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**FINAL REPORT OF THE RESTITUTION WORKGROUP
CONVENED BY THE CRIME VICTIM AND WITNESS
ADVISORY COUNCIL AND THE STATE COURT
ADMINISTRATOR'S OFFICE**

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FINAL RESTITUTION REPORT

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INTRODUCTION

During the past ten years, there has been a dramatic increase in public awareness of the problems and concerns of crime victims. In particular, much attention has focused on the need for financial compensation for those who suffer loss as a result of a crime. In response to this need, forty-eight states have established victim compensation programs. Minnesota's program, among the most progressive in the nation as far as its breadth and level of compensation, has been in existence since 1974.

The Minnesota Crime Victims Reparations Board spent approximately one and a half million dollars to compensate crime victims in 1987 alone. The Board is compelled to pursue recovery of awards made to victims in cases where the victim has filed a civil law suit or where the offender has been ordered to pay restitution. The most ideologically appropriate source of revenue recovery for the Board is restitution. Minnesota statutes provide that a victim may request restitution and there is a mechanism in place for the awarding and payment of restitution by offenders. In addition, the Reparations Board may file a

request for restitution on its own behalf. Despite the existing laws which were enacted to facilitate the ordering and collection of restitution, however, the Board has been relatively unsuccessful in its efforts to actually recover dollars through restitution.

In 1986, the Reparations Board began to examine the issue of restitution by requesting information and assistance from state agencies more familiar with the administration of restitution. The Board's cursory research uncovered the universal perception that the handling of restitution in Minnesota was suffering from inconsistency, unclear statutory and procedural foundation, and an underlying lack of clarity as to the purpose of restitution. The Board relayed these concerns to the Minnesota Crime Victim and Witness Advisory Council which decided, in September of 1987, to convene a task force to examine the entire issue of restitution. The task force was ultimately established as a cooperative effort between the Council and the State Court Administrator's Office. Staffing was shared by the two agencies.

S C O P E

SCOPE

The restitution workgroup set forth a series of policy questions which it would consider. These questions ranged from broad policy issues to specific questions regarding procedure and implementation.

Organizational Issues

The work group chose to consider the necessity of a statewide plan. The need for consistency in administration of restitution was clearly defined as a high priority. The group also identified a need for more uniform information gathering and decision-making as to the ordering of restitution. The group considered whether a single agency should be charged with the handling of restitution, or whether local practice should vary.

Ordering of Restitution

A primary question was whether judges were getting sufficient information to make good decisions regarding the ordering of restitution. If not, what could be done to enhance the quantity and quality of such information?

A second issue was the proper monetary amount of restitution. It was clear that there was a diffusion of responsibility for the determination of a real dollar amount to be ordered, and that this sometimes resulted in miscalculations of the total loss.

The workgroup also considered the mechanism by which a victim may request restitution, focusing on ways in which better victim input could be used to develop restitution recommendations, and also ways to promote uniformity in the development of victim impact statements.

Finally, a fundamental question which the workgroup considered involved general questions about ordering restitution -- whether judges were, in fact ordering restitution in all cases where it would be appropriate, and if they were not, what could be done to enhance utilization of restitution as a disposition.

Collection

The group addressed numerous practical issues involving the collection of restitution. The primary problem areas were the extent to which restitution was actually collected and the timeliness of its distribution to victims. Discussion focused on improving collection efforts and the efficiency of disbursement.

Enforcement of restitution orders was a prevailing concern as the workgroup examined collections. The workgroup studied the possibilities of payment schedules, the relative merits of docketing orders as civil judgments, and explored jurisdiction for enforcement of civil judgments. The overall relationship of restitution to the other penalties assigned to offenders was considered, and how the probation period might be altered to facilitate compliance with the restitution order.

Administratively, the workgroup considered the necessity of a statewide record-keeping system which would track payments against orders. The practical problems of attachment of wages and revenue recapture were also considered.

SUMMARY OF MAJOR FINDINGS

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There is an extensive body of literature which treats the philosophical and practical aspects of restitution.

Generally, empirical and scholarly works agree upon the beneficial nature of restitution as a means of assisting victims and ascribing appropriate penalties to offenders. In addition, restitution is, overall, generally agreed to be a positive disposition as an alternative to overburdened and non-rehabilitative prisons or jails.

Studies show that the efficacy of restitution varies among states. Surveys of programs in Rhode Island, Georgia, Arizona and Texas, conducted by the National Institute of Justice, reveal extremely high rates of full payment of restitution obligations (93 to 100 percent). Conversely, respondents to the same survey from Delaware, Colorado, Louisiana and California report extremely low rates of payment (23 to 50 percent.) Analysis of these reports, unfortunately, reveals no correlation between type of agency, caseload size, staffing patterns, or available sanctions for noncompliance and the success of restitution programs.

Research also makes it clear that offenders rarely comply fully with a restitution order. In a study of the Denver

District Court Probation Department, reported in Law and Behavior, the author, Miller, found that the typical offender in his sample paid 69 cents for every dollar of his restitution obligation. A study by Chesney of the Minnesota Department of Corrections found widely varying compliance with restitution orders, noting that inability to pay was the most common reason for failure to complete restitution. Nevertheless, the Department's study of 629 restitution obligations concluded that "satisfactory" levels of payment had been achieved in 75% of cases within two years of the offense.

Current information regarding levels of compliance with restitution orders is unavailable in Minnesota. Some aggregate data is accessible, but that only provides the total amount of restitution ordered compared to the total amount of restitution paid in a given time period -- thus making a case-by-case analysis virtually impossible. There was, however, consensus among members of the workgroup that the general efficacy of restitution could be improved.

In the course of reviewing literature, substantial discussion took place regarding the underlying purpose of restitution. Consistent with the findings of many studies, the workgroup agreed that restitution serves the economic goals of victims, but more importantly also has a

psychological goal for victims seeking palpable justice. From the justice system's standpoint, restitution as a sentence ideally serves to reduce prison and jail caseloads and may also improve crime reporting by citizens anticipating restitution. It has also been suggested that a defendant's participation in restitution efforts will reduce recidivism by enhancing his or her comprehension of the harm done to a victim.

Despite these ambitious goals, it is clear that restitution is not a social program, nor a substitute for civil actions. The workgroup's view was that restitution must be primarily penal, and that its administration must function within the framework of adequate due process protections and fairness. The group also agreed that restitution should always be considered in light of other, concomitant penalties assigned. It is against this backdrop that the attached recommendations were formulated.

RECOMMENDATIONS REGARDING THE ORDERING OF RESTITUTION

RECOMMENDATIONS REGARDING THE ORDERING OF RESTITUTION

- 1) Restitution requests should allow for inclusion of all verified out-of-pocket expenses incurred by the victim, compatible with, but not limited to, what is now compensable by the Crime Victims Reparations Board. (statutory change)

Discussion: Current law does not specify what may and may not be paid within the scope of a restitution order. As a consequence, some victims may be advised to omit items such as child care or wage loss, or may assume they can only obtain compensation for property damage. Specificity in law will clarify the scope of restitution.

Implementation: It is recommended that language be added to existing statute that specifically designates the types of expenses which may be covered by restitution.

Information regarding the right to request restitution (see recommendation 2) should include a description of the types of out-of pocket expenses covered. Subsequent additions or deletions from eligibility for Reparations payment should be accompanied by parallel changes in the restitution statutes.

- 2) Victims should be specifically notified of their right to request restitution as well as be given specific information regarding their ability to seek an amendment on an order of restitution at the time the order is made. (policy change)

Discussion: It is not unusual for a victim to be awarded only a fraction of their actual losses simply because the conviction was obtained before full costs of the crime were realized. Many victims are not aware that they can change orders of restitution to reflect their actual losses. The workgroup thought that the court and/or the prosecutor should clearly inform the victim of that right, and give instructions on the procedure for amendments.

Implementation: As part of changes made to Minnesota law in the 1988 session, every victim making a formal statement will receive a notice of their rights from the peace officer taking the statement. The notice which is currently being developed by the Crime Victim and Witness Advisory Council and will be distributed by the Commissioner of Public Safety, will include information about the victim's right to request restitution and will include a form for the preparation of a preliminary written victim impact summary. The legislation requires the victim to file the summary with the investigating officer within 5 days of receiving the notice. A summary that is filed within the time period will then be sent to the prosecutor with other investigative materials.

As a matter of policy, all prosecutors should also notify victims of their right to request restitution, and prosecutor's offices should provide forms and instructions for victims who wish to do so.

Probation officers should also inform and assist victims in accordance with their obligations under existing law.

It is recommended that the Minnesota County Attorney's Association work with the Minnesota Association of Restitution Services to develop a standardized manner of assuring that any victim involved in a case which will be prosecuted be informed of the right to request restitution.

It is recommended that the Conference of Chief Judges adopt a policy that information about the amendability of restitution orders be included as part of the record for every order of restitution.

- 3) The ability of the defendant to pay should be considered in determining the amount of restitution to be paid during the probation period. The defendant should have input regarding the amount to be paid as well as the payment schedule. (policy change)

Discussion: After reviewing and discussing the literature, the workgroup determined that a clear relationship exists between a defendant's perception of restitution as reasonable in terms of the dollar amount ordered and their subsequent efforts to comply with the order. There was strong consensus that the ordering of high dollar amounts of restitution for indigent defendants was entirely unproductive and inappropriate, but that proportionate levels of restitution were possible even for those who claimed complete poverty. While the workgroup advocates for balance of resources and ability to pay against the amount ordered, the workgroup also expressed strong concern regarding the tendency of the court to broadly accept claims of indigency with little or no substantial investigation into the actual assets held by the defendant. With that caution in mind, the workgroup recommended that the pre-sentence investigation report should allow for defendant input into the amount and structure of the restitution award, and that when the court determines the amount to be paid, it should consider

the offender's documented resources, current income, and other financial obligations. In addition, courts should take into consideration the impact which any set of sentences will have on an offender's ability to make restitution. The court should also be vigilant as to the tendency to accept a claim of indigency too readily.

Implementation: Probation officers should include the defendant's input regarding restitution in the presentence investigation report, and should consider that input when making recommendations to the court. The Department of Corrections should assist probation officers in this endeavor by providing training in conjunction with any other psi-related training which enables probation officers to evaluate ability to pay restitution.

Minnesota law should be amended to assure that the income, resources and obligations of the defendant are considered as factors in the amount of restitution ordered.

- 3A) The court should be specifically permitted to make partial orders of restitution in light of current resources available to the defendant, but should also provide for opportunities for future civil collections through the order for restitution. (statute change, procedure change)

Discussion: Current law provides for either an award of or a denial of requested restitution. Although the workgroup found that many judges already make partial awards, it was believed that express permission to do so was important. Further, the group discussed the possibility that a defendant who might be poor at the time of the initial restitution order might later acquire wealth which would enable them to more adequately compensate the victim. Use of the civil docketing of judgements in amounts larger than partial awards was recommended as a safeguard for a victim who might later be able to capture the additional resources in this type of situation.

Implementation: Current statute should be amended to provide for the partial ordering of restitution, and permitting judges to designate all or part of the amount requested for civil docketing, independent of the amount awarded.

- 4) Without exception, all restitution orders should be accompanied by a payment structure which will reinforce the overall policy that the probationer is to pursue his court ordered obligation throughout the term of probation. (statute change, policy change)

Discussion: Identified as a problem was the difficulty in holding individuals accountable for payment of outstanding restitution obligations when there was substantial time remaining prior to the deadline for payment, i.e., the end of the probation period. If a probationer, for example, is required to pay a particular amount within ten years, there is little recourse available when no good faith effort has been made to make payment within two years, since the probationer has eight years remaining in which she/he could legally fulfill the obligation.

It was clear that the intention of a restitution penalty is to promote a consistent and immediate effort to begin payment, and that greater structure is needed to facilitate that intention. Specifically, it was believed that either at the court's discretion, or subject to the discretion of court services, a specific payment schedule should be attached to all orders for restitution, and that absent exceptional circumstances, the payment should commence soon after the disposition is finalized. The monitoring of the restitution order would thus be keyed to appropriate "benchmarks" in the payment schedule, greatly enhancing the order's enforceability.

Implementation: The appropriate statutory changes should be adopted which mandate that a payment schedule be an inherent part of every restitution order. The schedule should, ideally, be specifically ordered by the court, or the order should delegate an enforceable payment schedule to the supervising agent.

Probation officers and court administrators should adapt their recordkeeping systems to assure that payment schedules form the basis for a system of "flagging" files where payments are overdue.

- 5) Restitution should be a penalty for juveniles as well as adults, and the penalty should include both personal and property damage. (statute change)

Discussion: Current law allows for limited restitution to be ordered in cases where juveniles are adjudicated delinquent. Relevant statutes limit juvenile restitution to property damage. The workgroup recommended that both personal and property damage be included as appropriate for consideration by the court in juvenile as well as adult cases.

Implementation: Current statute should be amended to expand the scope of restitution applicable in juvenile cases. Juvenile court authorities should be subject to the same requirements recommended throughout this report.

RECOMMENDATIONS REGARDING THE COLLECTION OF RESTITUTION

RECOMMENDATIONS REGARDING THE COLLECTION OF RESTITUTION

- 1) Restitution should be collected and recordkeeping regarding payment conducted by a single agency in all jurisdictions. The workgroup recommended that the Court Administrator assume this responsibility.
(statute change, policy change)

Discussion: The lack of standardization across jurisdictions for collecting and maintaining records of restitution orders and payments leads to confusion and diffusion of responsibility. There is no central source of data regarding the amounts ordered against amounts paid, and recordkeeping/tracking systems range from extremely sophisticated to virtually nonexistent. Designating a single agency to collect restitution payments and to issue checks was viewed as necessary to improve accountability and efficiency. The workgroup determined that the court administrators office would be the most appropriate entity to assume responsibility for collection and disbursement of restitution.

Some concerns were expressed about the current practice of some Court Administrators who hold payments made by the defendant until either the entire amount or a substantial amount has been paid. The workgroup suggested that this delay in disbursing a check to a victim be avoided. Court administrators should disburse checks received within 30 days.

Implementation: Legislation should be added which would designate the Court administrator in each jurisdiction as the responsible agency for the collection of restitution. Necessary training should be provided by the State Court Administrators office.

- 2) Where an offender is ordered to pay restitution in addition to fines and surcharges, the restitution should be collected first, fines second, and surcharges last.

Discussion: The current practice of some of those collecting monies from offenders is to apply the dollars received towards fines first, then the surcharges on the fines, and finally restitution. Since restitution benefits an individual, and replaces a loss, it is the strong recommendation of the workgroup that the first dollars received be applied to the restitution obligation, and that this be adopted as policy in all jurisdictions in the state.

Implementation: The Conference of Chief Judges should promulgate policies designating the appropriate order of collection.

- 3) Judges and probation officers should be encouraged to develop policies which allow for the early termination of probation, contingent upon full payment of restitution obligations, assuming all other conditions of probation have been completed.

Discussion: Early termination of probation was viewed as an effective incentive for payment of a restitution obligation. The workgroup was informed that it was currently a practice of some probation officers to terminate probation early if all conditions of probation had been met. The workgroup believes that the appropriate agencies should encourage, and where possible, by policy, adopt this practice.

Implementation: The Minnesota Department of Corrections should develop model policies which would be adopted by local jurisdictions in order to assure equitable application of early termination to all probationers.

- 4) The current exclusions for attachment are too restrictive, and should be modified to permit seizure of property within more reasonable parameters.

Discussion: Minnesota Statutes 550.37 govern the attachment of property or wealth in order to collect debts. Exempt from these statutes are substantial amounts of property including phonographs, radios, televisions and other items which the workgroup felt might be appropriate items for seizure in the case of restitution. The workgroup strongly preferred that debt collection in criminal cases be governed by different rules than in civil cases. It was suggested, although not fully endorsed by the workgroup, that income withholding, similar to that used in child support enforcement, be applicable to restitution orders.

Implementation: The legislature should consider an amendment to existing attachment statutes which would allow for income withholding in order to assure restitution payment.

- 5) The time frame for enforcing restitution orders should be built into a payment schedule, and the court should intervene promptly when failure to make payment is identified.

Discussion: Current law provides that when a defendant fails to pay restitution there should be a hearing regarding possible changes in the probationers status. Unfortunately, these hearings are normally conducted so close to the termination of the probation period, that the court has little "muscle" to effect payment. By using its authority to hold hearings when a payment has been missed by a reasonable period of time, the court will have greater authority to alter terms of probation appropriately.

Implementation: Legislation should be enacted which allows hearings relative to failure to pay restitution according to the benchmarks of payment schedules ordered by the court and continues to mandate such hearings if restitution is unpaid sixty (60) days prior to the end of the probation term.

- 6) Restitution should be distributed promptly. No restitution should ever be held for longer than it takes to distribute the funds. (policy change, statute change)

Discussion: Many of the workgroup members had received complaints from victims who were awaiting distribution of restitution payments which had been paid to the court, and were being held pending collection of the entire amount. The group strongly preferred quick distribution of funds as they were collected.

Implementation: Statute and court rules should be amended to require prompt disbursement of restitution payments.

SUMMARY

RECOMMENDATIONS REGARDING THE ORDERING OF RESTITUTION

- 1) Restitution requests should allow for inclusion of all verified out-of-pocket expenses incurred by the victim, compatible with, but not limited to, what is now compensable by the Crime Victims Reparations Board. (statutory change)
- 2) Victims should be specifically notified of their right to request restitution as well as be given specific information regarding their ability to seek an amendment on an order of restitution at the time the order is made. (policy change)
- 3) The ability of the defendant to pay should be considered in determining the amount of restitution to be paid during the probation period. The defendant should have input regarding the amount to be paid as well as the payment schedule. (policy change)
- 3A) The court should be specifically permitted to make partial orders of restitution in light of current resources available to the defendant, but should also provide for opportunities for future civil collections. (statute change, procedure change)
- 4) Without exception, all restitution orders should be accompanied by a payment structure which will reinforce the overall policy that the probationer is to pursue his court ordered obligation throughout the term of probation. (statute change, policy change)
- 5) Restitution should be a penalty for juveniles as well as adults, and the penalty should include both personal and property damage. (statute change)

SUMMARY

RECOMMENDATIONS REGARDING THE COLLECTION OF RESTITUTION

- 1) Restitution should be collected and recordkeeping regarding payment conducted by a single agency in all jurisdictions. The workgroup recommended that the Court Administrator assume this responsibility.
(statute change, policy change)
- 2) Where an offender is ordered to pay restitution in addition to fines and surcharges, the restitution should be collected first, fines second, and surcharges last.
- 3) Judges and probation officers should be encouraged to develop policies which allow for the early termination of probation, contingent upon full payment of restitution obligations, assuming all other conditions of probation have been completed.
- 4) The current exclusions for attachment are too restrictive, and should be modified to permit seizure of property within more reasonable parameters.
- 5) The time frame for enforcing restitution orders should be built into a payment schedule, and the court should intervene promptly when failure to make payment is identified.
- 6) Restitution should be distributed promptly. No restitution should ever be held for longer than it takes to distribute the funds. (policy change, statute change)

PROPOSED LEGISLATION

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260.185 DISPOSITIONS; DELINQUENT CHILD.

Subdivision 1. If the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:

- (a) Counsel the child or the parents, guardian, or custodian;
- (b) Place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court including reasonable rules for conduct and the conduct of the child's parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child, or with the consent of the commissioner of corrections, in a group foster care facility which is under the management and supervision of said commissioner,
- (c) Subject to the supervision of the court, transfer legal custody of the child to one of the following:
 - (1) A child placing agency; or
 - (2) The county welfare board; or
 - (3) A reputable individual of good moral character. No person may receive custody of two or more unrelated children unless licensed as a residential facility pursuant to sections 245.781 to 245.812; or
 - (4) Except for children found to be delinquent as defined in section 260.015, subdivision 5, clauses (c) and (d), a county home school, if the county maintains a home school or enters into an agreement with a county home school; or

(5) A county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;

(d) Except for children found to be delinquent as defined in section 260.015, subdivision 5, clauses (c) and (d), transfer legal custody by commitment to the commissioner of corrections.

(e) If the child is found to have violated a state or local ordinance which has resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage;

(f) Require the child to pay a fine of up to \$700; the court shall order payment of the fine in accordance with a time payment schedule which shall not impose an undue financial hardship on the child.

(g) If the child is in need of special treatment and care for reasons of physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided.

(h) If the court believes that it is in the best interests of the child and of public safety that the driver's license of the child be canceled until the child's 18th birthday, the court may recommend to the commissioner of public safety the cancellation of the child's license for any period up to the child's 18th birthday, and the commissioner is hereby authorized to cancel such license without a hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of public safety that the child be authorized to apply for a new license, and the commissioner may so authorize.

Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition ordered, and shall also set forth in writing the following information:

(a) Why the best interests of the child are served by the disposition ordered; and

(b) What alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case.

This subdivision applies to dispositions of juveniles found to be delinquent as defined in section 260.015, subdivision 5, clause (c) or (d) made prior to, on, or after January 1, 1978.

Subd. 2. Except when legal custody is transferred under the provisions of subdivision 1, clause (d), the court may expunge the adjudication of delinquency at any time that it deems advisable.

Subd. 3. When it is in the best interests of the child to do so and when child has admitted the allegations contained in the petition before the judge or referee, or when

Subd. 3a. **Enforcement of restitution orders.** If the court orders payment of restitution ~~as-a-condition-of-probation~~ and the child fails to pay the restitution ~~ordered-before-60-days before-the-term-of-probation-expires;~~ in accordance with the payment structure established by the court or the probation officer, the child's probation officer shall may file a petition for violation of probation or shall ask the court to hold a

hearing to determine whether the conditions of probation should be changed. The child's probation officer shall ask for such a hearing if payment or restitution ordered has not been made prior to sixty (60) days before the term of probation expires. The court shall schedule and hold this hearing before the child's term of probation expires.

609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

Subdivision 1. **Terms and conditions.** Except when a sentence of life imprisonment is required by law, or when a mandatory minimum term of imprisonment is required by section 609.11, any court may stay imposition or execution of sentence and (a) may order noninstitutional sanctions without placing the defendant on probation, or (b) may place the defendant on probation with or without supervision and on the terms the court prescribes, including noninstitutional sanctions when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony or gross misdemeanor, by the commissioner of corrections, or in any case by some other suitable and consenting person. No noninstitutional sanction may be ordered performed at a location that fails to observe applicable requirements or standards of chapter 181A or 182, or any rule promulgated under them. For purposes of this subdivision, subdivision 6, and section 609.14, the term "noninstitutional sanctions" includes but is not limited to restitution, fines, community work service, and work in lieu of or to work off fines.

A court may not stay the revocation of the driver's license of a person convicted of violating the provision of section 169.121.

Subd. 1a. **Failure to pay restitution.** If the court orders payment of restitution as a condition of probation and if the defendant fails to pay the restitution ~~ordered prior to~~ in accordance with the payment structure established by the court or the probation officer, 60 days before the term of probation expires, the defendant's probation officer shall ~~shall~~ may ask the court to hold a hearing to determine whether or not the conditions of probation should be changed or probation should be revoked. The defendant's probation officer shall ask for such a hearing if payment of restitution ordered has not been made prior to sixty (60) days before the term of probation expires. The court shall schedule and hold this hearing and take appropriate action before the defendant's term of probation expires.

~~-Subd.-1b.--Failure-to-pay-restitution.--If-the-court-orders payment-of-restitution-as-a-condition-of-probation-and-if-the-defendant-fails-to-pay-the-restitution-ordered-prior-to-60-days before-the-term-of-probation-expires,-the-defendant's-probation officer-shall-ask-the-court-to-hold-a-hearing-to-determine-whether or-not-the-conditions-of-probation-should-be-changed-or-probation should-be-revoked.--The-court-shall-schedule-and-hold-this-hearing-and-take-appropriate-action-before-the-defendant's-term of-probation-expires-~~

Where the commissioner directs that a child be detained in an approved juvenile facility with the approval of the administrative authority of the facility as provided in section 260.171, subdivision 2, or subdivision 4 of this section, the costs of such detention shall be a charge upon the county for which the child is being detained.

611A.04 ORDER OF RESTITUTION

Subdivision 1. **Request; decision.** (a) A victim of a crime has the right to request that restitution be considered as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender. The request for restitution shall be made by the victim in writing in affidavit form, and shall describe the items or elements of loss and itemize the total dollar amounts of restitution claimed, and the reasons justifying these amounts, if the request is for monetary or property restitution. A request for restitution may include, but is not limited to any out-of-pocket losses resulting from the crime, including medical or therapy costs, replacement of wages or services, and funeral expenses. In order to be considered by the court, the request 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 at least 24 hours before the sentencing or dispositional hearing.

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

- (1) the offender is on probation or supervised release;
- (2) a request for restitution is filed by the victim or prosecutor in affidavit form as required under paragraph (a); and
- (3) the true extent of the victim's loss was not known at the time of the sentencing or dispositional hearing.

If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, and the prosecutor at least five business days before the hearing. The court's restitution decision is governed by this section and section 611A.045.

(c) The court shall grant ~~or~~, deny or partially grant restitution, and shall state on the record its reasons for its decision on restitution if a request for restitution has been made. Where a partial grant of restitution is made due to the provisions of 611A.045, subd. 1, 2 or 3, the judge shall specify the full amount which may be docketed for civil collection under 611A.04, subd.3.

Subd. 1a. **Crime board request.** The crime victims reparations board may request restitution on behalf of a victim by filing a copy of a claim for reparations submitted under sections 611A.52 to 611A.67, along with order of the board, if any, which detail any amounts paid by the board to the victim. The filing of a claim for reparations with the court administrator shall also serve as a request for restitution by the victim. The restitution requested by the board may be considered to be both on its behalf and on behalf of the victim. If the board has not paid reparations to the victim, restitution may be made directly to the victim. If the board has paid reparations to the victim, the court shall order restitution payments to be made directly to the board.

Subdivision 2. **Procedures.** The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the

restitution is to be paid. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the amount of restitution actually paid by the offender. The Court Administrator shall disburse restitution in incremental payments, and shall hold no restitution payment for longer than 30 days. The court administrator shall forward the data collected to the state court administrator who shall compile the data and make it available to the supreme court and the legislature upon request.

Subdivision 3. **Effect of order for restitution.** An order of restitution may be enforced by any person named in the order to receive the restitution in the same manner as a judgment in a civil action. An order of restitution shall be docketed as a civil judgement by the court administrator of the district court in the county in which the order of restitution was entered. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

611A.045 PROCEDURE FOR ISSUING ORDER OF RESTITUTION.

Subdivision 1. **Criteria.** The court, in determining whether to order restitution and the amount of the restitution,

shall consider ~~the amount of the economic loss sustained by the victim as a result of the offense~~ the following factors:

- 1) The extent of harm to the victim;
- 2) The income, resources and obligations of the defendant; and
- 3) Other penalties imposed by the court.

Subdivision 2. **Presentence investigation.** ~~The court may order that~~ The presentence investigation report made pursuant to section 609.115, subdivision 1, shall contain information pertaining to the factors set forth in subdivision 1.

Subdivision 3. **Payment Structure.** The court shall include, as part of every restitution order, a provision requiring a schedule or structure for payment. The court may assign the development of such a structure to the court administrator, probation officer or other consenting person. If the defendant is placed on supervised probation, such a schedule shall become part of the probation agreement.

Subdivision 3 4. **Dispute; evidentiary burden.** A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.

HV 8688 .F56 1988

Final report of the
Restitution Workgroup

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