

CHAPTER 611A

CRIME VICTIMS: RIGHTS, PROGRAMS, AGENCIES

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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.

History: 1993 c 326 art 6 s 6

611A.02 NOTIFICATION OF VICTIM SERVICES AND VICTIMS' RIGHTS.

[For text of subd 1, see M.S.1992]

Subd. 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 10, 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.

History: 1993 c 326 art 6 s 7

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, 609.24, 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.

History: 1993 c 326 art 2 s 25

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 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 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.

Subd. 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.

History: 1993 c 326 art 2 s 26

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, and funeral expenses. 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 may be reserved or the sentencing or disposition continued if the affidavit or other competent evidence 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.

(b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:

- (1) the offender is on probation or supervised release;
- (2) information regarding restitution was submitted as required under paragraph (a); and
- (3) the true extent of the victim's loss was not known at the time of the sentencing or dispositional hearing.

If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, and the prosecutor 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.

Subd. 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. In either event, the board shall submit the payment order not less than three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of the payment order 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 may be reserved or the sentencing or disposition continued if the payment order is not received in time. 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, restitution may be made directly to the victim. If the board has paid reparations to the victim, the court shall order restitution payments to be made directly to the board.

[For text of subds 1b and 2, see M.S.1992]

Subd. 3. Effect of order for restitution. An order of restitution may be enforced by any person named in the order to receive the restitution in the same manner as a judgment in a civil action. 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 by the court administrator of the district court in the county in which the order of restitution was entered. 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. 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.

History: 1993 c 326 art 6 s 8-10

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 transferred to a minimum security setting, 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 release, transfer, or change in security status. 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, transfer, or change to minimum security status.

[For text of subds 2 to 5, see M.S.1992]

History: 1993 c 326 art 6 s 11; art 13 s 35

611A.52 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1992]

Subd. 5. **Collateral source.** "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under sections 611A.51 to 611A.67 which the victim or claimant has received, or which is readily available to the victim, from:

- (1) the offender;
- (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.67;
- (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.

[For text of subds 6 and 7, see M.S.1992]

Subd. 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 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, subject to the following limitations:

(i) if treatment is likely to continue longer than six months after the date the claim is filed and the cost of the additional treatment will exceed \$1,500, or if the total cost of treatment in any case will exceed \$4,000, the provider shall first submit to the board a plan which includes the measurable treatment goals, the estimated cost of the treatment, and the estimated date of completion of the treatment. Claims submitted for treatment that was provided more than 30 days after the estimated date of completion may be paid only after advance approval by the board of an extension of treatment; and

(ii) the board may, in its discretion, elect to pay claims under this clause on a quarterly basis;

(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 would have performed had the victim 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 sec-

tion 245A.03. Licensed facilities must be paid at a rate not to exceed their standard rate of payment. Facilities 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; and

(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.

(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 would have performed for the benefit of dependents if the victim 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 (3) 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.

Subd. 9. **Injury.** "Injury" means actual bodily harm including pregnancy and emotional trauma.

[For text of subd 10, see M.S.1992]

History: 1993 c 326 art 6 s 12-14

611A.57 DETERMINATION OF CLAIMS.

Subdivision 1. [Repealed, 1993 c 326 art 6 s 26]

Subd. 2. 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.

Subd. 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.

[For text of subd 4, see M.S.1992]

Subd. 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.

[For text of subd 6, see M.S.1992]

History: 1993 c 326 art 6 s 15-17

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.67. 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 260.161. All data released to the board retains the data classification that it had in the possession of the law enforcement agency.

History: 1993 c 326 art 6 s 18

611A.71 COUNCIL; ESTABLISHMENT.

Subdivision 1. Creation. The Minnesota crime victim and witness advisory council is established and shall consist of 16 members.

Subd. 2. Membership. (a) The crime victim and witness advisory council shall consist of the following members, appointed by the commissioner of public safety after consulting with the commissioner of corrections:

- (1) one district court judge appointed upon recommendation of the chief justice of the supreme court;
- (2) one county attorney appointed upon recommendation of the Minnesota county attorneys association;
- (3) one public defender appointed upon recommendation of the state public defender;
- (4) one peace officer;
- (5) one medical or osteopathic physician licensed to practice in this state;
- (6) five members who are crime victims or crime victim assistance representatives;
- (7) three public members; and
- (8) one member appointed on recommendation of the Minnesota general crime victim coalition.

The appointments should take into account sex, race, and geographic distribution. No more than seven of the members appointed under this paragraph may be of one gender. One of the nonlegislative members must be designated by the commissioner of public safety as chair of the council.

(b) Two members of the council shall be members of the legislature who have demonstrated expertise and interest in crime victims issues, one senator appointed under rules of the senate and one member of the house of representatives appointed under rules of the house of representatives.

Subd. 3. Terms of office. Section 15.059 governs the terms of office, filling of vacancies, and removal of members of the crime victim and witness advisory council. Members are eligible for reappointment and appointment may be made to fill an unexpired

term. The members of the council shall elect any additional officers necessary for the efficient discharge of their duties.

[For text of subds 4 to 6, see M.S.1992]

Subd. 7. Expiration. The council expires on June 30, 1995.

History: 1993 c 326 art 6 s 19-22