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Information Brief

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Crime Victim Legislation in Minnesota An Overview

This information brief summarizes the major features of laws enacted in Minnesota to protect the rights and interests of crime victims.

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Topical Summary of Victims Rights Legislation

Financial Assistance for Victims

Reparations. A person who has been the victim of a crime in Minnesota and who has suffered economic loss as a direct result of injury or death, may apply for and receive reparations from the state. Additionally, Minnesota residents who are victimized by crime outside of Minnesota are eligible for reparations from this state if the jurisdiction where the crime occurred does not have a reparations law covering the resident's injury or death. The victim is eligible for reparations regardless of whether or not the perpetrator is prosecuted for the crime. However, a victim is not eligible for reparations if the victim was an accomplice of the offender or was in the process of committing a criminal act at the time of the injury.

In most cases, the crime must have been reported to the police within 30 days of its occurrence and the reparations claim must have been filed within two years of the victim's injury or death.

The types of economic loss for which reparations may be paid are:

- ▶ medical and hospital expenses
- ▶ recreational therapy associated with the loss of a limb
- ▶ expenses incurred for necessary psychiatric or psychological services, up to a maximum limit set by the board
- ▶ loss of income
- ▶ expenses incurred for necessary child care or household services
- ▶ funeral, burial or cremation expenses
- ▶ loss of support
- ▶ reasonable costs incurred to return a child victim of kidnapping or abduction home.

The victim must pay the first \$50 of economic loss, and the maximum amount of reparations that may be paid to an individual is \$50,000. Claims are submitted to the

Crime Victims Reparations Board whose staff reviews them individually and decides the amount of reparations to which the victim is entitled. A claimant who disputes the amount of reparations awarded may ask the entire board to reconsider the staff's decision and the board, upon reconsideration, may affirm, reverse, or modify the prior ruling. A claimant who is denied reparations upon reconsideration may appeal the decision under the Administrative Procedures Act. The board receives funding for reparations from a number of sources, including the state general fund, payments made under the "Son of Sam" law (see below), and penalty assessments or surcharges imposed on federal crimes. Minn. Stat. §§611A.51 to 611A.67.

Restitution. Under Minnesota law, a sentencing judge may stay execution or imposition of sentence and place the defendant on probation under such conditions as the judge may prescribe. One of these conditions of probation can be the payment of restitution. Indeed, if the defendant is not ordered to serve jail-time as a condition of probation, the statute directs the sentencing judge to order a noninstitutional sanction, such as the payment of restitution, where practicable. Minn. Stat. §609.135. Payment of restitution may also be ordered in cases where sentence is imposed and executed. Minn. Stat. §§ 609.10 and 609.125.

Under the Crime Victims Bill of Rights, every victim of crime, including victims of juvenile offenders and corporations that incur loss or harm as a result of a crime, has the right to receive court-ordered restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding. The Crime Victims Reparations Board also may seek restitution on behalf of a reparations claimant. The restitution request must itemize the amounts claimed and the reasons justifying these amounts. If an offender intends to challenge these restitution amounts, he or she must produce detailed evidence in affidavit form of the basis for the challenge. If the court orders the payment of restitution, it must include a payment schedule or structure in the order. If the court orders partial restitution, it must also specify the full amount of restitution that may be docketed as a civil judgment. If the court denies restitution, it must state on the record its reasons for doing so. The court may not use an actual or prospective civil action or a docketed civil judgment as a basis for denying restitution. Minn. Stat. §§611A.04 and 611A.045.

If restitution is ordered but not paid, the victim may seek enforcement of the order in the same manner as he or she would seek enforcement of a civil judgment. Filing fees for docketing an order of restitution as a civil judgment are waived for any victim named in the restitution order. Restitution may also be collected from the offender's prison wages, tax refund, or cash bail deposit, if any. In addition, if restitution was ordered as a condition of probation, the court may revoke probation for failure to pay, and sentence the offender to prison or payment of a fine.

- ▶ Legislation enacted in 1989 permits probation officers to seek a probation review hearing if restitution is not paid in accordance with the payment schedule or structure in the restitution order.
- ▶ Legislation enacted in 1986 and 1987 requires probation officers to seek a probation review hearing if restitution has not been paid by an adult or juvenile offender 60 days prior to the expiration of probation.
- ▶ Legislation enacted in 1991 authorizes courts to extend an offender's probation period for up to one year if the court finds at a probation review hearing that the offender has failed to pay court-ordered restitution in accordance with the payment schedule and that it is unlikely that the offender will satisfy the restitution obligation before probation expires. This one-year extension may be renewed once if the same circumstances are present one year later.

Minn. Stat. §§609.135, subdivision 1a and 260.185, subdivision 3a.

The law also requires clerks of court to keep track of the amount of restitution ordered in each case, any changes to the restitution order, and the amount of restitution actually paid by the offender, and to forward the data to the state court administrator. The reason for this provision is to gather statistics on the degree to which victims are, in fact, being compensated for economic injury by means of restitution payments. Laws 1986, chapter 463, §10.

Finally, the financial assets of accused felons may be attached and frozen if \$10,000 or more allegedly has been lost as a result of the crime and an attachment order is necessary to ensure eventual restitution to victims of the crime. Minn. Stat. §609.532.

"Son of Sam" Law. Minnesota Statutes, section 611A.68, colloquially known as the "Son of Sam" law, prohibits persons who have been convicted of a felony or found not guilty of a felony by reason of insanity from profiting by exploiting the crime in the media or through the entertainment industry. Any person or organization that enters into a contract with a felony offender for the reenactment of or an interview about the crime must forward any money owed to the offender under the contract to the Minnesota Crime Victims Reparations Board. This prohibition applies for a ten-year period following the conviction or finding of not guilty by reason of insanity or, if the offender is imprisoned, for ten years after the offender's release. The board is authorized to disburse contract proceeds for the following purposes:

- ▶ it may reimburse itself for any reparations award previously made to the victim of the offender's crime;

- ▶ it may allocate up to ten percent of the proceeds for the benefit of the offender's minor dependent children if it can be shown that the funds will not be used in a way that benefits the offender;
- ▶ it may make reparations payments to the victim of the offender's crime including, where needed, reparations for pain and suffering and reparations in excess of the \$50,000 maximum limit contained in the reparations act; and
- ▶ if any money remains after these claims are paid, or if no claims are made against the proceeds within five years of the date on which the board received them, the board may use the proceeds to pay reparations to victims of other crimes.

Moreover, if ordered by a court the board must pay from the offender's account reasonable legal expenses related the offender's appeal of the felony conviction or defense against a victim's claim for reparations. It is a gross misdemeanor to willfully fail to notify the board of the existence of a contract covered by the "Son of Sam" law, and it is a misdemeanor to take any other action to defeat the operation of the statute.

The constitutionality of Minnesota's "Son of Sam" law has been called into question by the U.S. Supreme Court's recent decision in Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board, ___ U.S. ___, 112 S. Ct.-501 (1991). In that case, the Court held that New York's "Son of Sam" law was overbroad and violated free expression rights under the First Amendment for two reasons: (1) it covers all works concerning the criminal activity of the author, whether or not the author was convicted or even accused of any crime; and (2) it applies to any work by an offender on any subject as long as the work includes some thought or recollection by the author concerning his or her crime.

Because Minnesota's law is limited to felony offenders who have been convicted or found not guilty by reason of insanity, it does not share the first defect of the New York law. However, Minnesota's law may be vulnerable to constitutional attack for the second reason cited by the Court, because it applies not only to a reenactment of the felony offender's crime, but also to works containing "the expression of the offender's thoughts, feelings, opinions, or emotions about the crime". Minn. Stat. §611A.68, subdivision 1, paragraph (a).

Protection of Victims From Harm or Harassment

Tampering with a Witness. It is unlawful to use force, threats, or coercion to prevent or dissuade another person from being a witness in any legal proceeding or from reporting a crime to the police. It is also unlawful to coerce a witness into testifying falsely at a legal proceeding or providing false information to law enforcement authorities or to retaliate or

threaten to retaliate against a witness for the witness's testimony or report. The criminal penalty for these offenses is either a five-year felony or a gross misdemeanor, depending on the degree of force used or attempted. Minn. Stat. §609.498.

Privacy of Name or Address. A crime victim or witness who testifies in court proceedings may not be compelled to state his or her home or business address on the record in open court unless the court finds that the testimony would be relevant evidence. Minn. Stat. §611A.035.

Similarly, Minnesota law allows motor vehicle owners, driver's license holders and Minnesota ID card holders to request that the Commissioner of Public Safety not release their residence addresses to the public. Motor vehicle owners also may ask the commissioner not to release their names to the public. The commissioner must grant the request if the individual states in writing that keeping this information private is needed to protect the safety of the individual or the individual's family. If the residence address is "shielded" under this provision, the individual must provide a substitute mailing address for the commissioner to use in any documents and notices relating to the motor vehicle, driver's license, or ID card. The individual's residence address or, where applicable, name will remain available to law enforcement agencies. Minn. Stat. §§168.346 and 171.12, subdivision 7.

Separate Waiting Area. If possible, courts must provide victims with a waiting area during court proceedings that is separate from the waiting area used by the defendant, defense witnesses, and the defendant's relatives. If a separate waiting area is not feasible, the court must provide other safeguards, such as increased bailiff surveillance and escort services, to minimize the victim's contact with such people during court proceedings. Minn. Stat. §611A.034.

Employer Retaliation. Employers are prohibited from discharging, disciplining, or threatening to discharge or discipline an employee because the employee has been subpoenaed or requested to testify in court. This protection applies to all witnesses, whether or not the individual is a victim of a crime or a witness to it. An employer who violates this provision is guilty of a misdemeanor and may be punished for contempt of court. The court must also order the employer to offer job reinstatement to the employee and to pay back wages, as appropriate. Minn. Stat. §611A.036.

Harassment Crimes. Minnesota law provides gross misdemeanor and felony penalties for various types of harassing conduct. "Harass" is defined to mean engaging in "intentional conduct in a manner that would cause a reasonable person under the circumstances to feel oppressed, persecuted, or intimidated and that does cause such a reaction on the part of the

victim". Gross misdemeanor harassment crimes include making threats, stalking or pursuing another, returning to the property of another without claim of right to the property or consent, making repeated phone calls or inducing a victim to make phone calls; making someone's telephone repeatedly ring; repeatedly mailing or delivering objects to a person; or any other harassing conduct that interferes with another person or intrudes on that person's privacy or liberty. Felony penalties apply to persons who commit repeat violations of the harassment laws; commit certain "aggravated" harassment crimes, such as engaging in harassing conduct in order to tamper with a juror or judicial proceeding or retaliate against a judicial officer or attorney in connection with a judicial proceeding; or engage in a pattern of harassment that is directed at an individual person or household and that causes the victim to feel terrorized or fear bodily harm. Minn. Stat. §609.749.

Harassment Restraining Order. Victims of harassment may seek and obtain civil relief from harassment under the harassment restraining order law. "Harassment" is defined in this law to include: (1) repeated, intrusive or unwanted acts, words, or gestures which are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the parties; (2) repeated "targeted residential picketing" directed solely at a particular residence which either interferes with the occupant's ingress or egress, or otherwise adversely affects the occupant's safety, security, or privacy; and (3) engaging in a pattern of attending public events after being notified that the actor's presence is harassing to another. The restraining order issued by the court may require the respondent to cease the harassing conduct or to have no contact with the petitioner for up to two years. Violation of the restraining order is punishable as a misdemeanor; certain repeat violations are punishable as a gross misdemeanor. Minn. Stat. §609.748.

Training on Harassment Crimes. Three separate statutory provisions require professional training on harassment crimes. These laws require the supreme court to provide training to district court judges; the Peace Officers Standards and Training Board to provide training to peace officers; and the County Attorneys Association, in conjunction with the attorney general's office, to provide training to city and county attorneys. Minn. Stat. §§480.30; 626.8451, subd. 1a; and Laws 1993, chapter 326, article 2, §32.

Victim Notification Provisions

Notice of Victims' Rights. The Crime Victim and Witness Advisory Council has the responsibility to develop two model notices of crime victims' rights. The initial notice must be distributed by peace officers to victims at the time of initial contact with the victim. This notice must inform victims of: (1) their right to apply for reparations; (2) their right to request that data disclosing their identity be kept private; (3) the nearest crime

victim assistance program or resource; (4) their right to participate in the criminal justice process and to request restitution; and (5) if the victim is a victim of domestic abuse, the right to receive notice of the defendant's pretrial release and upcoming court dates. The supplemental notice must be distributed by prosecutors within a reasonable time after charges are filed, informing victims of all their rights under the victim rights laws, including the right to request restitution, the right to be notified of plea negotiations, the right to be present at the sentencing hearing and to object orally or in writing to a proposed plea agreement or disposition, and the right to be notified of the final case disposition. Minn. Stat. §611A.02, subd. 2. Additionally, the 1994 Legislature directed the Council to develop a separate notice of the rights of crime victims in juvenile court. Minn. Stat. §611A.02, subd. 3.

Higher Education Institution Sexual Harassment and Violence Policy. Higher education institutions are mandated (and the University of Minnesota is requested) to adopt sexual harassment and violence policies that, among other things, inform victims of their rights under the state crime victims bill of rights law. The school's policy must apply to criminal incidents occurring on school property and involving a student or employee of the school. The policy must also, at a minimum, include the following provisions relating to sexual assault cases: filing criminal charges with local law enforcement officials; obtaining the prompt assistance of campus authorities in notifying appropriate law enforcement and disciplinary authorities of a sexual assault incident; investigation and resolution of a complaint by campus disciplinary authorities; the victim's participation in and the presence of the victim's attorney or other support person at any campus disciplinary proceeding concerning the complaint; notice to the victim of the outcome of the proceeding, consistent with data practices laws; assistance of campus authorities, at the direction of law enforcement authorities, in obtaining and maintaining evidence and relevant materials in connection with the incident; and assistance with measures designed to shield the victim from unwanted contact with the alleged assailant. Minn. Stat. §135A.15.

Notice of Right to Keep Identity Confidential. A crime victim or witness has the right to ask a law enforcement agency to withhold public access to public information in the agency's records relating to the victim's or witness's identity. The agency may do so if it reasonably determines that revealing the victim's or witness's identity would threaten that person's personal safety or property. Minn. Stat. §§13.82, subd. 10 and 611A.021.

Notice of Decision not to Prosecute Domestic Assault or Harassment. Prosecutors must make reasonable efforts to notify a domestic assault or harassment victim by telephone or by mail of a decision to decline prosecution of the case or to dismiss charges. If the suspect is still in custody, the notification attempt must be made before the suspect is released. Additionally, prosecutors who dismiss domestic assault or harassment charges must state the specific reasons for the dismissal on the record. If the dismissal was due to

witness unavailability, the prosecutor must indicate the specific reason why the witness is unavailable. Finally, the prosecutor must inform the victim of the availability of alternative avenues of civil relief (i.e. restraining or protective orders). Minn. Stat. §611A.0315.

Notice of Plea Bargain Agreements. Prosecuting attorneys must make a good faith effort to inform crime victims of the contents of plea bargain agreements before presenting the plea agreement to the court. The prosecutor also must inform the victim of his or her right to be present at the sentencing hearing to express in writing any objections the victim may have to the proposed disposition. If the victim is not present at the hearing but has communicated these objections to the prosecutor, the prosecutor shall communicate the objections to the court. Minn. Stat. §611A.03.

Notice of Change in Court Schedule. Prosecutors must make reasonable efforts to provide advance notice of any change in the court's proceedings to any victim who has been subpoenaed or requested to testify. Minn. Stat. §611A.033.

Notice of Rights at Sentencing. A probation officer conducting a presentence investigation of a convicted person must notify the victim of the following events and victim rights related to the sentencing hearing:

- ▶ the charge of which the defendant has been convicted or to which he or she has pled guilty;
- ▶ the victim's right to request restitution;
- ▶ the time and place of the sentencing hearing and the victim's right to be present at it; and
- ▶ the victim's right to object in writing to the proposed disposition prior to the time of sentencing.

Minn. Stat. §611A.037.

Notice of Final Case Disposition. Prosecutors must make a reasonable and good faith effort to provide identifiable crime victims with a written or oral notice of the final disposition of the case within 15 working days after conviction, acquittal, or dismissal. However, if the prosecutor contacts the crime victim in advance of final case disposition and notifies the victim of the victim's right to receive this information, the prosecutor only has to notify those victims who indicate in advance their desire to be notified of the final disposition. Minn. Stat. §611A.039.

Notice of Offender Release from Confinement. The Commissioner of Corrections or other custodial authority must make a good faith effort to notify the victim, on request, that an adult or juvenile offender is to be:

- ▶ released from imprisonment or incarceration, including release on work release or extended furlough;
- ▶ released from a facility in which the offender was confined due to incompetency, mental illness or deficiency, or civil commitment as mentally ill and dangerous; or
- ▶ reduced to a lower custody status.

The notice given to a victim of a felony crime against the person must occur 60 days before the offender's release, transfer, or change to minimum security status if the offender was sentenced to prison for more than 18 months. The notice given to a victim of any crime against the person must also include the conditions governing the offender's release and either the identity of the supervising corrections agent or a means to identify the supervising court services agency. All identifying information about the victim, including the victim's request for the notice and the notice of release are classified as private data under the Minnesota Government Data Practices Act. Minn. Stat. §611A.06.

Additionally, custodial authorities must notify victims of harassment, domestic assault and sexual assault when the alleged offender is released from pretrial detention. This notice must inform the victim of the conditions of release and of the time and place of the next scheduled court hearing. Minn. Stat. §§629.72 and 629.73.

Notice of Right to Request Notice of Release. In every case in which there is an identifiable crime victim, the court must make reasonable efforts at the time of sentencing or disposition to inform the victim of the right to request notice of the offender's release from confinement. If the victim is a minor, this notice must be given to the minor's parent or guardian. Minn. Stat. §611A.0385.

Notice of Escape. The Commissioner of Corrections or other custodial authority must make all reasonable efforts to notify a victim if an offender escapes from imprisonment or confinement. This notice must be given to any victim who has previously requested notice of the offender's release and must occur within six hours after the escape was discovered. The victim must also be notified within 24 hours after the offender is apprehended. Minn. Stat. §611A.06, subd. 3.

Notice Concerning Sexually Transmitted Diseases. Minnesota law requires hospitals to give sexual assault crime victims whom they treat information about sexually transmitted diseases. This notice must inform the victim of the risk of contracting sexually transmitted diseases as a result of the sexual assault, the symptoms of these diseases, recommendations for periodic testing, where appropriate, and locations where confidential testing is done. Minn. Stat. §611A.20.

Notice Concerning HIV Testing of Convicted Offender. A victim may get a court order requiring a convicted violent crime offender or an adjudicated juvenile sex offender to have an HIV test and to release the results to the victim. Minn. Stat. §611A.19. Sexual assault counselors and others must notify victims of this right. Minn. Stat. §611A.20, subd. 2. Insurers may not use a test administered under section 611A.19 or any HIV test conducted on a crime victim to make an underwriting decision, and may not ask a victim or offender if they have had such a test. Minn. Stat. §72A.20, subdivision 29.

Notice to Victims of Motor Vehicle Theft. Law enforcement agencies must make reasonable efforts to notify the victim of a reported vehicle theft within 48 hours after the vehicle is recovered. The notice must specify when the agency expects to release the vehicle and how the owner may pick it up. The law also requires dismissal of any traffic violation citation given to the owner of a stolen vehicle if the owner presents, by mail or in person, verification that the vehicle was stolen at the time of the violation. Minn. Stat. §169.042.

Victim Participation in the Criminal Justice System

Victim Input Regarding Pretrial Diversion. Prosecutors must make every reasonable effort to notify and seek input from the victim before referring persons accused of certain serious crimes into a pretrial diversion program in lieu of prosecution. Minn. Stat. §611A.031.

Victim Input Regarding Plea Bargain Agreement. A victim has the right to express to the sentencing court in writing any objections he or she may have to the contents of a plea agreement that the prosecutor is presenting to the court. Minn. Stat. §§611A.03 and 611A.038.

Victim's Right to Request a Speedy Trial. A victim has the right to ask the prosecutor to make a speedy trial demand under the criminal procedure rules and thereby cause the

trial to begin within 60 days. The prosecutor must make reasonable efforts to comply with the victim's request. Minn. Stat. §611A.033.

Right to the Presence of a Supportive Person at Pretrial Hearing or Trial. A minor who is a prosecuting witness in a criminal case involving assault or another violent crime may choose to be accompanied by a supportive person at the omnibus or pretrial hearing and at trial. Adult prosecuting witnesses in criminal sexual conduct cases likewise have the right to the presence of a supportive person at the omnibus or pretrial hearing. If the supportive person has also been called as a witness, the court may nonetheless permit him or her to be present if it finds that there is no substantial risk that the supportive person's later testimony will be influenced by his or her presence at the proceeding. Minn. Stat. §631.046. Crime victims who are testifying in juvenile delinquency proceedings have a similar right to the presence of a supportive person; however, the supportive person may not also be a witness scheduled to testify in the proceedings. Minn. Stat. §260.155, subd. 1b.

Victim Impact Statement in the Presentence Investigation Report (PSI). Every presentence investigation report must contain a "victim impact statement" consisting of the following information:

- ▶ a summary of the damages or harm and any other problems generated by the criminal occurrence;
- ▶ a concise statement of what disposition the victim deems appropriate for the defendant, including the reasons given, if any, by the victim in support of his or her opinion; and
- ▶ an attachment to the report consisting of the victim's written objections, if any, to the proposed disposition if these objections are given to the preparer of the report sufficiently in advance of the disposition.

Minn. Stat. §611A.037.

Neighborhood Impact Statement in Drug Cases. Persons who conduct presentence investigations of defendants convicted of drug sale or distribution felonies must make reasonable efforts to include a "neighborhood impact statement" in the presentence investigation report. This neighborhood impact statement must describe any adverse social or economic effects the defendant's crime has had on persons who reside in the neighborhood where the crime was committed. Minn. Stat. §609.115, subd. 1.

Victim's Right to Make a Statement at Sentencing. Victims have the right to submit an impact statement to the court at the time of the sentencing or disposition hearing. The victim may choose whether to make the impact statement orally or in writing. If the victim requests, the prosecutor must present the statement orally to the court. The victim's statement may address the harm, trauma, or economic loss suffered by the victim as a result of the crime, and the victim's reaction to the proposed sentence or disposition. Minn. Stat. §611A.038.

Victim's Right to Request Probation Review Hearing. Victims have 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. Minn. Stat. §611A.046.

Victim/Witness Assistance Programs

Sexual Assault Victim Programs. The Commissioner of Corrections must develop a statewide community-based program to aid victims of reported sexual attacks. The program may include but need not be limited to counseling and payment of otherwise unreimbursed medical expenses for treatment and examinations made necessary by the sexual attack. The commissioner is also directed to do the following:

- ▶ encourage county attorneys to assign prosecutors who are trained in sensitivity and understanding of victims of sexual attack;
- ▶ assist in the development of programs to provide training to peace officers in sensitivity and understanding of victims of sexual attack, and encourage the assignment of trained peace officers to question victims of sexual attack; and
- ▶ encourage hospital administrators to place a high priority on the expeditious treatment of victims of sexual attack, and to employ personnel trained in sensitivity and understanding of such victims.

In 1991, the legislature created a 12-member Sexual Assault Advisory Council, located within the Department of Corrections, to advise the commissioner on the implementation and continued operation of the programs described above, to serve as a liaison between the commissioner and sexual assault services programs, and to serve as an advocate for sexual assault victims within the department. Minn. Stat. §§611A.21 to 611A.25.

Battered Women's Programs. The Commissioner of Corrections may award grants to designated programs that provide emergency shelter services and support services to battered women and their children. The 12-member Battered Women Advisory Council,

located within the Department of Corrections, advises the commissioner on the award of these grants. Minn. Stat. §§611A.31 to 611A.36.

General Crime Victim Programs. In 1991, the legislature created a 12-member General Crime Victim Advisory Council. This council is located within the Department of Corrections and advises the commissioner on the implementation and continued operation of the crime victims laws with respect to victims of crimes other than sexual assault and domestic abuse. The council also serves as a liaison between the commissioner and crime victim services programs and as an advocate for general crime victims within the department. Minn. Stat. §611A.361.

Crime Victim Crisis Centers. The Commissioner of Corrections must establish at least two operational crime victim crisis centers. The functions of the crisis centers include: direct crisis intervention, transportation of victims to needed emergency services, investigation of available financial resources for individual victims, referral of victims to existing needed victim services, and other coordinating and educational activities. Minn. Stat. §§611A.41 to 611A.44.

Crime Victim and Witness Advisory Council. The 16-member Crime Victim and Witness Advisory Council is charged with centralizing oversight and advocacy services for victims at the statewide level. The council members are appointed by the Commissioner of Public Safety, in consultation with the Commissioner of Corrections, and include representatives from the legislature and the judiciary, as well as police officers, prosecutors, defense attorneys and crime victims. The council is responsible for:

- ▶ reviewing the treatment of victims by the system and the need for victim services;
- ▶ advising other agencies in the coordination and allocation of federal funds for victim assistance;
- ▶ monitoring and advocating for victim-related legislation;
- ▶ providing information, training and educational services; and
- ▶ assisting in the development of guidelines for and the delivery of victim services.

The executive director of the council is also responsible for supervising the administration of the Crime Victims Reparations Act. Minn. Stat. §611A.71.

Crime Victim Ombudsman. The Crime Victim Ombudsman is appointed by the Commissioner of Public Safety with the advice of the Crime Victim and Witness Advisory Council. The ombudsman's responsibility is to investigate possible violations of the rights of crime victims, the delivery of victims services, the administration of the reparations act, and complaints of mistreatment of victims by the criminal justice system. If the ombudsman finds that a complaint is valid, he or she may make recommendations based on that finding to the appropriate authorities. Minn. Stat. §§611A.72 to 611A.74.

Penalty Assessments. Minnesota law imposes a penalty surcharge or assessment on all persons who are convicted of crimes other than parking or traffic offenses. The amount imposed is either 20 percent of the offender's fine or, if there is no fine imposed, an amount between \$25 and \$50. Additionally, the court must assess the following surcharges on convicted offenders: (1) for a person originally charged with a felony: \$25; (2) for a person originally charged with a gross misdemeanor: \$15; (3) for a person originally charged with a misdemeanor: \$10; and (4) for a person originally charged with a local ordinance violation: \$5. The penalty assessment or surcharge may not be waived by the court; however, the court may reduce it or order it to be paid in installments in cases of indigency or undue financial hardship. Moneys received by the courts must be forwarded to the state general fund. In past years, money gained from this source has been expended by the legislature for victim reparations, the Crime Victim and Witness Advisory Council, and to supplement federally-funded activities of the Crime Victim Ombudsman. Minn. Stat. §609.101, subd. 1.

Minimum Fines. Sentencing courts must impose minimum fines of between \$100 and \$300, depending on the severity of the offense, on persons convicted of assault or sexual assault. The court must forward 70 percent of the minimum fine proceeds to local victim assistance programs and the remaining 30 percent to the state general fund. If there is no local victim assistance program, the court must forward all of the fine proceeds to the state general fund. Fine proceeds received by local victim assistance programs must be used to provide direct services to victims. Minn. Stat. §609.101, subd. 2.

Prison Wage Contributions. The Commissioner of Corrections may withhold up to 20 percent of a prison inmate's gross wages for the purpose of contributing to programs established by law to aid victims of crime. Minn. Stat. §§241.26 and 243.23.

Notice of Victims Services. The Commissioner of Corrections, in cooperation with the executive director of the Crime Victims Reparations Board, must develop a plan to provide victims with notice of those victim services that exist in the geographic area where the victim is located. Minn. Stat. §611A.02.

Crime Victim Services Hotline. The Department of Public Safety must establish and operate a 24-hour telephone line to provide referrals for crime victim services. Minn. Stat. §611A.76.

Crime Victim Mediation Programs. The state court administrator may award grants to nonprofit organizations to create or expand mediation programs for crime victims and offenders. Eligibility is limited to the mediation of nonviolent crimes in which the victim was not a family or household member of the offender. Minn. Stat. §611A.77.

Victims of "Bias Crimes"

Reporting of Crimes Motivated by Bias. Every peace officer must file a report with the head of the officer's department whenever the peace officer has reason to believe that an offender was motivated to commit a crime because of the victim's race, religion, national origin, sex, age, disability, or characteristics identified as sexual orientation. The head of the law enforcement agency must file a monthly report with the Department of Public Safety's Bureau of Criminal Apprehension describing crimes reported under this law, and the Commissioner of Public Safety must file an annual report with the legislature and the Department of Human Rights summarizing the information received. The commissioner may include information in the annual report concerning any additional criminal activity motivated by bias against a group that is not otherwise covered by the statute. Minn. Stat. §626.5531.

Peace Officer Training on Bias Crimes. The Peace Officer Standards and Training (POST) Board must prepare a training course to assist officers in identifying and responding to bias crimes, and in accurately reporting them. The board must update the course periodically, as appropriate. The statute provides that an individual may not be licensed as a peace officer unless the individual has received this training.

Additionally, the POST Board must make instructional materials available to chief law enforcement officers for use by existing peace officers for continuing education credit. The board must also seek funding for an educational conference on bias crimes and, if funding is obtained, sponsor the conference on its own or with other public or private groups. Minn. Stat. §626.8451.

Prosecutor Training on Bias Crimes. The attorney general's office, in conjunction with other agencies, must create a prosecutor training course on bias-motivated crimes and must offer the course to prosecutors at least once a year until 1994. The head of each prosecuting agency must maintain records on the number of prosecutors who have attended

the course and the number who have not, and must report this information to the attorney general annually. Minn. Stat. §8.34.

Increased Criminal Penalties for Crimes Motivated by Bias. The 1989 Legislature increased the criminal penalties for certain crimes if the crime was committed because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin. The criminal acts affected by the legislation include assault, criminal damage to property, and harassment. Minn. Stat. §§609.2231, subd. 4; 609.595, subs. 1a, 2, and 3; and 609.749, subd. 3.

Historical Summary of Victims Rights Legislation 1974 - 1994

The following is a chronological summary of victims rights legislation in Minnesota. Details of each law referred to in this section are presented more fully in the topical sections of this information brief.

- 1974** The chronology of victims rights legislation in Minnesota began in 1974 with the enactment of the Crime Victims Reparations Act. This legislation offered financial compensation to persons who were injured, killed, or otherwise damaged by the criminal act of a third party. Financed by state appropriations, this act represented one of the first efforts by the state to offer direct aid to crime victims. It was also among the first expressions by the legislature of the notion that the state had a policy interest not only in the successful prosecution of criminal offenders, but also in the welfare of the offender's victim. The reparations act has been amended almost every year since 1974; however, the amendments have been mainly to fine-tune the act's provisions, and it remains substantially in the same form as it was originally passed. In addition to the reparations act, the 1974 Legislature also created a new program to aid victims of sexual assault.
- 1976** In 1976, the legislature made it a crime to tamper with a witness or a potential witness to any legal proceeding. This crime prohibited the use of force, violence, or coercion to prevent or dissuade a witness from attending or testifying at any trial or other legal proceeding.
- 1977** The 1977 Legislature directed the Commissioner of Corrections to establish at least two "victim crisis centers" in the state. These centers were statutorily designed to offer direct services to crime victims as well as general educational functions in the geographic area. That year, the legislature also explicitly authorized sentencing judges to order convicted offenders to pay restitution to their victims as a condition of probation.

- 1979** In 1979, the legislature enacted a law prohibiting convicted felons from profiting commercially from their crimes. Known colloquially as the "Son of Sam" law, this legislation required persons who enter into contracts with convicted felons regarding the reenactment of the crime in movie, book, or other entertainment form, to forward the profits of the venture to the Crime Victims Reparations Board for payment to the victim or victims of the offender's crime.
- 1981** In 1981, the legislature passed a bill designed to provide funding for victims services from a new source: persons convicted of crimes other than traffic or parking violations. This legislation imposed a fine surcharge equal to ten percent of the person's fine or, if no fine was imposed, a penalty assessment of between \$20 and \$40. The surcharge or assessment could be waived by the sentencing judge under circumstances of indigency or undue hardship.
- 1983** 1983 was perhaps the most significant year for victims legislation in Minnesota since the passage of the Reparations Act in 1974. In 1983, the legislature enacted the so-called "Crime Victims Bill of Rights" which, among other things, provided crime victims with notice of certain events in the prosecution of the crime of which they were victimized, and provided them with certain limited rights of participation in that criminal process. The significance of this legislation lay primarily in the public policy that it expressed: namely, that a criminal prosecution is not solely a matter between the offender and the state, and that the victim has a separate interest in the outcome which, though secondary to that of the state, is nonetheless publicly recognized.
- 1984** The 1984 Legislature shifted its focus from victim involvement in the system back to victim compensation by enacting legislation expanding the authority of sentencing courts to order the payment of restitution and expressing a preference for the use of restitution and other types of noninstitutional sanctions in cases where incarceration is not ordered.
- 1985** In 1985, the legislature further enhanced the usefulness of restitution orders by simplifying the procedure through which the victim may seek civil enforcement of the order in court. The legislature also authorized the Commissioner of Corrections and prison inmates to withhold up to 20 percent of earned prison wages for the purpose of funding victims services programs. Finally, in response to recommendations made by a Task Force on Crime Victims established by the attorney general, the legislature created a Crime

Victim and Witness Advisory Council to centralize the oversight of victims programs, services and legislation in Minnesota and to advocate for any needed changes. The legislature also created a Crime Victim Ombudsman to investigate possible violations of the rights of individual crime victims or witnesses by the criminal justice system and to act as a liaison between the aggrieved victim or witness and the agency responsible for the complaint.

1986 The 1986 Legislature added a number of new rights to the Crime Victims Bill of Rights to further increase the ability of victims to participate in the criminal justice process and achieve satisfaction of restitution orders, and to minimize the potentially adverse effects of the victim's participation in the criminal prosecution.

1987 The 1987 Legislature made several changes to the statutes governing victim restitution to broaden their coverage and further simplify their enforcement. The 1987 Legislature also passed new laws designed to further safeguard the personal safety of victims. Third, the legislature enacted new measures to provide funding for victims services by means of criminal fine proceeds. And finally, the 1987 Legislature specified that at least one member of the Sentencing Guidelines Commission must have been the victim of a felony-level crime.

1988 The 1988 Legislature passed a wide variety of crime victim laws. Three of these laws made fairly significant changes or additions to existing law. First, the legislature streamlined the process through which crime victims may make reparations claims under the "Son of Sam" law by replacing the judicial procedures with administrative ones. The law was also broadened to permit the use of "Son of Sam" contract proceeds for financial assistance for minor dependents of the offender and for paying reparations to victims of other offenders' crimes. Second, the legislature gave crime victims the right to describe their damages and their reaction to the offender's proposed sentence to the sentencing judge orally or in writing. And third, the legislature required law enforcement officials to file reports with the state on crimes believed to have been motivated by "bias" against the victim's race or other group affiliation, and to receive training on the detection of and response to such bias crimes.

- 1989** In 1989, the legislature reworked the statutes relating to court-ordered restitution to provide clearer guidance to courts on the types of damages that are compensable through restitution orders and on the process by which compliance with these orders is attained. The 1989 Legislature also continued to address the issue of "bias" crimes by enhancing penalties for committing certain criminal acts when the act is motivated by bias against the victim's race or other group affiliation.
- 1990** The 1990 Legislature made four noteworthy changes to the crime victims laws. First, it enhanced legal protections for victims of "harassment" by:
- (1) increasing criminal penalties for certain types of harassing conduct;
 - (2) creating civil remedies to help victims protect themselves from harassment; and
 - (3) increasing the ability of individuals to keep their identities confidential in certain government records. Second, it expanded the scope of the Crime Victims Reparations Act to cover certain losses and injuries that had previously been excluded from the act's coverage. Third, it required hospitals to give sexual assault victims information regarding the risk and symptoms of sexually transmitted diseases and the availability of confidential testing for these diseases. And finally, the 1990 Legislature required prosecutors who dismiss domestic assault charges to state the specific reasons for the dismissal on the court record and, where the dismissal was due to witness unavailability, to state publicly the specific reason why the witness was unavailable.
- 1991** In 1991, the legislature amended the statutes governing court-ordered restitution to enable courts to extend an offender's probation period if the offender fails to pay the restitution in accordance with the payment schedule and it appears that the restitution will not be fully paid before probation expires. This extension of probation may be for a one-year period and may be renewed once. The 1991 Legislature also amended the Crime Victims Bill of Rights to require prosecutors to make reasonable efforts to notify victims of final case dispositions and to require custodial authorities to notify victims, on request, if an offender either escapes from confinement, or is transferred to a correctional program with less security. Finally, the 1991 Legislature made numerous changes to the membership, structure and duties of the Battered Women's Advisory Council and created two new advisory councils within the Department of Corrections: one for victims of sexual assault and one for general crime victims.

- 1992** In 1992, the legislature made the following changes to the crime victim laws. First, it required higher education institutions to adopt sexual harassment and violence policies that inform victims of their rights under state law and that contain specific provisions relating to the investigation and resolution of sexual assault incidents occurring on school property and involving students or school employees. Second, it allowed sex crime victims to get a court order requiring convicted offenders to have an HIV test and to release the results to the victim. Other victim law changes enacted by the 1992 Legislature include: (1) further streamlining of the court-ordered restitution process; (2) increasing the penalty assessment imposed on all convicted offenders (other than traffic law offenders) from ten to 20 percent of the fine imposed; (3) authorizing grants for mediation programs in cases involving nonviolent offenses; (4) creating a statewide 24-hour telephone hotline to provide referrals for crime victim services; and (5) permitting victims of juvenile offenders to have a supportive person present in the courtroom during the victim's testimony.
- 1993** The 1993 Legislature extensively revised and strengthened criminal and civil laws protecting victims of harassment. It also made several changes to the crime victims laws, including the following: (1) requiring law enforcement agencies to make reasonable efforts to notify a motor vehicle theft victim that the vehicle has been recovered and how to pick it up; (2) requiring dismissal of any traffic ticket given to the owner of a stolen vehicle if it is shown that the vehicle was stolen at the time of the theft; (3) streamlining procedures for giving victims written notice of their rights; (4) waiving court fees for docketing a restitution order as a civil judgment; (5) expanding the size of the Crime Victim and Witness Advisory Council by one member; and (6) allowing minor prosecuting witnesses to have a supportive person in the courtroom during the witness's testimony in any criminal case involving a violent crime or an assault.
- 1994** In 1994, the legislature adjusted the crime victim laws in several ways. It expanded the law prohibiting employer retaliation against victim-witnesses to include all witnesses. It expanded the law requiring notice to victims of an offender's release from confinement to include situations where an offender's custody status has been reduced. In addition, it required courts, at the time of sentencing or disposition, to notify victims of the right to request notice of the offender's release from confinement. The legislature strengthened victims' rights to restitution by prohibiting courts from denying restitution solely on the basis of an actual or prospective civil action or a docketed civil judgment, and by requiring offenders who challenge restitution amounts to

produce detailed evidence in affidavit form of the basis for the challenge. The legislature also expanded the right to request that an offender be tested for HIV to include all convicted violent crime offenders and adjudicated juvenile sex offenders. Finally, the legislature increased the fees and expense reimbursements paid to witnesses in court cases and expanded the time periods within which victims may apply for reparations as follows: crimes must be reported to the police within 30 days of occurrence instead of five; and reparations claims must be filed within two years of the victim's injury or death instead of one year.