

CHAPTER 611A

CRIME VICTIMS: RIGHTS, PROGRAMS, AGENCIES

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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 a corporation that incurs loss or harm as a result of a crime. If the victim is a natural person and is deceased, "victim" means the deceased's surviving spouse or next of kin; and

(c) "Juvenile" has the same meaning as given to the term "child" in section 260.015, subdivision 2.

History: 1995 c 226 art 7 s 8

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.

History: 1995 c 259 art 3 s 20

611A.032 [Repealed, 1995 c 186 s 102]**611A.04 ORDER OF RESTITUTION.**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 may be 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) 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, 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, 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. 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.

[For text of subs 1a to 3, see M.S.1994]

History: 1995 c 226 art 7 s 9

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.

Subd. 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.

Subd. 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 260.126 is conclusive proof of the perpetrator's assumption of the risk.

Subd. 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.

Subd. 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.

Subd. 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.

History: 1995 c 226 art 6 s 15

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 609.152, 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 144.763, 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.

[For text of subd 2, see M.S.1994]

History: 1995 c 226 art 7 s 10

611A.31 DEFINITIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. "Battered woman" means a woman who is being or has been victimized by domestic abuse as defined in section 518B.01, subdivision 2.

[For text of subs 3 to 5, see M.S.1994]

History: 1995 c 226 art 7 s 11

611A.51 TITLE.

Sections 611A.51 to 611A.68 shall be known as the Minnesota crime victims reparations act.

History: 1995 c 226 art 7 s 25

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.

[For text of subds 2 and 3, see M.S.1994]

Subd. 4. **Claimant.** "Claimant" means a person entitled to apply for reparations pursuant to sections 611A.51 to 611A.68.

Subd. 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;
 - (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.

[For text of subds 6 to 10, see M.S.1994]

History: 1995 c 226 art 7 s 25

611A.53 ELIGIBILITY FOR REPARATIONS.

[For text of subds 1 to 1b, see M.S.1994]

Subd. 2. 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 two 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 two 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 two years of the injury or death, then the claim can be made within two 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

(f) the claim is less than \$50.

The limitations contained in clauses (a) and (e) do not apply to victims of domestic child abuse as defined in section 260.015, subdivision 24. In those cases the two-year limitation period commences running with the report of the crime to the police.

History: 1995 c 226 art 7 s 12

611A.61 SUBROGATION.

[For text of subs 1 and 2, see M.S.1994]

Subd. 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 or paid to the crime victims reparations board under section 611A.04, subdivision 1a, 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.

History: 1995 c 226 art 7 s 13

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

History: 1995 c 266 art 7 s 25

611A.675 FUND FOR EMERGENCY NEEDS OF CRIME VICTIMS.

Subdivision 1. **Grants authorized.** The crime victims reparations board shall make grants to local law enforcement agencies 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; and

(3) transportation to locations related to the victim's needs as a victim, such as medical facilities and facilities of the criminal justice system.

Subd. 2. **Application for grants.** A county sheriff or the chief administrative officer of a municipal police department may apply to the board for a grant for any of the purposes described in subdivision 1 or for any other emergency assistance purpose approved by the board. The application must be on forms and pursuant to procedures developed by the board.

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 board.

Subd. 3. Reporting by local agencies required. A county sheriff or chief administrative officer of a municipal police department who receives a grant under this section shall report all expenditures to the board on a quarterly basis. The sheriff or chief administrative officer shall also file an annual report with the board 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.

Subd. 4. Report to legislature. On or before February 1, 1997, the board 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.

History: 1995 c 226 art 7 s 14

611A.68 LIMITING COMMERCIAL EXPLOITATION OF CRIMES; PAYMENT OF VICTIMS.

[For text of subds 1 to 3, see M.S.1994]

Subd. 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.

[For text of subd 4a, see M.S.1994]

Subd. 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

(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.

Subd. 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 these moneys may be used for purposes other than the payment of reparations.

[For text of subds 6 to 8, see M.S.1994]

History: 1995 c 226 art 7 s 25

611A.71 COUNCIL; ESTABLISHMENT.

[For text of subds 1 to 6, see M.S.1994]

Subd. 7. Expiration. The council expires on June 30, 1997.

History: 1995 c 226 art 7 s 15

611A.73 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1994]

Subd. 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.

[For text of subs 4 and 5, see M.S.1994]

History: 1995 c 226 art 7 s 16

611A.74 CRIME VICTIM OMBUDSMAN; CREATION.

Subdivision 1. Creation. The office of crime victim ombudsman for Minnesota is created. The ombudsman shall be appointed by the commissioner of public safety with the advice of the advisory council, and shall serve in the unclassified service at the pleasure of the commissioner. No person may serve as ombudsman while holding any other public office. The ombudsman is directly accountable to the commissioner of public safety and shall have the authority 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.

Subd. 2. Duties. The crime victim ombudsman 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 ombudsman shall act as a liaison, when the ombudsman deems necessary, between agencies, either in the criminal justice system or in victim assistance programs, and victims and witnesses. The ombudsman may be concerned with activities that strengthen procedures and practices which lessen the risk that objectionable administrative acts will occur. The ombudsman must be made available through the use of a toll free telephone number and shall answer questions concerning the criminal justice system and victim services put to the ombudsman by victims and witnesses in accordance with the ombudsman's knowledge of the facts or law, unless the information is otherwise restricted. The ombudsman 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 ombudsman.

The ombudsman'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.

Subd. 3. Powers. The crime victim ombudsman has those powers necessary to carry out the duties set out in subdivision 1, including:

(a) The ombudsman 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 ombudsman may request and shall be given access to information and assistance the ombudsman considers necessary for the discharge of responsibilities. The ombudsman may inspect, examine, and be provided copies of records and documents of all elements of the criminal justice system and victim assistance programs. The ombudsman may request and shall be given access to police reports pertaining to juveniles and juvenile delinquency petitions, notwithstanding section 260.161. Any information received by the ombudsman retains its data classification under chapter 13 while in the ombudsman's possession. Juvenile records obtained under this subdivision may not be released to any person.

(c) The ombudsman 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 ombudsman conclusions, recommendations, and proposals.

(d) After completing investigation of a complaint, the ombudsman 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 ombudsman'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 ombudsman shall consult with that agency or person.

Subd. 4. No compelled testimony. Neither the ombudsman nor any member of the ombudsman'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 except as may be necessary to enforce the provisions of this section.

Subd. 5. Recommendations. (a) On finding a complaint valid after duly considering the complaint and whatever material the ombudsman deems pertinent, the ombudsman may recommend action to the appropriate authority.

(b) If the ombudsman 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 ombudsman about the action taken or the reasons for not complying with the recommendation.

(c) The ombudsman 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 ombudsman shall include any statement the administrative agency may have made to the ombudsman by way of explaining its past difficulties or its present rejection of the ombudsman's proposals.

Subd. 6. Reports. In addition to whatever reports the ombudsman may make from time to time, the ombudsman shall biennially report to the legislature and to the governor concerning the exercise of ombudsman functions during the preceding biennium. The biennial report is due on or before the beginning of the legislative session following the end of the biennium.

History: 1995 c 226 art 7 s 17

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.

Subd. 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.

Subd. 3. Petition. An individual subject of data, as defined in section 13.02, or a patient, as defined in section 144.335, 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.

History: 1995 c 259 art 4 s 6