common entry point;

(11) whether law enforcement has been notified;

(12) whether the reporter wishes to receive notification of the initial and final reports; and

(13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

(c) The common entry point is not required to complete each item on the form prior to dispatching the report to the appropriate investigative agency.

(d) The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

(e) If a report is initially made to a law enforcement agency or a lead agency, those agencies shall take the report on the appropriate common entry point intake forms and immediately forward a copy to the common entry point.

(f) The common entry point staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section.

(g) When a centralized database is available, the common entry point has access to the centralized database and must log the reports in on the database.

Subdivision 9a. Evaluation and referral of reports made to a common entry point unit.
The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the common entry point determines that there is an immediate need for adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

(3) if the report references alleged or suspected maltreatment and there is no immediate need for adult protective

services, the common entry point shall notify the appropriate lead agency as soon as possible, but in any event no longer than two working days;

(4) if the report does not reference alleged or suspected maltreatment, the common entry point may determine whether the information will be referred; and

(5) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman established under section 245.92. Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

Subdivision 9b. Response to reports.
Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead agency shall complete the investigative process for reports within its jurisdiction. Any other lead agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead agency shall obtain the results of any investigation conducted by law enforcement officials. The lead agency has the right to enter facilities and inspect and copy records as part of investigations. The lead agency has access to not public data, as defined in section 13.02, and medical records under section 144.335, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead agency shall develop guidelines for prioritizing reports for investigation.

Subdivision 9c. Lead agency; notifications, dispositions, and determinations.

(a) Upon request of the reporter, the lead agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) Upon conclusion of every investigation it conducts, the lead agency shall make a final disposition as defined in section 626.5572, subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment, the lead agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(d) The lead agency shall complete its final disposition within 60 calendar days. If the lead agency is unable to complete its final disposition within 60 calendar days, the lead agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation:

(1) the vulnerable adult or the vulnerable adult's legal guardian, when known, if the lead agency knows them to be aware of the investigation, and

(2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable,

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of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. A lead agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(e) Within ten calendar days of completing the final disposition, the lead agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons:

(1) the vulnerable adult, or the vulnerable adult's legal guardian, if known unless the lead agency knows that the notification would endanger the well-being of the vulnerable adult;

(2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult;

(3) the alleged perpetrator, if known;

(4) the facility; and

(5) the ombudsman for older Minnesotans, or the ombudsman for mental health and developmental disabilities, as appropriate.

(f) The lead agency shall notify the vulnerable adult who is the subject of the report or the vulnerable adult's legal guardian, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal or review rights under this section or section 256.021.

(g) The lead agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing boards. These reports must include the names of substantiated perpetrators. The lead agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

(h) In order to avoid duplication, licensing boards shall consider the findings of the lead agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

(i) The lead agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Subdivision 9d. Administrative reconsideration of final disposition of maltreatment and disqualification based on serious or recurring maltreatment; review panel.

(a) Except as provided under paragraph (e), any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead agency's determination, who contests the lead agency's final disposition of an allegation of maltreatment, may request the lead agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian. If mailed, the request for reconsideration must be postmarked and sent to the lead agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead agency within 30 calendar days after the individual's receipt of the notice of disqualification.

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(b) Except as provided under paragraphs (e) and (f), if the lead agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section 256.021 if the lead agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or if the disqualification is not set aside under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing shall not be conducted under paragraph (b). When a fine is based on a determination that the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, reconsideration of the maltreatment determination shall not be conducted under this section. If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

(1) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

(2) For purposes of any background studies under chapter 245C, when a determination of substantiated

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maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section 245C.31.

Subdivision 9e. Education requirements.

(a) The commissioners of health, human services, and public safety shall cooperate in the development of a joint program for education of lead agency investigators in the appropriate techniques for investigation of complaints of maltreatment. This program must be developed by July 1, 1996. The program must include but need not be limited to the following areas:

(1) information collection and preservation;

(2) analysis of facts;

(3) levels of evidence;

(4) conclusions based on evidence;

(5) interviewing skills, including specialized training to interview people with unique needs;

(6) report writing;

(7) coordination and referral to other necessary agencies such as law enforcement and judicial agencies;

(8) human relations and cultural diversity;

(9) the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation;

(10) the protective social services that are available to protect alleged victims from further abuse, neglect, or financial exploitation;

(11) the methods by which lead agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and

(12) data practices laws and procedures, including provisions for sharing data.

(b) The commissioners of health, human services, and public safety shall offer at least annual education to others on the requirements of this section, on how this section is implemented, and investigation techniques.

(c) The commissioner of human services, in coordination with the commissioner of public safety shall provide training for the common entry point staff as required in this subdivision and the program courses described in this subdivision, at least four times per year. At a minimum, the training shall be held twice annually in the seven-county metropolitan area and twice annually outside the seven-county metropolitan area. The commissioners shall give priority in the program areas cited in paragraph (a) to persons currently performing assessments and investigations pursuant to this section.

(d) The commissioner of public safety shall notify in writing law enforcement personnel of any new requirements under this section. The commissioner of public safety shall conduct regional training for law enforcement personnel regarding their responsibility under this section.

(e) Each lead agency investigator must complete the education program specified by this subdivision within the first 12 months of work as a lead agency investigator. A lead agency investigator employed when these requirements take effect must complete the program within the first year after training is available or as soon as training is available. All lead agency investigators having responsibility for investigation duties under this section must receive a minimum of eight hours of continuing education or in-service training each year specific to their duties under this section.

Subdivision 10. Duties of county social service agency.

(a) Upon receipt of a report from the common entry point staff, the county social service agency shall immediately assess and offer emergency and continuing protective social services for purposes of preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable adult. In cases of suspected sexual abuse, the county social service agency shall immediately arrange for and make available to the vulnerable adult appropriate medical examination and treatment. When necessary in order to protect the vulnerable adult from further harm, the county social service agency shall seek authority to remove the vulnerable adult from the situation in which the maltreatment occurred. The county social service agency may also investigate to determine whether the conditions which resulted in the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and offer protective social services that are called for by its determination.

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(b) County social service agencies may enter facilities and inspect and copy records as part of an investigation. The county social service agency has access to not public data, as defined in section 13.02, and medical records under section 144.335, that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.

(c) When necessary in order to protect a vulnerable adult from serious harm, the county social service agency shall immediately intervene on behalf of that adult to help the family, vulnerable adult, or other interested person by seeking any of the following:

(1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section 518B.01;

(2) the appointment of a guardian or conservator pursuant to sections 524.5-101 to 524.5-502, or guardianship or conservatorship pursuant to chapter 252A;

(3) replacement of a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator, pursuant to sections 524.5-101 to 524.5-502; or

(4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.The expenses of legal intervention must be paid by the county in the case of indigent persons, under section 524.5-502 and chapter 563. In proceedings under sections 524.5-101 to 524.5-502, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or organization to provide ongoing guardianship services. If the county presents evidence to the court exercising probate jurisdiction that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or protected person even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Subdivision 10a. [Repealed, 1995 c 229 art 1 s 24

Subdivision 11. [Repealed, 1995 c 229 art 1 s 24]

Subdivision 11a. [Repealed, 1995 c 229 art 1 s 24]

Subdivision 12. [Repealed, 1995 c 229 art 1 s 24]

Subdivision 12a. [Repealed, 1983 c 273 s 8]

Subdivision 12b. Data management.

(a) County data. In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph (c). Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall destroy data three calendar years after date of receipt.

(b) Lead agency data. The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

(i) the name of the facility investigated;

(ii) a statement of the nature of the alleged maltreatment;

(iii) pertinent information obtained from medical or other records reviewed;

(iv) the identity of the investigator;

(v) a summary of the investigation's findings;

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(vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;

(vii) a statement of any action taken by the facility;

(viii) a statement of any action taken by the lead agency; and

(ix) when a lead agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known. The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

(i) the name of the vulnerable adult;

(ii) the identity of the individual alleged to be the perpetrator;

(iii) the identity of the individual substantiated as the perpetrator; and

(iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) Identity of reporter. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

(d) Destruction of data. Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be destroyed under the following schedule:

(1) data from reports determined to be false, two years after the finding was made;

(2) data from reports determined to be inconclusive, four years after the finding was made;

(3) data from reports determined to be substantiated, seven years after the finding was made; and

(4) data from reports which were not investigated by a lead agency and for which there is no final disposition, two years from the date of the report.

(e) Summary of reports. The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

(1) whether and where backlogs of cases result in a failure to conform with statutory time frames;

(2) where adequate coverage requires additional appropriations and staffing; and

(3) any other trends that affect the safety of vulnerable adults.

(f) Record retention policy. Each lead agency must have a record retention policy.

(g) Exchange of information. Lead agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(h) Completion time. Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) Notification of other affected parties. A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard

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the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) Federal requirements. Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Subdivision 13. [Repealed, 1995 c 229 art 1 s 24]

Subdivision 14. Abuse prevention plans.

(a) Each facility, except home health agencies and personal care attendant services providers, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of:

(1) the person's susceptibility to abuse by other individuals, including other vulnerable adults;

(2) the person's risk of abusing other vulnerable adults; and

(3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

(c) If the facility, except home health agencies and personal care attendant services providers, knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse prevention plan must detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably be expected to pose to visitors to the facility and persons outside the facility, if unsupervised. Under this section, a facility knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or the facility's ongoing assessments of the vulnerable adult.

Subdivision 15. [Repealed, 1995 c 229 art 1 s 24]

Subdivision 16. Implementation authority.

(a) By September 1, 1995, the attorney general and the commissioners of health and human services, in coordination with representatives of other entities that receive or investigate maltreatment reports, shall develop the common report form described in subdivision 9. The form may be used by mandated reporters, county social service agencies, law enforcement entities, licensing agencies, or ombudsman offices.

(b) The commissioners of health and human services shall as soon as possible promulgate rules necessary to implement the requirements of this section.

(c) By December 31, 1995, the commissioners of health, human services, and public safety shall develop criteria for the design of a statewide database utilizing data collected on the common intake form of the common entry point. The statewide database must be accessible to all entities required to conduct investigations under this section, and must be accessible to ombudsman and advocacy programs.

(d) By September 1, 1995, each lead agency shall develop the guidelines required in subdivision 9b.

Subdivision 17. Retaliation prohibited.

(a) A facility or person shall not retaliate against any person who reports in good faith suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(b) In addition to any remedies allowed under sections 181.931 to 181.935, any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to $10,000, and attorney's fees.

(c) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to:

(1) discharge or transfer from the facility;

(2) discharge from or termination of employment;

(3) demotion or reduction in remuneration for services;

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(4) restriction or prohibition of access to the facility or its residents; or

(5) any restriction of rights set forth in section 144.651.

Subdivision 18. Outreach.
The commissioner of human services shall maintain an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media. The commissioner of human services shall print and make available the form developed under subdivision 9.

Subdivision 19. [Repealed, 1995 c 229 art 1 s 24]

626.5572 Definitions

Subdivision 1. Scope.
For the purpose of section 626.557, the following terms have the meanings given them, unless otherwise specified.

Subdivision 2. Abuse.
"Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:
(1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;

(2) the use of drugs to injure or facilitate crime as defined in section 609.235;

(3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and

(4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451. A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:
(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and

(4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section 245.825.

(c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or 524.5-313, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:
(1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.

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(g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Subdivision 3. Accident.
"Accident" means a sudden, unforeseen, and unexpected occurrence or event which:

(1) is not likely to occur and which could not have been prevented by exercise of due care; and

(2) if occurring while a vulnerable adult is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

Subdivision 4. Caregiver.
"Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

Subdivision 5. Common entry point.
"Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

Subdivision 6. Facility.

(a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a home care provider licensed or required to be licensed under section 144A.46; a hospice provider licensed under sections 144A.75 to 144A.755; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16 , 256B.0625, subdivision 19a, 256B.0651, and 256B.0653 to 256B.0656.

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

Subdivision 7. False.
"False" means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

Subdivision 8. Final disposition.
"Final disposition" is the determination of an investigation by a lead agency that a report of maltreatment under Laws 1995, chapter 229, is substantiated, inconclusive, false, or that no determination will be made. When a lead agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

Subdivision 9. Financial exploitation.
"Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

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(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subdivision 10. Immediately.
"Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

Subdivision 11. Inconclusive.
"Inconclusive" means there is less than a preponderance of evidence to show that maltreatment did or did not occur.

Subdivision 12. Initial disposition.
"Initial disposition" is the lead agency's determination of whether the report will be assigned for further investigation.

Subdivision 13. Lead agency.
"Lead agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes, or boarding care homes.

(b) The Department of Human Services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, chemical health programs, or personal care provider organizations.

(c) The county social service agency or its designee is the lead agency for all other reports.

Subdivision 14. Legal authority.
"Legal authority" includes, but is not limited to:

(1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations;

(2) a contractual obligation; or

(3) documented consent by a competent person.

Subdivision 15. Maltreatment.
"Maltreatment" means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

Subdivision 16. Mandated reporter.
"Mandated reporter" means a professional or professional's delegate while engaged in:

(1) social services;

(2) law enforcement;

(3) education;

(4) the care of vulnerable adults;

(5) any of the occupations referred to in section 214.01, subdivision 2;

(6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation;

(7) an employee or person providing services in a facility as defined in subdivision 6; or

(8) a person that performs the duties of the medical examiner or coroner.

Subdivision 17. Neglect.
"Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with that authority and within the boundary

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of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with:

(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or

(5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:

(i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;

(ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;

(iii) the error is not part of a pattern of errors by the individual;

(iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;

(v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and

(vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

(e) If the findings of an investigation by a lead agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

Subdivision 18. Report.
"Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

Subdivision 19. Substantiated.
"Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

Subdivision 20. Therapeutic conduct.
"Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by:

(1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or

(2) a caregiver.

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Subdivision 21. Vulnerable adult.
"Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, and 256B.0653 to 256B.0656; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

626.5573 Negligence Actions

A violation of sections 626.557 to 626.5572 shall be admissible as evidence of negligence, but shall not be considered negligence per se.

626.561 Interviews with Child Abuse Victims

Subdivision 1. Policy.
It is the policy of this state to encourage adequate and accurate documentation of the number and content of interviews conducted with alleged child abuse victims during the course of a child abuse assessment, criminal investigation, or prosecution, and to discourage interviews that are unnecessary, duplicative, or otherwise not in the best interests of the child.

Subdivision 2. Definitions.
As used in this section:

(a) "child abuse" means physical or sexual abuse as defined in section 626.556, subdivision 2;

(b) "government employee" means an employee of a state or local agency, and any person acting as an agent of a state or local agency;

(c) "interview" means a statement of an alleged child abuse victim which is given or made to a government employee during the course of a child abuse assessment, criminal investigation, or prosecution; and

(d) "record" means an audio or videotape recording of an interview, or a written record of an interview.

Subdivision 3. Record required.
Whenever an interview is conducted, the interviewer must make a record of the interview. The record must contain the following information:

(1) the date, time, place, and duration of the interview;

(2) the identity of the persons present at the interview; and

(3) if the record is in writing, a summary of the information obtained during the interview. The records shall be maintained by the interviewer in accordance with applicable provisions of section 626.556, subdivision 11 and chapter 13.

Subdivision 4. Guidelines on tape recording of interviews.
Every county attorney's office shall be responsible for developing written guidelines on the tape recording of interviews by government employees who conduct child abuse assessments, criminal investigations, or prosecutions. The guidelines are public data as defined in section 13.02, subdivision 14.

626.8454 Manual and Policy for Investigating Cases Involving Children Who are Missing and Endangered

Subdivision 1. Manual.
By July 1, 1994, the superintendent of the Bureau of Criminal Apprehension shall transmit to law enforcement agencies a training and procedures manual on child abduction investigations.

Subdivision 2. Model investigation policy.
By June 1, 1995, the Peace Officer Standards and Training Board shall develop a model investigation policy for cases involving children who are missing and endangered as defined in section 299C.52. The model policy shall describe the procedures for the handling of cases involving children who are missing and

Selected Statutes – Chapter 626 Mandatory Reporting Requirements

endangered. In developing the policy, the board shall consult with representatives of the Bureau of Criminal Apprehension, Minnesota Police Chiefs Association, Minnesota Sheriff's Association, Minnesota Police and Peace Officers Association, Minnesota Association of Women Police, Minnesota County Attorneys Association, a nonprofit foundation formed to combat child abuse, and two representatives of victims advocacy groups selected by the commissioner of corrections. The manual on child abduction investigation shall serve as a basis for defining the specific actions to be taken during the early investigation.

Subdivision 3. Local policy.
By August 1, 1995, each chief of police and sheriff shall establish and implement a written policy governing the investigation of cases involving children who are missing and endangered as defined in section 299C.52. The policy shall be based on the model policy developed under subdivision 2. The policy shall include specific actions to be taken during the initial two-hour period.

Selected Statutes – Chapter 628.26 Criminal Statute of Limitations

628.26 Limitations

(a) Indictments or complaints for any crime resulting in the death of the victim may be found or made at any time after the death of the person killed.

(b) Indictments or complaints for a violation of section 609.25 may be found or made at any time after the commission of the offense.

(c) Indictments or complaints for violation of section 609.282 may be found or made at any time after the commission of the offense if the victim was under the age of 18 at the time of the offense.

(d) Indictments or complaints for violation of section 609.282 where the victim was 18 years of age or older at the time of the offense, or 609.42, subdivision 1, clause (1) or (2), shall be found or made and filed in the proper court within six years after the commission of the offense.

(e) Indictments or complaints for violation of sections 609.342 to 609.345 if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper court within nine years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.

(f) Notwithstanding the limitations in paragraph (e), indictments or complaints for violation of sections 609.342 to 609.344 may be found or made and filed in the proper court at any time after commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. If this evidence is not collected and preserved and the victim was 18 years old or older at the time of the offense, the prosecution must be commenced within nine years after the commission of the offense.

(g) Indictments or complaints for violation of sections 609.466 and 609.52, subdivision 2, clause (3), item (iii), shall be found or made and filed in the proper court within six years after the commission of the offense.

(h) Indictments or complaints for violation of section 609.52, subdivision 2, clause (3), items (i) and (ii), (4), (15), or (16), 609.631, or 609.821, where the value of the property or services stolen is more than $35,000, shall be found or made and filed in the proper court within five years after the commission of the offense.

(i) Except for violations relating to false material statements, representations or omissions, indictments or complaints for violations of section 609.671 shall be found or made and filed in the proper court within five years after the commission of the offense.

(j) Indictments or complaints for violation of sections 609.561 to 609.563, shall be found or made and filed in the proper court within five years after the commission of the offense.

(k) In all other cases, indictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense.

(l) The limitations periods contained in this section shall exclude any period of time during which the defendant was not an inhabitant of or usually resident within this state.

(m) The limitations periods contained in this section for an offense shall not include any period during which the alleged offender participated under a written agreement in a pretrial diversion program relating to that offense.

(n) The limitations periods contained in this section shall not include any period of time during which physical evidence relating to the offense was undergoing DNA analysis, as defined in section 299C.155, unless the defendant demonstrates that the prosecuting or law enforcement agency purposefully delayed the DNA analysis process in order to gain an unfair advantage.

Selected Statutes – Chapter 629 Domestic Abuse Arrest Policy/Bail/Notice to Victims

629.341 Allowing Probable Cause Arrests for Domestic Violence; Immunity from Liability

Subdivision 1. Arrest.
Notwithstanding section 629.34 or any other law or rule, a peace officer may arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that within the preceding 12 hours the person has committed domestic abuse, as defined in section 518B.01, subdivision 2. The arrest may be made even though the assault did not take place in the presence of the peace officer.

Subdivision 2. Immunity.
A peace officer acting in good faith and exercising due care in making an arrest pursuant to subdivision 1 is immune from civil liability that might result from the officer's action.

Subdivision 3. Notice of rights.
The peace officer shall tell the victim whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include furnishing the victim a copy of the following statement: *"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. The notice must include the resource listing, including telephone number, for the area battered women's shelter, to be designated by the Department of Corrections.

Subdivision 4. Report required.
Whenever a peace officer investigates an allegation that an incident described in subdivision 1 has occurred, whether or not an arrest is made, the officer shall make a written police report of the alleged incident. The report must contain at least the following information: the name, address and telephone number of the victim, if provided by the victim, a statement as to whether an arrest occurred, the name of the arrested person, and a brief summary of the incident. Data that identify a victim who has made a request under section 13.82, subdivision 17 , paragraph (d), and that are private data under that subdivision, shall be private in the report required by this section. A copy of this report must be provided upon request, at no cost, to the victim of domestic abuse, the victim's attorney, or organizations designated by the Minnesota Crime Victims Services Center, the Department of Public Safety, or the commissioner of corrections that are providing services to victims of domestic abuse. The officer shall submit the report to the officer's supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made.

Subdivision 5. Training.
The Board of Peace Officer Standards and Training shall provide a copy of this section to every law enforcement agency in this state on or before June 30, 1983.Upon request of the Board of Peace Officer Standards and Training to the Bureau of Criminal Apprehension, at least one training course must include instruction about domestic abuse. A basic skills course required for initial licensure as a peace officer must, after January 1, 1985, include at least three hours of training in handling domestic violence cases.

629.342 Law Enforcement Policies for Domestic Abuse Arrests

Subdivision 1. Definition.
For purposes of this section, "domestic abuse" has the meaning given in section 518B.01, subdivision 2.

Subdivision 2. Policies required.

(a) By July 1, 1993, each law enforcement agency shall develop, adopt, and implement a written policy regarding arrest procedures for domestic abuse incidents. In the development of a policy, each law enforcement agency shall consult with domestic abuse advocates, community organizations, and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents. The policy shall discourage dual arrests, include consideration of whether one of the parties acted in self defense, and provide guidance to officers concerning instances in which officers should remain at the scene of a domestic abuse incident until the likelihood of further imminent violence has been eliminated.

(b) The Bureau of Criminal Apprehension, the Board of Peace Officer Standards and Training, and the Advisory Council

on Battered Women and Domestic Abuse appointed by the commissioner of corrections under section 611A.34, in consultation with the Minnesota Chiefs of Police Association, the Minnesota Sheriffs Association, and the Minnesota Police and Peace Officers Association, shall develop a written model policy regarding arrest procedures for domestic abuse incidents for use by local law enforcement agencies. Each law enforcement agency may adopt the model policy in lieu of developing its own policy under the provisions of paragraph (a).

(c) Local law enforcement agencies that have already developed a written policy regarding arrest procedures for domestic abuse incidents before July 1, 1992, are not required to develop a new policy but must review their policies and consider the written model policy developed under paragraph (b).

Subdivision 3. Assistance to victim where no arrest.
If a law enforcement officer does not make an arrest when the officer has probable cause to believe that a person is committing or has committed domestic abuse or violated an order for protection, the officer shall provide immediate assistance to the victim. Assistance includes:

(1) assisting the victim in obtaining necessary medical treatment; and

(2) providing the victim with the notice of rights under section 629.341, subdivision 3.

Subdivision 4. Immunity.
A peace officer acting in good faith and exercising due care in providing assistance to a victim pursuant to subdivision 3 is immune from civil liability that might result from the officer's action.

629.715 Release in Cases Involving Crimes Against Persons; Surrender of Firearms

Subdivision 1. Judicial review; release.

(a) When a person is arrested for a crime against the person, the judge before whom the arrested person is taken shall review the facts surrounding the arrest and detention. If the person was arrested or detained for committing a crime of violence, as defined in section 629.725, the prosecutor or other appropriate person shall present relevant information involving the victim or the victim's family's account of the alleged crime to the judge to be considered in determining the arrested person's release. The arrested person must be ordered released pending trial or hearing on the person's personal recognizance or on an order to appear or upon the execution of an unsecured bond in a specified amount unless the judge determines that release

(1) will be inimical to public safety,

(2) will create a threat of bodily harm to the arrested person, the victim of the alleged crime, or another, or

(3) will not reasonably assure the appearance of the arrested person at subsequent proceedings.

(b) If the judge determines release under paragraph (a) is not advisable, the judge may impose any conditions of release that will reasonably assure the appearance of the person for subsequent proceedings, or will protect the victim of the alleged crime, or may fix the amount of money bail without other conditions upon which the arrested person may obtain release.

Subdivision 2. Surrender of firearms.
The judge may order as a condition of release that the person surrender to the local law enforcement agency all firearms, destructive devices, or dangerous weapons owned or possessed by the person, and may not live in a residence where others possess firearms. Any firearm, destructive device, or dangerous weapon surrendered under this subdivision shall be inventoried and retained, with due care to preserve its quality and function, by the local law enforcement agency, and must be returned to the person upon the person's acquittal, when charges are dismissed, or if no charges are filed. If the person is convicted, the firearm must be returned when the court orders the return or when the person is discharged from probation and restored to civil rights. If the person is convicted of a designated offense as defined in section 609.531, the firearm is subject to forfeiture as provided under that section. This condition may be imposed in addition to any other condition authorized by rule 6.02 of the Rules of Criminal Procedure.

Subdivision 3. Written order.
If conditions of release are imposed, the judge shall issue a written order for conditional release. The court administrator shall immediately distribute a copy of the order for conditional release to the agency having custody of the arrested person and shall provide the agency having custody of the arrested person with any available information on the location of the victim in a manner that protects the victim's safety. Either the court or its designee or the agency having custody of the arrested person shall serve upon the defendant a copy of the order. Failure to serve the arrested person with a copy of the order for conditional release does not invalidate the conditions of release.

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Subdivision 4. No contact order.
If the judge imposes as a condition of release a requirement that the person have no contact with the victim of the alleged crime, the judge may also, on its own motion or that of the prosecutor or on request of the victim, issue an ex parte temporary restraining order under section 609.748, subdivision 4, or an ex parte temporary order for protection under section 518B.01, subdivision 7. Notwithstanding section 518B.01, subdivision 7, paragraph (b), or 609.748, subdivision 4, paragraph (c), the temporary order is effective until the defendant is convicted or acquitted, or the charge is dismissed, provided that upon request the defendant is entitled to a full hearing on the restraining order under section 609.748, subdivision 5, or on the order for protection under section 518B.01. The hearing must be held within seven days of the defendant's request.

629.72 Bail in Cases of Domestic Abuse, Harassment, Violation of an Order for Protection, or Violation of a Domestic Abuse No Contact Order

Subdivision 1. Definitions.

(a) For purposes of this section, the following terms have the meanings given them.

(b) "Domestic abuse" has the meaning given in section 518B.01, subdivision 2.

(c) "Harassment" has the meaning given in section 609.749.

(d) "Violation of a domestic abuse no contact order" has the meaning given in section 518B.01, subdivision 22.

(e) "Violation of an order for protection" has the meaning given in section 518B.01, subdivision 14.

Subdivision 1a. Allowing detention in lieu of citation; release.

(a) Notwithstanding any other law or rule, an arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with harassment, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order.

(b) Notwithstanding any other law or rule, an individual who is arrested on a charge of harassing any person, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order, must be brought to the police station or county jail. The officer in charge of the police station or the county sheriff in charge of the jail shall issue a citation in lieu of continued detention unless it reasonably appears to the officer or sheriff that release of the person (1) poses a threat to the alleged victim or another family or household member, (2) poses a threat to public safety, or (3) involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings.

(c) If the arrested person is not issued a citation by the officer in charge of the police station or the county sheriff, the arrested person must be brought before the nearest available judge of the district court in the county in which the alleged harassment, domestic abuse, violation of an order for protection, or violation of a domestic abuse no contact order took place without unnecessary delay as provided by court rule.

Subdivision 2. Judicial review; release; bail.

(a) The judge before whom the arrested person is brought shall review the facts surrounding the arrest and detention of a person arrested for domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order. The prosecutor or prosecutor's designee shall present relevant information involving the victim's or the victim's family's account of the alleged crime to the judge to be considered in determining the arrested person's release. In making a decision concerning pretrial release conditions of a person arrested for domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order, the judge shall review the facts of the arrest and detention of the person and determine whether:

(1) release of the person poses a threat to the alleged victim, another family or household member, or public safety; or

(2) there is a substantial likelihood the person will fail to appear at subsequent proceedings. Before releasing a person arrested for or charged with a crime of domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order, the judge shall make findings on the record, to the extent possible, concerning the determination made in accordance with the factors specified in clauses (1) and (2).

(b) The judge may impose conditions of release or bail, or both, on the person to protect the alleged victim or other family or household members and to ensure the appearance of the person at subsequent proceedings. These conditions may include an order:

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(1) enjoining the person from threatening to commit or committing acts of domestic abuse or harassment against the alleged victim or other family or household members or from violating an order for protection or a domestic abuse no contact order;

(2) prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;

(3) directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the alleged victim is likely to be;

(4) prohibiting the person from possessing a firearm or other weapon specified by the court;

(5) prohibiting the person from possessing or consuming alcohol or controlled substances; and

(6) specifying any other matter required to protect the safety of the alleged victim and to ensure the appearance of the person at subsequent proceedings.

(c) If conditions of release are imposed, the judge shall issue a written order for conditional release. The court administrator shall immediately distribute a copy of the order for conditional release to the agency having custody of the arrested person and shall provide the agency having custody of the arrested person with any available information on the location of the victim in a manner that protects the victim's safety. Either the court or its designee or the agency having custody of the arrested person shall serve upon the defendant a copy of the order. Failure to serve the arrested person with a copy of the order for conditional release does not invalidate the conditions of release.

(d) If the judge imposes as a condition of release a requirement that the person have no contact with the alleged victim, the judge may also, on its own motion or that of the prosecutor or on request of the victim, issue an ex parte temporary restraining order under section 609.748, subdivision 4, or an ex parte temporary order for protection under section 518B.01, subdivision 7. Notwithstanding section 518B.01, subdivision 7, paragraph (b), or 609.748, subdivision 4, paragraph (c), the temporary order is effective until the defendant is convicted or acquitted, or the charge is dismissed, provided that upon request the defendant is entitled to a full hearing on the restraining order under section 609.748, subdivision 5, or on the order for protection under section 518B.01. The hearing must be held within seven days of the defendant's request.

Subdivision 2a. Electronic monitoring as a condition of pretrial release.

(a) Until the commissioner of corrections has adopted standards governing electronic monitoring devices used to protect victims of domestic abuse, the court, as a condition of release, may not order a person arrested for a crime described in section 609.135, subdivision 5a, paragraph (b), to use an electronic monitoring device to protect a victim's safety.

(b) Notwithstanding paragraph (a), district courts in the Tenth Judicial District may order, as a condition of a release, a person arrested on a charge of a crime described in section 609.135, subdivision 5a , paragraph (b), to use an electronic monitoring device to protect the victim's safety. The courts shall make data on the use of electronic monitoring devices to protect a victim's safety in the Tenth Judicial District available to the commissioner of corrections to evaluate and to aid in development of standards for the use of devices to protect victims of domestic abuse.

Subdivision 3. Release.

If the arrested person is not issued a citation by the officer in charge of the police station or the county sheriff pursuant to subdivision 1, and is not brought before a judge within the time limits prescribed by court rule, the arrested person shall be released by the arresting authorities, and a citation must be issued in lieu of continued detention.

Subdivision 4. Service of restraining order or order for protection.

If a restraining order is issued under section 609.748 or an order for protection is issued under section 518B.01 while the arrested person is still in detention, the order must be served upon the arrested person during detention if possible.

Subdivision 5. Violations of conditions of release.

The judge who released the arrested person shall issue a warrant directing that the person be arrested and taken immediately before the judge, if the judge:

(1) receives an application alleging that the arrested person has violated the conditions of release; and

(2) finds that probable cause exists to believe that the conditions of release have been violated.

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Subdivision 6. Notice regarding release of arrested person.

(a) Immediately after issuance of a citation in lieu of continued detention under subdivision 1, or the entry of an order for release under subdivision 2, but before the arrested person is released, the agency having custody of the arrested person or its designee must make a reasonable and good faith effort to inform orally the alleged victim, local law enforcement agencies known to be involved in the case, if different from the agency having custody, and, at the victim's request any local battered women's and domestic abuse programs established under section 611A.32 or sexual assault programs of:

(1) the conditions of release, if any;

(2) the time of release;

(3) the time, date, and place of the next scheduled court appearance of the arrested person and the victim's right to be present at the court appearance; and

(4) if the arrested person is charged with domestic abuse, the location and telephone number of the area battered women's shelter as designated by the Department of Corrections.

(b) As soon as practicable 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 paragraph (a), clauses (2) and (3).

Subdivision 7. Notice to victim regarding bail hearing.

When a person arrested for or a juvenile detained for domestic assault or harassment is scheduled to be reviewed under subdivision 2 for release from pretrial detention, the court shall make a reasonable good faith effort to notify:

(1) the victim of the alleged crime;

(2) if the victim is incapacitated or deceased, the victim's family; and

(3) if the victim is a minor, the victim's parent or guardian. The notification must include:

(a) the date and approximate time of the review;

(b) the location where the review will occur;

(c) the name and telephone number of a person that can be contacted for additional information; and

(d) a statement that the victim and the victim's family may attend the review.

629.725 Notice to Crime Victim Regarding Bail Hearing of Arrested or Detained Person

When a person arrested or a juvenile detained for a crime of violence or an attempted crime of violence is scheduled to be reviewed under section 629.715 for release from pretrial detention, the court shall make a reasonable and good faith effort to notify the victim of the alleged crime. If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent or guardian. The notification 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 that can be contacted for additional information; and

(4) a statement that the victim and the victim's family may attend the review. As used in this section, "crime of violence" has the meaning given it in section 624.712, subdivision 5, and also includes section 609.21, gross misdemeanor violations of section 609.224, and nonfelony violations of sections 518B.01, 609.2231, 609.3451, 609.748, and 609.749.

629.73 Notice to Crime Victim Regarding Release of Arrested or Detained Person

Subdivision 1. Oral notice.

When a person arrested or a juvenile detained for a crime of violence or an 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 inform orally the victim or, if the victim is incapacitated, the same or next of kin, or if the victim is a minor, the victim's parent or guardian of the following matters:

(1) the conditions of release, if any;

(2) the time of release;

(3) the time, date, and place of the next scheduled court appearance of the arrested or detained person and, where applicable, the victim's right to be present at the court appearance; and

(4) the location and telephone number of the area sexual assault program as designated by the commissioner of corrections.

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Subdivision 2. Written notice.
As soon as practicable after the arrested or detained person is released, the agency having custody of the arrested or detained person or its designee must personally deliver or mail to the alleged victim written notice of the information contained in subdivision 1, clauses (2) and (3).

629.735 Notice to Local Law Enforcement Agency Regarding Release of Arrested or Detained Person

When a person arrested or a juvenile detained for a crime of violence or an 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 inform any local law enforcement agencies known to be involved in the case, if different from the agency having custody, of the following matters:

(1) the conditions of release, if any;

(2) the time of release; and

(3) the time, date, and place of the next scheduled court appearance of the arrested or detained person.

Selected Statutes – Chapter 631 Courtroom/Spectator/Supportive Persons

631.04 Excluding Minors from Attendance at Criminal Trials; Duty of Officer; Penalty

A minor under the age of 17 who is not a party to, witness in, or directly interested in a criminal prosecution or trial before a district court, may not be present at the trial. A police officer, sheriff, or other officer in charge of a court and attending upon the trial of a criminal case in the court, shall exclude a minor under age of 17 from the room in which the trial is being held. This section does not apply when the minor is permitted to attend by order of the court before which the trial is being held. A police officer, sheriff, or deputy sheriff who knowingly neglects or refuses to carry out the provisions of this section is guilty of a misdemeanor.

631.045 Excluding Spectators from the Courtroom

At the trial of a complaint or indictment for a violation of sections 609.109, 609.341 to 609.3451, 609.3453, or 617.246, subdivision 2, when a minor under 18 years of age is the person upon, with, or against whom the crime is alleged to have been committed, the judge may exclude the public from the courtroom during the victim's testimony or during all or part of the remainder of the trial upon a showing that closure is necessary to protect a witness or ensure fairness in the trial. The judge shall give the prosecutor, defendant and members of the public the opportunity to object to the closure before a closure order. The judge shall specify the reasons for closure in an order closing all or part of the trial. Upon closure the judge shall only admit persons who have a direct interest in the case.

631.046 Authorizing Presence of Support Person for Minor Prosecuting Witness

Subdivision 1. Child abuse and violent crime cases.
Notwithstanding any other law, a prosecuting witness under 18 years of age in a case involving child abuse as defined in section 630.36, subdivision 2, a crime of violence, as defined in section 624.712, subdivision 5, or an assault under section 609.224 or 609.2242, may choose to have in attendance or be accompanied by a parent, guardian, or other supportive person, whether or not a witness, at the omnibus hearing or at the trial, during testimony of the prosecuting witness. If the person so chosen is also a prosecuting witness, the prosecution shall present on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

Subdivision 2. Other cases.
Notwithstanding any other law, a prosecuting witness in any case involving criminal sexual conduct as defined in sections 609.342, 609.343, 609.344, and 609.345 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 follow the motion procedure outlined in subdivision 1 to determine whether or not the supportive person's presence will be permitted.

Selected Statutes – Chapter 631 Courtroom/Spectator/Supportive Persons

631.07 Order of Final Argument

When the giving of evidence is concluded in a criminal trial, unless the case is submitted on both sides without argument, the prosecution may make a closing argument to the jury. The defense may then make its closing argument to the jury. The prosecution shall then have the right to reply in rebuttal to the closing argument of the defense.

631.52 Effect of Certain Convictions on Custody and Parenting Time Rights

Subdivision 1. Suspension of parenting time rights; transfer of custody.

(a) If a person who has court-ordered custody of a child or parenting time rights is convicted of a crime listed in subdivision 2 and if no action is pending regarding custody or parenting time, the sentencing court shall refer the matter to the appropriate family court for action under this section. The family court shall:

(1) grant temporary custody to the noncustodial parent, unless it finds that another custody arrangement is in the best interests of the child; or

(2) suspend parenting time rights, unless it finds that parenting time with the convicted person is in the best interests of the child. The family court shall expedite proceedings under this section. The defendant has the burden of proving that continued custody or parenting time with the defendant is in the best interests of the child. If the victim of the crime was a family or household member as defined in section 518B.01, subdivision 2, the standard of proof is clear and convincing evidence. A guardian ad litem must be appointed in any case to which this section applies.

(b) If a person who has child custody or parenting time rights was convicted of a crime listed in subdivision 2 before July 1, 1990, then any interested party may petition the sentencing court for relief under paragraph (a) if:

(1) the defendant is currently incarcerated, on probation, or under supervised release for the offense; or

(2) the victim of the crime was a family or household member as defined in section 518B.01, subdivision 2 .

Subdivision 2. Application.

Subdivision 1 applies to the following crimes or similar crimes under the laws of the United States or any other state:

(1) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(2) manslaughter in the first degree under section 609.20;

(3) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(4) kidnapping under section 609.25;

(5) depriving another of custodial or parental rights under section 609.26;

(6) soliciting, inducing, promoting, or receiving profit derived from prostitution involving a minor under section 609.322;

(7) criminal sexual conduct in the first degree under section 609.342;

(8) criminal sexual conduct in the second degree under section 609.343;

(9) criminal sexual conduct in the third degree under section 609.344, subdivision 1, paragraph (c), (f), or (g);

(10) solicitation of a child to engage in sexual conduct under section 609.352;

(11) incest under section 609.365;

(12) malicious punishment of a child under section 609.377;

(13) neglect of a child under section 609.378;

(14) terroristic threats under section 609.713; or

(15) felony harassment or stalking under section 609.749.

Selected Statutes – Chapter 638 Board of Pardons

638.04 Meetings

The Board of Pardons shall hold meetings at least twice each year and shall hold a meeting whenever it takes formal action on an application for a pardon or commutation of sentence. All board meetings shall be open to the public as provided in chapter 13D.The victim of an applicant's crime has a right to submit an oral or written statement at the meeting. 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

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denied. In addition, any law enforcement agency may submit an oral or written statement at the meeting, giving its recommendation on whether the application should be granted or denied. The board must consider the victim's and the law enforcement agency's statement when making its decision on the application.

638.06 Action on Application

Every application for relief by the Pardon Board shall be filed with the secretary of the Board of Pardons not less than 60 days before the meeting of the board at which consideration of the application is desired. If an application for a pardon or commutation has been once heard and denied on the merits, no subsequent application shall be filed without the consent of two members of the board endorsed on the application. Immediately on receipt of any application, the secretary to the board shall mail notice of the application, and of the time and place of hearing on it, to the judge of the court where the applicant was tried and sentenced, and to the prosecuting attorney who prosecuted the applicant, or a successor in office. Additionally, the secretary shall publish notice of an application for a pardon extraordinary in the local newspaper of the county where the crime occurred. The secretary shall also make all reasonable efforts to locate any victim of the applicant's crime. The secretary shall mail notice of the application and the time and place of the hearing to any victim who is located. This notice shall specifically inform the victim of the victim's right to be present at the hearing and to submit an oral or written statement to the board as provided in section 638.04.

Rules of Court

Selected Minnesota Rules of Court – Evidence

Rule 412. Past Conduct of Victim of Certain Sex Offenses

(1) In a prosecution for acts of criminal sexual conduct, including attempts or any act of criminal sexual predatory conduct, 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 circumstances:

(a) When consent of the victim is a defense in the case,

(i) evidence of the victim's previous sexual conduct tending to establish 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;

(ii) evidence of the victim's previous sexual conduct with the accused; or

(b) 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, to show the source of the semen, pregnancy or disease.

(2) The accused may not offer evidence described in rule 412(1) except pursuant to the following procedure:

(a) A motion shall be made by the accused prior to the trial, unless later for good cause shown, setting out with particularity the offer of proof of the evidence that the accused intends to offer, relative to the previous sexual conduct of the victim.

(b) If the court deems the offer of proof sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the accused to make a full presentation of the offer of proof.

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the accused regarding the previous sexual conduct of the victim is admissible under the provisions of rule 412(1) and that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court shall make an order stating the extent to which such evidence is admissible. The accused may then offer evidence pursuant to the order of the court.

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in rule 412(1) admissible, the accused may make an offer of proof pursuant to rule 412(2), and the court shall hold an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Selected Minnesota Rules of Court – Juvenile Delinquency

Rule 2.01 Right to Attend Hearing

Juvenile court proceedings are closed to the public except as provided by law. Only the following may attend hearings:

(a) the child, guardian ad litem and counsel for the child;

(b) the parent(s), legal guardian, or legal custodian of the child and their counsel;

(c) the spouse of the child;

(d) the prosecuting attorney;

(e) other persons requested by the parties listed in (a) through (d) and approved by the court;

(f) persons authorized by the court under such conditions as the court may approve;

(g) persons authorized by statute, under such conditions as the court may approve; and

(h) any person who is entitled to receive a summons or notice under these rules.

Rule 2.02 Exclusion of Persons Who Have a Right To Attend Hearings

The court may temporarily exclude any person, except counsel and the guardian ad litem, when it is in the best interests of the child to do so. The court shall note on the record the reasons a person is excluded. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. An unrepresented child can not be excluded on the grounds that it is in the best interests of the child to do so.

Rule 18.05 Hearing

Subdivision 1. In General.

(a) Limited Public Access. The court shall exclude the general public from certification hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court, including victims. The court shall open the hearings to the public in certification proceedings where the child 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 and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(b) Timing. The certification hearing shall be held within thirty (30) days of the filing of the certification motion. Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

(c) Waiver. The child may waive the right to a certification hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a certification hearing by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem; and the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(d) Discovery. The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Rule 30.01 Generally

Subdivision 1. Records Defined.

Juvenile court records include:

(a) all documents filed with the court;

(b) all documents maintained by the court;

(c) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials; and

(d) as relates to delinquency matters, all documents maintained by juvenile probation officers, county home schools and county detention agencies.

Subdivision 2. Duration of Maintaining Records.

The juvenile court shall maintain records as required by Minnesota Statute.

Selected Minnesota Rules of Court – Juvenile Delinquency

Rule 30.02 Availability of Juvenile Court Records

Subdivision 1. By Statute or Rule.
Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules.

Subdivision 2. No Order Required.

(a) Court and Court Personnel. Juvenile court records shall be available to the court and court personnel without a court order.

(b) Child's Counsel, Guardian Ad Litem, and Counsel for the Child's Parent(s), Legal Guardian, or Legal Custodian. Juvenile court records of the child shall be available for inspection, copying and release to the following without court order:

(1) the child's counsel and guardian ad litem;

(2) counsel for the child's parent(s), legal guardian or legal custodian subject to restrictions on copying and release imposed by the court.

(c) Prosecuting Attorney. Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney.

(d) Other. The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

Subdivision 3. Court Order Required.

(a) Person(s) with Custody or Supervision of the Child, and Others. The court may order juvenile court records to be made available for inspection, copying, disclosure or release, subject to such conditions as the court may direct, to:

(1) a representative of a state or private agency providing supervision or having custody of the child under order of the court; or

(2) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order; or

(3) any other person having a legitimate interest in the child or in the operation of the court.

(b) Public. A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying, disclosure or release is:

(1) in the best interests of the child; or

(2) in the interests of public safety; or

(3) necessary for the functioning of the juvenile court system.

(c) Disclosure Prohibited. The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

(d) Disclosure Limited. The inspection, copying, disclosure, or release of the juvenile records listed below is limited pursuant to the identified Rules of Juvenile Delinquency Procedure:

(1) Predisposition report (Rule 15.03, Subdivision 4);

(2) Juvenile certification study (Rule 18.04, Subdivision 4);

(3) Extended jurisdiction juvenile study (Rule 19.03, Subdivision 4); and

(4) Competency examination (Rule 20.02, Subdivision 5).

Selected Minnesota Rules of Court – Public Access

Rule 4. Accessibility to Case Records

Subdivision 1. Accessibility.
All case records are accessible to the public except the following:

(a) Domestic Abuse Records. Records maintained by a court administrator in accordance with the domestic abuse act, Minn. Stat. § 518B.01, until a court order as authorized by subdivision 5 or 7 of section 518B.01 is executed or served upon the record subject who is the respondent to the action;

(b) Court Services Records. Records on individuals maintained by a court, other than records that have been admitted into evidence, that are gathered at the request of a court to:

(1) determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts,

(2) assist in assigning an appropriate sentence or other disposition in a case,

(3) provide the court with a recommendation regarding the custody of minor children, or

(4) provide the court with a psychological evaluation of an individual. Provided, however, that the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location;

Selected Minnesota Rules of Court – Public Access

the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation in a diversion program and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

(c) Judicial Work Product and Drafts. All notes and memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared in accordance with Minn. Stat. 546.24-.25.

(d) Juvenile Appeal Cases. Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the appellate court's written opinion or unless otherwise provided by rule or order of the appellate court.

(e) Race Records. The contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters, and the contents of race data fields in any judicial branch computerized information system, except that the records may be disclosed in bulk format if the recipient of the records:

(1) executes a nondisclosure agreement in a form approved by the state court administrator in which the recipient of the records agrees not to disclose to any third party any information in the records from which either the identity of any participant or other characteristic that could uniquely identify any participant is ascertainable; and

(2) obtains an order from the supreme court authorizing the disclosure. Nothing in this section (e) shall prevent public access to source documents such as complaints or petitions that are otherwise accessible to the public.

(f) Other. Case records that are made inaccessible to the public under:

(1) state statutes, other than Minnesota Statutes, chapter 13;

(2) court rules or orders; or

(3) other applicable law.

The state court administrator shall maintain, publish and periodically update a partial list of case records that are not accessible to the public.

Subdivision 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules.

PART 5

PROSECUTION LETTERS TO VICTIMS

TABLE OF CONTENTS

PART 5 – PROSECUTION LETTERS TO VICTIMS

Guidelines and Statutory Authority

Prosecutors are statutorily required to provide notification to victims throughout the course of the criminal prosecution. This section provides a list of notification requirements, tips, and sample letters for prosecutors to use in creating and/or updating their victim notification letters. **These sample letters are available for downloading in Word format on the OJP Web site at *www.ojp.state.mn.us/MCCVS/CVJU/ publications/Sample_ letters_to_victims.doc***

Notification Requirement

Notice of Prosecution

Victims have a right, if an offender is charged, to be informed of, and participate in, the prosecution process.
Minn. Stat. section 611A.02, subd. 2(b)(5)

Supplemental Notice of Rights

Prosecutors must distribute a supplemental notice of the rights of crime victims to each victim, within a reasonable time after the offender is charged or petitioned. This notice must inform the victim of all statutory victim rights under chapter 611A.
Minn. Stat. section 611A.02, subd. 2(c)

Notification of Plea Agreements

A prosecutor must make a reasonable and good faith effort to notify a victim of the contents of a plea agreement prior to the entry of a plea pursuant to a plea agreement recommendation.
Minn. Stat. section 611A.03, subd. 1

Sentencing

A prosecutor must make a reasonable and good faith effort to inform the victim of the right to be present at the sentencing hearing.
Minn. Stat. section 611A.03, subd. 1

Pretrial Diversion

A prosecutor shall make every reasonable effort to notify and seek input from the victim prior to referring a person into a pretrial diversion program in lieu of prosecution (for certain specified crimes).
Minn. Stat. section 611A.031

Decision to not Charge in Domestic Abuse, Sexual Assault and Harassment Cases

A prosecutor must make every reasonable effort to notify a victim of domestic assault, a criminal sexual conduct offense, or harassment that the prosecutor has decided to decline prosecution or to dismiss the criminal charges filed against the defendant. The prosecutor must also inform the victim of the method of seeking an order for protection or restraining order and that the victim may seek an order without paying a fee.
Minn. Stat. section 611A.0315

Schedule Changes

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. section 611A.033(b)

Disposition Notice

A prosecutor shall make reasonable good faith efforts to notify each affected crime victim, either orally or in writing, with notice of the final disposition of the case. This notice must be provided within 15 working days after conviction, acquittal, or dismissal of a criminal case.

NOTE: If a prosecutor contacts the crime victim in advance of the final case disposition and notifies the victim of the victim's right to request information on the final disposition, the prosecutor shall only be required to provide notice to those victims who have indicated their desire in advance to be notified of the final case disposition. ***This provision only applies to the disposition notice, not to the other notification requirements.***
Minn. Stat. section 611A.039

Part 5 – Prosecution Letters To Victims

Guidelines and Statutory Authority

Civil Commitment Proceedings

The county attorney must make a reasonable effort to provide prompt notice to the victim of the filing of the petition to commit the offender. In addition, the county attorney must make a reasonable effort to promptly notify the victim of the resolution of the petition to commit the offender.
Minn. Stat. section 253B.18, subd. 5a

Notice of Appeal

A prosecutor shall make a reasonable and good faith effort to provide the victim of notice of a pending appeal, either orally or in writing. This notice must be provided within 30 days of the filing of the respondent's brief, 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.
Minn. Stat. section 611A.0395, subd. 1

Notice of Appeal Decision

A prosecutor shall make a reasonable and good faith effort to provide to each affected victim oral or written notice of the decision on an appeal. This notice must be made within 15 working days of the final decision on appeal and must include a brief explanation of what effect if any, the decision has upon the judgment of the trial court and contact information.
Minn. Stat. section 611A.0395, subd. 1(b)

Expungement

The prosecuting authority with jurisdiction over an offense for which expungement is being sought shall make a good faith effort to notify a victim that the expungement is being sought if the victim has made a written request to the prosecuting authority or has included such request in the written request to the commissioner of corrections for notice of release.
Minn. Stat. section 611A.06, subd. 1a; 609A.03, subd. 3

General Guidelines

- Inform the victim of the nature of the charges filed against the offender.
- Provide notice of victim rights in writing, not orally.
- Be clear about the appropriate person to contact in the office (victim advocate or prosecuting attorney).
- Remind victim to inform office of any changes in contact information.
- For court proceedings, make sure the victim knows where to go and any check-in procedures.
- Inform the victim of the likelihood of changes in the court schedule.
- Inform the victim that plea agreements can be made at any time and that the defendant can enter a plea at any time.
- Inform victims of the Minnesota Crime Victim Reparations Board.

Note: These sample letters are available in Microsoft Word format on the OJP Web site: www.ojp.state.mn.us/MCCVS/CVJU/publications.htm

Notice of Decision to Decline Prosecution – Domestic Violence, Sexual Assault, or Harassment Case

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Suspect name*
Name Law Enforcement Agency Number: *Number*
Incident date: *Date*

Dear *Victim Name:*

You are the named victim in the incident that occurred on *date.* Our office has had a chance to review the incident report in that case and has made the decision not to file any charges against *Suspect name.* Given the facts and circumstances surrounding this incident, there does not appear to be sufficient evidence to prove to a jury beyond a reasonable doubt that *Suspect Name* committed the crime. In particular: *[Describe reasons for decision to decline.]*

Even though criminal charges will not be filed, you may want to consider seeking an Order for Protection (OFP) or Harassment Restraining Order (HRO) against *Suspect Name.* You can get information about this process by contacting:

Name County District Court, *telephone number*

Local DV organization, telephone number

An OFP or HRO may assist in keeping the offender away from you, as well as providing other relief. There is no cost to filing an OFP, and, in some circumstances, you may seek a HRO without paying a filing fee. If you have questions or concerns about this matter, please contact *name* for further assistance.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Prosecution – Sample 1

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name city/county File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

You have been identified as a victim in the above-named criminal case. This letter is to inform you that this office has begun criminal prosecution in the above case.

As a victim of a crime, you are guaranteed certain rights under chapter 611A of the Minnesota Statutes. Enclosed is a brochure outlining your rights as a crime victim.

One of your rights as a crime victim is the right to request restitution in the event the defendant enters a plea or is found guilty of the crime. The court may order the defendant to pay restitution to you for any monetary loss you may have incurred as a result of the crime. If you wish to request this payment as part of the sentence, please complete the enclosed ***Affidavit of Restitution*** and return to *location.*

I have been assigned to this case as your advocate and I am here to assist you. I will be working with the prosecutor, who is the attorney assigned to handle this case. Part of my role as an advocate is to keep you informed of the status of your case as well as to assist you with any problems as a result of this crime. As this case progresses through the criminal justice system, I will be sending you notification of court dates. Because you are a victim in this case, it is possible that you may be subpoenaed to testify at a court proceeding. If you receive a subpoena, please call the phone number listed on the subpoena prior to coming to court to determine if your appearance is still necessary.

If you wish to participate in the court proceedings, it is important that this office has up-to-date contact information. Please contact me if you have a change in your telephone number or mailing address. When calling our office, you may be asked to provide the *city/county* attorney number listed above to ensure that we are able to immediately reference your case and route your call properly.

I realize that being a victim of a crime may carry with it substantial burdens. It is our hope to eliminate as many of these difficulties and uncertainties. Please contact our office if you have any questions or concerns.

Yours truly,

Name
Victim Advocate

Enclosures

Notice of Prosecution – Sample 2

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to inform you that our office has charged a case involving you as a victim.

I am the assigned victim advocate for your case. An advocate is not an attorney, but rather a person devoted to assisting crime victims who works in the *Name City/County* Attorney's Office. Advocates are available to help explain the criminal justice process, answer questions, try to resolve problems that crime victims and their families may encounter, and attend court hearings with victims when requested to do so. Victim advocates also serve as a liaison between the prosecutor and crime victims.

As a victim of a crime, you are guaranteed certain rights under chapter 611A of the Minnesota Statutes. Enclosed is a brochure outlining your rights as a crime victim.

It is common for criminal cases to be resolve through plea negotiations, in which case there would be no trial. In the event that a plea agreement is reached with the defendant or defendant's attorney, we will attempt to contact you in advance. Therefore it is important that you notify us of any changes in your contact information.

As a crime victim, you have the right to request restitution in the event the defendant enters a plea or is found guilty of the crime. The court may order the defendant to pay restitution to you for any monetary loss you may have incurred as a result of the crime. If you wish to request this payment as part of the sentence, please complete the enclosed ***Affidavit of Restitution*** and return to this office.

You have a right to attend the court proceedings, however, you are not required to do so unless you have been ordered by the court to appear. This court order is called a subpoena.

Due to the number of cases processed by the court system, delays and last-minute continuances are common. To avoid an unnecessary trip to the court, we recommend that you contact our office one working day before the court proceeding that you plan to attend so you may be informed of any changes or continuances.

Please contact me if you have any questions or concerns about this case.

Yours truly,

Name,
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosures

Notice of Prosecution – Sample 3 (Homicide/Criminal Vehicular Homicide)

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

On behalf of the *Name City/County* Attorney's Office, I wish to express our sympathy to you and your family on the death of your *family member.*

We have undertaken criminal prosecution of *name* for the crimes listed above. The defendant appeared in court on *date* and at that time bail was set in the amount of *$amount.* The defendant is next scheduled to appear on *date* for a *hearing type.*

As a family member of the deceased, you are guaranteed certain rights under chapter 611A of the Minnesota Statutes. Enclosed is a brochure outlining your rights as a crime victim.

One of your rights as a crime victim is the right to request restitution in the event the defendant enters a plea or is found guilty of the crime. The court may order the defendant to pay restitution to you for any monetary loss you may have incurred as a result of the crime. If you wish to request this payment as part of the sentence, please complete the enclosed ***Affidavit of Restitution*** and return to this office.

In addition, as a victim of a violent crime, you may be eligible for compensation under the Minnesota Crime Victim Reparations Board. This program provides financial assistance to victims of violent crime for expenses related to the crime such as medical expenses, counseling, and lost wages. Enclosed is a brochure describing this program.

If you wish to participate in the court proceedings, it is important that this office has up-to-date contact information. Please contact our office to provide us with a current phone number so we are able to contact you when hearings are scheduled. In addition, please notify *name* if you have a change in mailing address.

If you have any questions, please contact this office.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosures

Notice of Prosecution – Sample 4 (Post Initial Appearance)

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to inform you that our office has filed charges in a case in which you have been identified as the victim. For your information, the defendant has made *his/her* first appearance in court on *date* and at that time *describe what occurred.* The defendant's next court date has been scheduled for *date/time* at *location.*

As a victim of a crime, you are guaranteed certain rights under chapter 611A of the Minnesota Statutes. Enclosed is a brochure outlining your rights as a crime victim.

One of your rights as a crime victim is the right to request restitution in the event the defendant pleads guilty or is found guilty of the crime. The court may order the defendant to pay restitution to you for any monetary loss you may have incurred as a result of the crime. If you wish to request this payment as part of the sentence, please complete the enclosed ***Affidavit of Restitution*** and return to this office.

You have a right to attend the court proceedings, however, you are not required to do so unless subpoenaed or ordered by the court. It is important to keep in mind that hearing dates and times change frequently. Please call *this office/the clerk's office at (###) ###-####* one working day in advance of any proceeding you plan to attend so you may be informed of any last-minute changes in scheduling.

Finally, if you wish to participate in the court proceedings, it is important that this office has up-to-date contact information. Please contact our office to provide us with a current phone number and address so we are able to contact you when hearings are scheduled.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosures

Notice of Prosecution – Sample 5 (Post Initial Appearance)

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to advise you that criminal charges have been filed against the above-named defendant. The defendant has made *his/her* first appearance in court on *date* and at that time *describe what occurred.* The defendant's next court date has been scheduled for *date/time* at *location.*

This case has been assigned to *name,* one of the assistant county attorneys in our office. However, if you have questions or concerns related to this case, please contact our victim advocate, *name.* She/he will be able to assist you as this case progresses through the prosecution process.

As a victim of a crime, you are guaranteed certain rights under chapter 611A of the Minnesota Statutes. Enclosed is a brochure outlining your rights as a crime victim.

One of your rights as a crime victim is the right to request restitution in the event the defendant pleads guilty or is found guilty of the crime. The court may order the defendant to pay restitution to you for any monetary loss you may have incurred as a result of the crime. If you wish to request this payment as part of the sentence, please complete the enclosed ***Affidavit of Restitution*** and return to *location* by *date.*

In general, victims have a right to attend the court proceedings, however, they are not required to do so unless subpoenaed or ordered by the court. It is important to keep in mind that hearing dates and times change frequently. If you plan to attend a court proceeding, please call one working day in advance to check on any last-minute changes in scheduling.

Finally, if you wish to participate in the court proceedings, it is important that this office has up-to-date contact information. Please contact our office to provide us with a current phone number and address so we are able to contact you when hearings are scheduled.

If you have any questions, please do not hesitate to call *name* at *telephone number.*

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosures

Notice of Hearing – Sample 1

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*

Dear *Victim Name:*

This letter is to inform you that a *hearing name* in the above-entitled matter is scheduled for *date/time* at *location.* As the victim in this matter, you have a right to attend this hearing, but your presence is not required unless you receive a subpoena which is a court order requiring you to attend.

It is important to keep in mind that hearing dates and times change frequently. Please call our office one working day in advance of any proceeding you plan to attend so you may be informed of any last-minute changes in scheduling.

If you do plan to attend the hearing, please arrive at the courtroom at least 15 minutes prior to the start of the scheduled proceeding, and check-in with the prosecuting attorney on this case.

As always, please call *name* at *telephone number* if you have any questions or concerns regarding this case.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Hearing – Sample 2 (Misdemeanors)

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*

Dear *Victim Name:*

This letter is to inform you that a *hearing name* in the above-entitled matter is scheduled for *date/time* at *location.* As the victim in this matter, you have a right to attend this hearing, but your presence is not required unless you receive a subpoena which is a court order requiring you to attend.

Hearing dates and times are subject to change, sometimes at the last minute. Please call our office one working day in advance of any proceeding you plan to attend so you may be informed of any changes in scheduling. If you do plan to attend the hearing, please arrive at the courtroom at least 15 minutes prior to the start of the scheduled proceeding, and check-in with the prosecuting attorney on this case.

Please keep in mind that most cases are resolved by a plea agreement between the defendant and the *name county/city attorney's office.* If a plea agreement is proposed, our office will notify you about the agreement and ask for your input.

Although there is no proposed plea agreement at this time, it is not unusual for an agreement to be reached on short notice, oftentimes at a pre-trial proceeding. In such instances, we will attempt to reach you by telephone before the defendant enters *his/her* plea. If we are unsuccessful in our attempts to reach you, however, the court may still want the case to proceed and have the defendant enter *his/her* plea. Given this possibility, you may want to let us know now about your feelings on how this case should be resolved. In any case, you are always free to attend any court proceeding or call our office to discuss the likelihood of a plea agreement being made in the upcoming hearing. Given our need to reach you by telephone, please make sure that you notify us of any change in your daytime number.

If you have any questions or concerns regarding this case, please call *name* at *telephone number.*

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Plea Offer

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to advise you that the prosecutor assigned in this case is in the process of negotiating a plea agreement with the defendant. Enclosed is a copy of the agreement that the prosecutor is proposing.

As a victim in this case, you have the right to be made aware of the terms and conditions of the proposed plea agreement and to give your input. Please read the proposal carefully and if you have any questions, concerns, or questions, please contact *name.*

The next scheduled hearing is *date/time,* at which time the defendant may enter a plea of guilty based on this proposed plea agreement. You have a right to attend the plea hearing and voice any objection you have to the proposed plea agreement. If you cannot attend the hearing, you can still ask the prosecutor to notify the court of your objections to the proposed disposition of the case.

The defendant does not have to accept the proposed offer, however, in the event that the defendant accepts this plea agreement, there will not be a jury trial held in this case.

As always, if you have any questions or concerns contact *name.*

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosure

Notice of Sentencing Hearing – Sample 1

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to inform you that the defendant in the above-referenced matter pled guilty to *charge(s)* on date. As part of a plea agreement, the *charge(s),* were dismissed.

Because of the defendant's guilty plea, there will be no trial in this case. Sentencing in this matter has been set for *date/time.* The judge has ordered that a pre-sentence investigation report be prepared by *department name.* The purpose of the pre-sentence investigation report is to inform the judge about the crime, the defendant's criminal and social history, and how the crime affected you (emotionally, financially, and /or physically). You will be contacted by someone from the *department name* prior to sentencing for input into the pre-sentence investigation.

You have a right to provide a victim impact statement to the court, either in writing, orally, or both. If you wish to provide a victim impact statement to the court at the time of sentencing, please contact name at number. You can also request that the prosecutor or an advocate read your victim impact statement on your behalf.

If you wish to make a request for restitution and have not done so, please complete the enclosed ***Affidavit of Restitution*** and return to name as soon as possible. In order to be considered at the sentencing hearing, all information regarding restitution must be received by the court administrator at least three business days before the sentencing hearing.

You will also receive a letter informing you of the defendant's sentence at a later date.

Please contact our office if you have any questions or concerns.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosure

Notice of Sentencing Hearing – Sample 2

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to inform you that the defendant in this case appeared on *date,* pleaded guilty to *charge(s),* and the *other charge(s)* were dismissed. The defendant is scheduled to appear for sentencing at the *Name* County District Court on *date/time.*

As the victim of the crime, you have the right to be present at the sentencing hearing. You also have the right to submit a victim impact statement, either orally or in writing, and the right to object to the plea agreement that has been reached in this matter.

If you would like to submit a victim impact statement at the sentencing hearing, please contact *name/me* as soon as possible. *She/he/I* can discuss the process with you and make arrangements to meet you prior to the start of the hearing.

If you have continuing concerns or questions, please do not hesitate to contact our office.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosure

Notice of Disposition – Sample 1

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*

Dear *Victim Name:*

This letter is to inform you of the outcome in the above-named case in which you are the victim. The defendant appeared on *date,* and, pursuant to a plea agreement, pleaded guilty to *charge(s),* and the *other charge(s)* were dismissed. The judge sentenced the defendant to the following: *(describe sentence in detail)*

- Jail time
- Length of probation, and which agency supervising
- Conditions of probation or stay of adjudication
- No contact provision
- Counseling, treatment, or other conditions
- Restitution

As a victim of the crime, you have the right to be notified prior to the offender's release from detention facility. If you wish to be notified, you can register to receive automated notification regarding the offender's release through the Victim Information Notification Everyday (VINE) system. To register, please call: 877-664-8463.

If you have continuing concerns or questions, please do not hesitate to contact our office.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Disposition – Sample 2 (Prison)

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*
Charges: *List charges*

Dear *Victim Name:*

This letter is to inform you of the outcome in the above-named case in which you are the victim. The defendant appeared on *date,* pleaded guilty to *charge(s),* and the *other charge(s)* were dismissed. The judge sentenced the defendant to the following: *(describe sentence in detail)*

- Length of incarceration
- Length of probation/supervision
- No contact provision
- Counseling, treatment, or other conditions
- Restitution

The defendant has been remanded to the custody of the Minnesota Department of Corrections (DOC). He will first go to the Minnesota Correctional Facility at *Name* for processing, and then will likely be transferred to another facility within *number* of weeks. In general, you can find the location of the defendant, as well as other information, by going to the "offender locator" page on the DOC website: *www.doc.state.mn.us.*

As a victim of the crime, you have the right to be notified when the offender is released from the correctional facility. If you wish to be notified prior to the offender's release, you must make a written request to the DOC. A copy of the DOC form is enclosed. In addition, you can register to receive automated notification regarding the offender's release through the Victim Information Notification Everyday (VINE) system. To register, please call: 877-664-8463. *It is important to remember that release notification to crime victims is not automatic—you must take steps to ensure that your request for notification is given to the proper agency.*

If you have continuing concerns or questions, please do not hesitate to contact our office.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Enclosure

Notice of Decision to Dismiss Charge Against Person Accused of Domestic Assault, Harassment, or Criminal Sexual Conduct

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name *City/County* Attorney File Number: *Number*

Dear *Victim Name:*

You are the named victim in the incident that occurred on *date.* Our office has decided to dismiss the charges against *Suspect name.* Given the facts and circumstances surrounding this incident, there does not appear to be sufficient evidence to prove to a jury beyond a reasonable doubt that *Suspect Name* committed the crime. In particular: *[Describe reasons for decision to dismiss charges.]*

Even though criminal charges have been dismissed, you may want to consider seeking an Order for Protection (OFP) or Harassment Restraining Order (HRO) against *Suspect Name.* You can get information about this process by contacting:

Name County District Court, telephone number

Local DV organization, telephone number

An OFP or a HRO may assist in keeping the offender away from you, as well as providing other relief. There is no cost to filing an OFP, and, in some circumstances, you may seek a HRO without paying a filing fee.

If you have questions or concerns about this matter, please contact *name* for further assistance.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice to Employer of Victim – Prohibition on Employer Retaliation

Employer Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*

Dear *Employer Name*

There is currently a criminal case being prosecuted by the *Name City/County* Attorney in which *Victim Name* is the named victim.

During the course of the criminal proceeding, the victim may wish or be required to attend certain court proceedings. Under Minnesota law, crime victims have the right to take a reasonable amount of time off from their work to attend certain court proceedings without negative employment consequences. Specifically, there are three main provision that provide protections to employees who are crime victims:

- Employers may not retaliate against victims and witnesses who take time off from work to answer a subpoena or answer the request of a prosecutor. Minn. Stat. § 611A.036, subds. 1 and 3.
- Employers cannot retaliate against a victim of a violent crime, as well as the victim's spouse or next of kin, who takes reasonable time off from work to attend proceedings involving the prosecution of the 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, subd. 2.
- Employers are prohibited from retaliating against an employee who takes reasonable time off from work to obtain an order for protection or harassment restraining order. Minn. Stat. 518B.01, subd. 23; 609.748, subd. 10.

The acts that are prohibited include: discharge, discipline, threaten, or otherwise discriminate against or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee took reasonable time off from work to attend the court proceeding. Minn. Stat. 611A.036, subd. 3; 518B.01, subd. 23(a).

Employees must communicate their request for reasonable time off to their employer. 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. 611A.036, subd. 4; 518B.01, subd. 23(a).

There are consequences to the employer for violating these provisions. In particular, an employer who violates these provisions is guilty of a misdemeanor and may be punished for contempt of court. The court has the authority to order the employer pay back wages and offer reinstatement. In addition, the employee may have a civil cause of action against the employer for violating these provisions. A prevailing plaintiff may seek damages and costs, as well as other injunctive relief. Minn. Stat. 611A.036, subd. 5; 518B.01, subd. 23(b).

Attached are copies of the relevant sections of the Minnesota Statutes related to this matter. If you have any questions about this, please feel free to call.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Filing of Appeal

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*

Dear *Victim Name:*

This letter is to inform you that an appeal has been filed in the above-entitled matter by the *defendant/prosecutor.*

The matter has been appealed based upon *[discuss contested issues].* Enclosed is a copy of the briefs submitted by the *Name City/County* Attorney's Office and by the defendant. If you have questions about these issues or the process, please call *name* at *number.*

Once an appeal has been filed, it may take several months for the matter to be resolved. In some cases, the process includes the presentation of oral arguments by the attorneys directly to the *Minnesota Supreme Court/Minnesota Court of Appeals.* Not all cases have oral arguments, but if an oral argument hearing is scheduled, you will be notified of the time and place. [Or: Oral arguments have been scheduled for *date/time* at *location.*] As the victim in this matter, you have a right to attend this hearing, but your presence is not required. If you wish to attend oral arguments, please contact *name* at *number* for further information and directions.

Once the appeal has been decided by the *Minnesota Supreme Court/Minnesota Court of Appeals,* you will be notified of the outcome.

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Outcome of Appeal

Victim Name
Street
City, MN Zip

RE: State of Minnesota vs. *Defendant name*
Name City/County Attorney File Number: *Number*

Dear *Victim Name:*

This letter is to inform you that the appeal that had been filed in the above-entitled matter by the *defendant/prosecutor* has concluded.

In a decision released on *date,* the *Minnesota Supreme Court/Minnesota Court of Appeals* decided that [discuss details of court's decision]. A copy of that decision is enclosed.

If you have questions about the outcome of this appeal, please call *name* at *number.*

Sincerely,

Name
Title (victim/witness coordinator, prosecutor, or other designated person)
Telephone number

Notice of Victims Rights – Minnesota Statutes Chapter 611A

Right to be Notified of

- Victim rights.
- Prosecution process and the right to participate.
- Content of any plea bargain agreements.
- Changes in court proceeding schedule when a victim has been subpoenaed or requested to testify.
- Final disposition of the case.
- Appeals filed by the defendant, the right to attend the oral argument or hearing, and the right to be notified of the final disposition.
- Sentence modifications for the offender, including the date, time and location of the review.
- Release, transfer, or escape of the offender from prison or custodial institution.
- Offender's petition for expungement.
- Right to request restitution and right to apply for reparations.
- Information on the nearest crime victim assistance program or resource.
- Petition to civilly commit an offender, outcome of that petition, and notice of offender's possible discharge/release from civil commitment.

Right to Protection from Harm

- Right to a secure waiting area during court proceedings.
- Right to request address and other information be withheld in open court.
- Right to request law enforcement withhold victim's identity from the public.
- Right to confidential request for HIV testing of offender in sexual assault cases.
- Protection against employer retaliation for victims and witnesses called to testify, and for victims of heinous crimes and their family members wishing to take reasonable time off to attend court proceedings.
- Tampering with a witness is a crime and should be reported.

Right to Participate in Prosecution

- Right to request a speedy trial.
- Right to provide input in a pretrial diversion decision.
- Right to object orally or in writing to a proposed disposition or sentence.
- Right to object orally or in writing to a plea agreement at the hearing.
- Right to inform court of impact of crime orally or in writing at the sentencing hearing.
- Right to inform court at the sentencing hearing of social and economic impact of crime on persons and businesses in the community.
- The right to be present at the sentencing and plea presentation hearings.
- Right to submit statement regarding decision to discharge/release offender from civil commitment.

Right to Apply for Financial Assistance

- Victims of violent crime may apply for financial assistance (reparations) from the state if they have suffered economic loss as a result of the crime.
- Victims may request the court to order the defendant to pay restitution if the defendant is found guilty or pleads guilty.
- Victims may request that a probation violation hearing be schedule 60 days prior to the expiration of probation if restitution has not been paid.

Domestic Violence, Sexual Assault, and Harassment Victims

- Right to be informed of decision by the prosecutor to decline prosecution or dismiss case, accompanied by information about seeking a protective or harassment order at no fee.
- Protection against employer retaliation for victims to take reasonable time off to attend order for protection or harassment restraining order proceedings.

This list contains all of the crime victim rights required for the supplemental notice requirement under Minnesota Statutes section 611A.02, subd. 2(c).

Victim Impact

Victim Information

Please complete this form and return to the *Name Office* to provide information about the impact this crime has had on you and to indicate to what extent you would like to participate in the criminal prosecution of the defendant.

Name: _____

Address: _____

Home phone: _____ Cell phone: _____

Work phone: _____

Which number is the best one to reach you during the day?

☐ Home phone ☐ Cell phone ☐ Work phone ☐ Any

Desired Outcome of the Criminal Case

Although it is the responsibility of the court to impose the final sentence, your opinion is important. *What would you like to see happen with this case?*

☐ **Probation:** The court orders that the offender be sentenced to time in jail or prison, but has all or part of his/her sentence stayed. This means that the offender does not actually serve the time but is monitored for a period of time by an agent to ensure compliance with the conditions of probation.

☐ **Jail:** The offender is ordered to spend time in a detention facility administered by the county sheriff's office. Offender cannot be ordered to spend more than one year in a county facility. Offenders with less serious offenses are typically sentenced to jail and not prison.

☐ **Prison:** The offender is ordered to spend time in a Minnesota Correctional Facility. The offender is ordered to spend at least a year and day in a correctional facility, typically referred to as "prison." Offenders convicted of more serious offenses are sentence to prison.

☐ **Restitution:** The offender is ordered to pay money to reimburse the victim for losses that are a result of the crime. The victim must submit information about the financial loss to the court in order to receive restitution.

☐ **No contact order:** The offender is ordered to have no contact with the victim.

☐ **Counseling/treatment:** The offender is ordered to undergo special treatment or attend a special program such as NA, AA, a batterers program, chemical dependency treatment, mental health counseling, etc. If so, what kind?

_____

☐ **Other.** ***Please describe:*** _____

_____

_____

☐ **No preference as to what happens to the offender.**

Victim Impact (Page 2)

Notification About Case

You have a right to be notified of the developments of this case and the outcome of the sentence, even if you do not have a specific request related to how this case should be decided. Please indicate how much contact you would like from this office:

☐ I want to be notified of the hearings in this case.

☐ I want to be notified of any plea agreement with the defendant.

☐ I want to be notified of the outcome of this case.

☐ I do not want any further communication from your office.

Impact of The Crime

You may provide a statement to the court about the impact of the crime. You have a right to submit this statement in writing, orally, or both. You may choose to have the prosecutor or victim advocate read the statement to the court for you at the sentencing hearing. You may submit this statement now, or submit it later at the scheduled sentencing hearing in the event the defendant pleads guilty or is found guilty at trial.

You can describe the impact that this crime has had on you below, or attach a separate written or typed statement to this form.

NOTE: If found guilty and a pre-sentence investigation (PSI) is ordered, would you like this impact statement forwarded to the *name agency* for their information? (If not, you may receive another *Victim Impact Statement* form from them to complete.) ☐ Yes ☐ No

Please return this form to *Name Office, Street, City, MN, Zip.*

Affidavit Of Restitution – Sample 1 (Court Form)

State of Minnesota **District Court**

County

Judicial District: _____

Court File Number: _____

Case Type:

State of Minnesota,
Plaintiff

vs.

_____
Defendant

Affidavit for Restitution
Minn. Stat. 611A.04

_____ , being duly sworn, states the following losses were incurred,

or the following property was damaged, stolen or destroyed by _____ , defendant.

List the value and/or damage of each property item. Also include other out-of-pocket losses resulting from the crime.
(Attach estimates or receipts. Attach another sheet if necessary.)

_____ $ _____
_____ $ _____
_____ $ _____
_____ $ _____
_____ $ _____
_____ $ _____
_____ $ _____

Total: $ _____

My losses/damages (were) (were not) covered by insurance.

Name of insurance company _____

Policy No. _____ Amount of deductible and/or uninsured loss: $ _____

Claim No. _____

☐ Insurance claim has been submitted but has not been paid.

Dated: _____ _____

Signature *(Sign only in front of notary public or court administrator.)*

Name: _____

Sworn/affirmed before me this

Address: _____

_____ day of _____ , _____ .

City/State/Zip: _____

_____

Telephone: (_____) _____

Notary Public \ Deputy Court Administrator

NOTE: This affidavit for restitution must be completed and returned to the court administrator not later than _____ ,
Failure to claim restitution will not result in the loss of the right to pursue any other civil remedy available by law.

Affidavit of Restitution – Sample 2

You Must Complete This Form to Request Restitution

District Court File Number: _____

Victim Name: _____

Victim Address: _____

Daytime Phone number: _____

I, _____, am a victim (or representative of the victim) in this case and I wish to make a claim for restitution.

Property Stolen or Damaged:

Description of loss	Amount
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____

Medical Expenses:

Description of expense	Amount
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____

Other:

Description of expense	Amount
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____

Please check here if additional sheets are attached: ☐

Affidavit of Restitution – Sample 2 (Page 2)

Other Information:

☐ I do not have insurance coverage.

☐ I do have insurance coverage or partial coverage.

Insurance company: _____

Policy Number: _____

Telephone Number: _____

Deductible: _____

☐ I have a pending claim with the Minnesota Crime Victims Reparation Board.

Restitution is determined by the Judge based on this affidavit and any documents you submit. It will help the *name city/county* attorney's office represent and prove your request for restitution to the Judge if you provide supporting documentation for all items listed.

Please attach supporting documentation including: medical bills, repair or replacement receipts, copies of cancelled checks, insurance claim forms, and/or estimates for repairs. If the above list includes collectibles such as coins, stamps, etc., verification of value by a licensed dealer or appraiser must be attached. *If you do not have supporting documentation, please explain how the amount of loss was determined.*

This Form Must be Signed Before a Notary:

The above statement of claim is true and correct to the best of my knowledge:

_____

Signature

Sworn/affirmed before me this _____ day of _____.

_____

Notary public

Please return this form to *Name, Agency, Address,* by _____ (date). (In order to be considered at the sentencing hearing, all information regarding restitution must be received by the court administrator at least three business days before the sentencing hearing.)

Keep a Copy of this Form and All Supporting Documentation for Your Records.

Notice to Crime Victim/Request to be Notified – (Court Form)

State of Minnesota **District Court**

County	Judicial District:_____ Court File Number:_____ Case Type: Criminal

State of Minnesota,
Plaintiff

vs.

Notice to Crime Victim
Minn. Stat. 611A.06

_____
Defendant

You Have the Right to be Notified if the Defendant is Released or his or her custody status is reduced (for instance, if he or she is placed in a facility that is less secure). To be notified, you must make a written request to the head of the facility in which the defendant is confined. You may make a copy of this form, complete the bottom request portion and mail the form to:

The County Detention Facility at:

The Commissioner of Corrections at:

Department of Corrections
Attention: Records
1450 Energy Park Drive Suite 200
St Paul MN 55108-5219

You have the right to be notified if the defendant requests expungement (sealing) of his or her record in which you are identified as a victim.

You must make a written request to the prosecutor's office to be informed if the defendant requests an expungement (sealing) of his or her record. You may make copies of this form and fill out the following to make your request.

Request to be Notified

I wish to be notified:

☐ Upon release or reduction in custody status of the above defendant. (If you checked this box, send this notice to the facility where the defendant is being held at the address provided above.)

☐ If the above defendant requests expungement (sealing) of the criminal record. (If you checked this box, send notice to the prosecutor's office that handled this offense.)

My Name:_____

Address:_____

Phone:_____

NOTE: Victim address and other identifying data provided to the prosecutor or facility for purposes of this notice may only be seen by the prosecutor, Department of Corrections records unit and the facility where the offender is held.
You must notify the prosecutor and/or facility in writing if address is changed and you still want to be notified.

Victim Notification Form – DOC

Private Data Only

Victim Notification Request Form – DOC
Mail to:

Commissioner of Corrections – Attention: Records Unit
1450 Energy Park Drive, Suite 200
St. Paul, MN 55108

This form should only be used for offenders who have been sentenced to the Minnesota Department of Corrections and are serving their sentence at a Minnesota State Correctional facility.

Victim/Witness Information

Date: _____

Victim/Witness Name: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____
(Optional)

Offender Information

Offender Name: _____

Date of Birth: _____

County of Prosecution: _____

Victim/Witness Change of Address

New Address: _____

City/State/Zip: _____

New Phone Number: _____

The Minnesota Department of Corrections will acknowledge receipt of your request for notification by mail within 60 days of the offender's arrival at a Minnesota State Correctional Facility. If you have not received acknowledgment within 60 days of the offender's arrival at a Minnesota State Correctional Facility, please contact your victim service provider or the Victim Notification Coordinator with the Minnesota Center for Crime Victim Services at 1-888-622-8799.

* The Department of Corrections also operates a toll-free offender info line, 1-800-657-3830 and an inmate locator website *www.doc.state.mn.us*