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Information Brief

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MAY 13 1988

ACQUISITIONS

CRIME VICTIM LEGISLATION IN MINNESOTA: AN OVERVIEW

This information brief summarizes the major features of laws that have been enacted in Minnesota over the past thirteen years to protect the rights and interests of crime victims.

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I. Topical Summary of Victims Rights Legislation

A. FINANCIAL ASSISTANCE FOR VICTIMS

Reparations. Under Minnesota Statutes, sections 611A.51 to 611A.67, 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. The victim is eligible for reparations regardless of whether or not the perpetrator is prosecuted for the crime. The types of economic loss for which reparations may be paid are: medical and hospital expenses, expenses incurred for necessary psychiatric or psychological services, loss of income greater than \$50, expenses incurred for necessary child care or household services, funeral, burial or cremation expenses, and loss of support. The victim must pay the first \$100 of economic loss, and the maximum amount of reparations that may be paid to an individual is \$50,000. Claims are submitted to a five member reparations board which reviews them individually and decides the amount of reparations to which the victim is entitled. 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 state and federal crimes.

Restitution. Minnesota Statutes, section 609.135 authorizes the sentencing judge to 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. Payment of restitution may also be ordered in cases where sentence is imposed and executed. See Minnesota Statutes, sections 609.10 and 609.125.

According to Minnesota Statutes, section 611A.04, every victim of crime, including a corporation that incurs loss or harm as a result of a crime, has a right to request that restitution be considered by the judge at the time of sentencing or after sentencing if the offender is on probation or supervised release and the true extent of the victim's loss was not known at the time of sentencing. The Crime Victims Reparations Board may also seek restitution on behalf of a reparations claimant. The restitution request must itemize the amounts claimed and the reasons justifying these amounts. If the court denies restitution, it must state on the record its reasons for doing so.

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. See section 611A.04, subdivision 3. Restitution may also be collected from the offender's tax refund, 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 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. Minnesota Statutes, sections 609.135, subdivision 1a and 260.185, subdivision 3a. The 1986 legislation 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. See Laws 1986, chapter 463, section 10.

Finally, the 1987 Legislature enacted statutory procedures for attaching and freezing the financial assets of accused felons where there was an alleged loss of \$10,000 or more as a result of the crime and where an attachment order is necessary to ensure eventual restitution to victims of the crime. Laws 1987, chapter 217.

"Son of Sam" Law. Minnesota Statutes, section 611A.68, colloquially known as the "Son of Sam" law, prohibits convicted felony offenders in Minnesota 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. Any victim of the offender's crime who obtains a civil judgment for damages against the offender within five years of the time money is received by the Board may seek payment of the judgment from the Board. Money remaining after five years is returned to the offender if there are no pending victim claims for the funds. 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 victims claims for damages.

B. PROTECTION OF VICTIMS FROM HARM

Tampering With a Witness. Minnesota Statutes, section 609.498 prohibits any person from using 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. The law also protects such witnesses for a period of one year from the time the testimony is taken or police report is made. Legislation enacted in 1987 expands the crime of witness tampering to include coercing a witness into testifying falsely at a legal proceeding or providing false information to law enforcement authorities. Laws 1987, chapter 194. The criminal penalty for the offense is either a five year felony or a gross misdemeanor, depending on the degree of force used or attempted.

Address Protection. Minnesota Statutes, section 611A.035 provides that a crime victim or witness who provides testimony 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.

Secure Waiting Area. Minnesota Statutes, section 611A.034 requires courts, if possible, to 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 to minimize the victim's contact with such people during court proceedings.

Employer Retaliation. Minnesota Statutes, section 611A.036 prohibits employers from discharging, disciplining, or threatening to discharge or discipline an employee because the employee has been subpoenaed or requested to testify as a victim in court. 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.

C. VICTIM NOTIFICATION OF EVENTS IN THE CRIMINAL JUSTICE SYSTEM

Notice of Plea Bargain Agreements. Minnesota Statutes, section 611A.03 requires that prosecuting attorneys 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 must also 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.

Notice of Change in Court Schedule. Minnesota Statutes, section 611A.033 requires prosecutors to 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.

Notice of Rights at Sentencing. Minnesota Statutes, sections 609.115, subdivision 1c and Laws 1987, chapter 331, section 12 require any probation officer conducting a presentence investigation of a convicted person to notify the victim of the following events and victim rights related to the sentencing hearing: (a) the charge of which the defendant has been convicted or to which he or she has pled guilty; (b) the victim's right to request restitution; (c) the time and place of the sentencing hearing and the victim's right to be present at it; and (d) the victim's right to object in writing to the proposed disposition prior to the time of sentencing.

Notice of Offender Release From Confinement. Minnesota Statutes, section 611A.06 requires the commissioner of corrections or other custodial authority to make a good faith effort to notify the victim that an offender is to be (a) released from imprisonment or incarceration, including release on work release or extended furlough, or (b) 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. The victim must have requested this notice in writing prior to the offender's release. All identifying information about the victim, including the victim's request and the notice of release are classified as private data under the Minnesota government data practices act.

D. VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE SYSTEM

Victim Input Regarding Pretrial Diversion. Minnesota Statutes, section 611A.031 requires prosecutors to 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.

Victim Input Regarding Plea Bargain Agreement. Minnesota Statutes, section 611A.03 permits a victim 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.

Victim's Right to Request a Speedy Trial. Minnesota Statutes, section 611A.033 permits a victim to request 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.

Right to the Presence of a Supportive Person at Pretrial Hearing. Minnesota Statutes, section 631.046 states that a prosecuting witness in a child abuse or rape case may choose to be accompanied by a supportive person at the omnibus or pretrial hearing and, in child abuse cases, at trial. 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.

Victim Impact Statement in the Presentence Investigation Report. Minnesota Statutes, section 609.115, subdivision 1b (recodified as Minnesota Statutes, section 611A.037 by Laws 1987, chapter 331, section 12) requires every presentence investigation report to contain a "victim impact statement" consisting of the following information: (a) a summary of the damages or harm and any other problems generated by the criminal occurrence; (b) a concise statement of what disposition the victim deems appropriate for the defendant, including the reasons given, if any, by the victim in support of his or her opinion; and (c) 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.

E. VICTIM/WITNESS ASSISTANCE PROGRAMS

Programs for Victims of Sexual Attack. Minnesota Statutes, section 611A.21 requires the commissioner of corrections to develop a statewide community-based program to aid victims of reported sexual attacks. These programs 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 by section 611A.22 to do the following: (a) encourage county attorneys to assign prosecutors who are trained in sensitivity and understanding of victims of sexual attack; (b) 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 (c) 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.

Programs for Battered Women. Minnesota Statutes, section 611A.31 directs the commissioner of corrections to award grants to designated programs that provide emergency shelter services and support services to battered women. The commissioner is also mandated to award grants for the development and implementation of educational programs designed to promote public and professional awareness of the problems of battered women.

Crime Victim Crisis Centers. Minnesota Statutes, section 611A.41 directs the commissioner of corrections to establish at least two operational crime victim crisis centers. The functions of the crisis centers are enumerated in section 611A.43, and 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.

Crime Victim and Witness Advisory Council. Minnesota Statutes, section 611A.71 creates a Crime Victim and Witness Advisory Council, consisting of 15 members, for the purpose of centralizing oversight and advocacy services for victims at the statewide level. The council includes representatives from the legislature and the judiciary, as well as police officers, prosecutors, defense attorneys and crime victims, and is responsible for: (a) reviewing the treatment of victims by the system and the need for victim services; (b) advising other agencies in the coordination and allocation of federal funds for victim assistance; (c) monitoring and advocating for victim-related legislation; (d) providing information, training and educational services; and (e) 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 and the crime victim ombudsman.

Crime Victim Ombudsman. Minnesota Statutes, section 611A.74 creates the office of crime victim ombudsman. The ombudsman is appointed by the commissioner of public safety with the advice of the crime victim and witness advisory council, and is directly accountable to the executive director of the advisory council. The purpose of the ombudsman 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.

Penalty Assessments. Minnesota Statutes, section 609.101 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 10% of the offender's fine or, if there is no fine imposed, an amount between \$20 and \$40. The penalty assessment or surcharge may be waived by the court in cases of indigency or undue financial hardship. Moneys received by the courts under this section must be forwarded to the commissioner of finance for deposit in a special account in the state treasury called the crime victim and witness account. Money credited to the account may be used for victim reparations, the Crime Victim and Witness Advisory Council, and to supplement federally-funded activities of the crime victim ombudsman.

Minimum Fines. Laws 1987, chapter 404, section 189 requires courts to 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 fine proceeds to local victim assistance programs and the remaining 30 percent to the state treasury to be credited to the crime victim and witness account. If there is no local victim assistance program, the court must forward all of the fine proceeds to the state treasury. Fine proceeds received by local victim assistance programs must be used to provide direct services to victims. Fine proceeds deposited in the crime victim and witness account may be appropriated to the crime victim and witness advisory council and used to establish new victim assistance programs.

Prison Wage Contributions. Minnesota Statutes, sections 241.26 and 243.23 permit the commissioner of corrections to withhold or the inmate to expend up to 20% of a prison inmate's gross wages for the purpose of contributing to programs established by law to aid victims of crime.

Notice of Victims Services. Minnesota Statutes, section 611A.02 directs the commissioner of corrections, in cooperation with the executive director of the crime victims reparations board, to develop a plan to provide victims with notice of those victim services that exist in the geographic area where the victim is located.

II. Historical Summary of Victims Rights Legislation

The following is a brief chronological summary of victims rights legislation in Minnesota. Details of each of the laws 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 almost 12 years ago. 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 legislation 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 10% 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% 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 victims 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 previously enacted in 1983 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. Most recently, the 1987 Legislature made several changes to the statutes governing victim restitution to broaden their coverage and further simplify their enforcement. Second, the 1987 Legislature added several new provisions 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.