

STATE OF MINNESOTA

IN SUPREME COURT

A21-1270

Court of Appeals

Moore, III, J.

State of Minnesota,

Respondent,

vs.

Filed: March 22, 2023
Office of Appellate Courts

Michael Phillip Cloutier,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

Minnesota Statutes § 611A.045, subd. 3(a) (2022), imposes no burden on the State to prove that a defendant's income, resources, and obligations allow them to pay restitution when a defendant challenges a restitution order.

Affirmed.

OPINION

MOORE, III, Justice.

This case presents the question of whether, under Minn. Stat. § 611A.045, subd. 3(a) (2022), the State must prove that a defendant’s income, resources, and obligations allow them to pay restitution when a defendant challenges a restitution order issued in a criminal case. After appellant Michael Cloutier pleaded guilty to second-degree unintentional felony murder, the district court ordered him, as part of his sentence, to pay \$7,500 in restitution for the victim’s funeral expenses. Cloutier challenged the restitution order, arguing that he was unable to pay the amount ordered. After holding an evidentiary hearing, the district court concluded that Cloutier had “the ability to pay restitution someday” and denied his motion to relieve his restitution obligation. Cloutier appealed, arguing that Minn. Stat. § 611A.045, subd. 3(a), requires the State to prove his ability to pay restitution based on his income, resources, and obligations. The court of appeals concluded that the statute imposes no such burden on the State and affirmed the district court’s restitution order. *State v. Cloutier*, 971 N.W.2d 743, 749 (Minn. App. 2022). Because we agree that Minn. Stat. § 611A.045, subd. 3(a), imposes no burden on the State to prove a defendant’s income, resources, and obligations, we affirm the decision of the court of appeals.

FACTS

Cloutier pleaded guilty to second-degree unintentional felony murder under Minn. Stat. § 609.19, subd. 2(1) (2022). As part of the factual basis provided to the district court for his plea, Cloutier admitted that he fatally stabbed his girlfriend, P.H. The district

court accepted Cloutier’s plea and ordered a presentence investigation report. A probation officer interviewed Cloutier and filed a presentence investigation report with the court that contained information about Cloutier’s education, work history, financial status, and physical abilities. Among other information, the report detailed that Cloutier had served in the United States Army, worked as a first responder for the Chicago Fire Department for 15 years, and was P.H.’s personal care attendant and Social Security payee before he fatally stabbed her. In describing his current financial status, Cloutier told the probation officer that he “does not qualify for military pension because he terminated his service early,” “does not have a Chicago Fire Department pension because he liquidated it at the time of his divorce,” and “has no current earned income, no savings, and no debt,” but that “there may be a portion of inheritance from his father once his estate is settled.”

At the sentencing hearing, the district court imposed a 162-month prison sentence and ordered Cloutier to pay \$7,500 in restitution to the Minnesota Crime Victims Reparations Board for P.H.’s funeral expenses.¹ Cloutier subsequently filed a motion to relieve his restitution obligation, arguing that he was unable to pay the amount ordered. In support of his motion, Cloutier relied on Minn. Stat. § 611A.045, subd. 1(a)(2) (2022), which requires a district court, “in determining whether to order restitution and the amount of the restitution,” to consider “the income, resources, and obligations of the defendant.”

¹ The Minnesota Crime Victims Reparations Board has authority to pay reparations to a crime victim who has suffered economic loss as a result of death. Minn. Stat. §§ 611A.52, subds. 8(a), 10; 611A.53, subd. 1; 611A.60 (2022). Such a reparations claim was paid in this case. As a result, the Crime Victims Reparations Board is empowered to seek restitution on behalf of the victim. *Evans v. State*, 880 N.W.2d 357, 360–61 (Minn. 2016).

He also submitted an affidavit asserting that he is unable to pay the restitution amount ordered by the court because (1) he is “serving a 162 month [prison] sentence,” (2) he is “not employed,” (3) he is “not . . . able to collect Social Security benefits while incarcerated,” and (4) he does “not own a vehicle, investments, retirement accounts, or any other assets of substance.”

In response to Cloutier’s motion, the district court held an evidentiary hearing. During Cloutier’s testimony, he reiterated the facts alleged in his affidavit. The State did not ask Cloutier any questions, nor did it present any evidence. The parties did not discuss the issue of who (if anyone) had the burden of proving Cloutier’s ability to pay restitution.

In a written order, the district court concluded that Cloutier had “the ability to pay restitution someday.” The district court based this conclusion on the following findings: (1) the presentence investigation report stated that Cloutier held jobs that “traditionally pay pensions,” (2) there was no testimony regarding Cloutier’s pensions, (3) Cloutier would “presumably” receive pension income, (4) there was no evidence that Cloutier could not be employed in prison, and (5) there was no evidence that Cloutier would not receive Social Security payments when he was released from prison. The court observed that if it relieved Cloutier of his duty to pay restitution, it would be ignoring the primary purpose of restitution—the right of the victim’s family to be compensated for their monetary loss. Based on this analysis, the district court denied Cloutier’s motion to relieve his restitution obligation.

Cloutier appealed, challenging the district court’s order on three grounds. First, he asserted that under Minn. Stat. § 611A.045, subd. 3(a), the State bears the burden of

proving the factor in Minn. Stat. § 611A.045, subd. 1(a)(2) (“the income, resources, and obligations of the defendant”)—which we have previously referred to as the defendant’s “ability to pay” restitution²—and that the State failed to meet that burden in his case. Second, he argued that the district court abused its discretion by failing to adequately consider his income, resources, and obligations. Third, he argued that the district court erred by failing to order a payment schedule.

The court of appeals affirmed the restitution award, concluding that the State does not bear the burden of producing evidence of or proving a defendant’s ability to pay restitution. *Cloutier*, 971 N.W.2d at 749. After reviewing the statutory language of Minn. Stat. § 611A.045 (2022), the court of appeals determined that subdivision 3(a) unambiguously limits the State’s burden of proof to disputes involving the *amount* and *type* of restitution and that it does not extend to disputes involving a defendant’s *ability to pay*. *Cloutier*, 971 N.W.2d at 747–48.

Subdivision 3(a) states:

At the sentencing, dispositional hearing, or hearing on the restitution request, the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts. This burden of production must include a detailed sworn affidavit of the offender setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims. The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing. 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

² See, e.g., *State v. Wigham*, 967 N.W.2d 657, 659 n.1 (Minn. 2021) (referring to the “the income, resources, and obligations of the defendant” factor in Minn. Stat. § 611A.045, subd. 1(a)(2), as the defendant’s “ability to pay”).

loss sustained by a victim as a result of the offense and the *appropriateness of a particular type of restitution* is on the prosecution.

Minn. Stat. § 611A.045, subd. 3(a) (emphasis added).

The court of appeals determined that the phrase “appropriateness of a particular type of restitution” requires the State to “demonstrate that, given the facts of the case, the type of restitution requested is appropriate,” and that this burden does not include proving a defendant’s ability to pay. *Cloutier*, 971 N.W.2d at 748. As part of its analysis, the court observed that, as a practical matter, defendants possess the information about their ability to pay restitution and that requiring the State to obtain and present such information would force the State to make “discovery requests—a process not contemplated by the restitution statute.” *Id.*

Having concluded that the burden-of-proof provision in Minn. Stat. § 611A.045, subd. 3(a) does not apply to the question of “the income, resources, and obligations of the defendant” in Minn. Stat. § 611A.045, subd. 1(a)(2), the court of appeals reviewed the district court’s consideration of that factor. *See Cloutier*, 971 N.W.2d at 749–50. The court of appeals determined that the district court adequately considered *Cloutier*’s ability to pay restitution under the standard we articulated in *State v. Wigham*.³ *Cloutier*, 971 N.W.2d at 749–50 (citing *State v. Wigham*, 967 N.W.2d 657, 663 (Minn. 2021)). The court of appeals reasoned that the district court’s consideration was adequate because it

³ In *Wigham*, we held that when ordering restitution under Minn. Stat. § 611A.045, subd. 1, a district court must expressly state that it considered the defendant’s ability to pay restitution and that the record must include sufficient evidence about the defendant’s income, resources, and obligations to allow a district court to consider the defendant’s ability to pay the amount of restitution ordered. 967 N.W.2d at 666.

made explicit findings about Cloutier’s ability to pay and the record contained sufficient evidence to support those findings. *Id.* at 749. However, because the district court failed to establish a payment schedule, the court of appeals remanded to the district court “to assign responsibility for creating a payment schedule or structure to a proper person.” *Id.* at 750; *see also* Minn. Stat. § 611A.045, subd. 2a; *Wigham*, 967 N.W.2d at 666.

Cloutier petitioned for review on the issue of whether Minn. Stat. § 611A.045, subd. 3(a), imposes a burden of proof regarding a defendant’s income, resources, and obligations—specifically as this information relates to a defendant’s ability to pay restitution. We granted review.⁴

ANALYSIS

The issue of whether subdivision 3(a) of section 611A.045 imposes a burden of proof as to a defendant’s income, resources, and obligations presents a question of law, which we review de novo. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015).

⁴ The State moved to strike portions of Cloutier’s brief that addressed the issue of whether the district court abused its discretion by basing the restitution award upon clearly erroneous factual findings about Cloutier’s income, resources, and obligations. The State argued that Cloutier forfeited review of this issue because Cloutier did not challenge the particular factual findings raised in his brief at the court of appeals and because Cloutier raised the issue for the first time in his brief to this court. We agree that Cloutier failed to challenge the factual findings identified in his brief at the court of appeals and that he did not request review of these findings in his petition for review. “Failing to raise an issue both before the court of appeals and in a petition for review forfeits the issue.” *McGuire v. Bowlin*, 932 N.W.2d 819, 829 (Minn. 2019); *see also Minn. Voters All. v. County of Ramsey*, 971 N.W.2d 269, 275 n.3 (Minn. 2022) (concluding that a party forfeited an argument by failing to raise it before the court of appeals and failing to include it in the petition for review). Accordingly, we do not address the merits of Cloutier’s challenge to the district court’s factual findings and grant the State’s motion to strike.

“The aim of statutory analysis is to effectuate the intent of the legislature.” *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019) (citation omitted) (internal quotation marks omitted); Minn. Stat. § 645.16 (2022). “The first step in statutory interpretation is to determine whether the statute’s language, on its face, is ambiguous.” *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). “A statute is ambiguous when its language is subject to more than one reasonable interpretation.” *Riggs*, 865 N.W.2d at 682. To determine whether statutory language is ambiguous, we may consider the canons of interpretation listed in Minn. Stat. § 645.08 (2022). *Riggs*, 865 N.W.2d at 682. “One such canon provides that ‘words and phrases are construed according to rules of grammar and according to their common and approved usage.’ ” *Id.* (quoting Minn. Stat. § 645.08(1)). “The statutory language in dispute is not examined in isolation; rather, all provisions in the statute must be read and interpreted as whole.” *Pakhnyuk*, 926 N.W.2d at 920.

We begin with the text of Minn. Stat. § 611A.045. Subdivision 1(a) of the statute mandates that the district court consider two factors when determining whether to order restitution and the amount of restitution: “(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant.” These two factors are the exclusive factors that a district court may consider in determining the amount of a restitution award. *Riggs*, 865 N.W.2d at 685. Subdivision 2 of the statute requires that information regarding both factors be included in a presentence investigation report.

A defendant may “challenge the amount of restitution or specific items of restitution or their dollar amounts.” Minn. Stat. § 611A.045, subd. 3(a); *see also* Minn. Stat.

§ 611A.04, subd. 1(a) (2022) (“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.”). Subdivision 3(a) imposes certain burdens on the defendant and the State when a defendant challenges restitution.

After commencing a timely challenge, the defendant has an initial burden of production.⁵ Minn. Stat. § 611A.045, subd. 3. The defendant must produce “a detailed sworn affidavit . . . setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim.” *Id.*, subd. 3(a). The district court must resolve “[a] dispute as to the proper amount or type of restitution . . . by the preponderance of the evidence.” *Id.* And once the defendant has met their burden of production, “[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.” *Id.*

Cloutier recognizes that any burden on the State to prove the defendant’s ability to pay must be grounded in this last provision in subdivision 3(a). The issue before us, therefore, is whether the statutory language describing the second fact that the State must prove—“the appropriateness of a particular type of restitution”—requires the State to prove

⁵ Subdivision 3(b) requires a defendant to challenge restitution “by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later.” Minn. Stat. § 611A.045, subd. 3(b). The parties do not dispute that Cloutier timely challenged the restitution he was ordered to pay and that he met his burden of production.

that a defendant's income, resources, and obligations allow them to pay the restitution amount ordered.

We begin our analysis of the statute by looking to the meaning of the phrase “type of restitution.” *See State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). Cloutier instead argues that the focus should be on the word “appropriateness.” He asserts that this word necessarily imputes a burden to prove a defendant's ability to pay restitution because, he claims, the State must prove “appropriateness” in light of the factors district courts consider—which include a defendant's “income, resources, and obligations.” Minn. Stat. § 611A.045, subd. 1(a)(1). But the statute does not require the State to demonstrate the general appropriateness of a restitution award. Rather, “appropriateness” is the quality of being “[s]uitable for a particular person, condition, occasion, or place.” *See Appropriate*, *The American Heritage Dictionary* 122 (Second College Ed. 1982) (recognizing “appropriateness” as the noun form of the adjective “appropriate”). And the *particular condition* set forth in subdivision 3(a) is the “type of restitution.” Minn. Stat. § 611A.045, subd. 3(a).

The statute does not define the term “type of restitution.” We must therefore look to the ordinary and plain meaning of this phrase. *Haywood*, 886 N.W.2d at 488. “Type” is a reference to “a kind; category.” *See Type*, *The American Heritage Dictionary* 1309 (Second College Ed. 1982). Thus, the focus of the term “type of restitution” is on the “kind” or “category” of restitution at issue. Cloutier argues that the statutory phrase “type of restitution” refers to either full or partial restitution and that the statute requires the State to prove whether full or partial restitution is appropriate in light of the defendant's “income,

resources, and obligations.” *See* Minn. Stat. § 611A.045, subd. 1(a)(2). The State urges us to adopt the court of appeals’ interpretation of this language—namely, that the statute requires the State to prove “that the *type* of restitution that is requested is an appropriate *form* of restitution.” *Cloutier*, 971 N.W.2d at 748. Under this interpretation, the State argues, it has no burden to prove anything concerning the defendant’s income, resources, and obligations. For the reasons that follow, we conclude that subdivision 3(a) imposes no burden on the State to prove a defendant’s income, resources, and obligations.

The plain and ordinary meaning of the statute’s mandate that the State prove “the appropriateness of a particular type of restitution” is that the State must prove that “specific items of restitution” are appropriate. *See* Minn. Stat. § 611A.045, subd. 3(a). In other words, the inquiry is whether the victim’s request for restitution consists of the type, kind, or categories of expenses that should be compensated through restitution. Under this interpretation, it is clear that the statute does not require the State to prove that a defendant’s income, resources, and obligations allow them to pay the amount of restitution ordered. Whether an item is appropriately compensated through restitution is a separate question from whether a defendant is able to pay for that item of restitution. Consequently, the plain language of subdivision 3(a) does not assign a burden of proof regarding a defendant’s income, resources, and obligations.

This meaning is supported by the surrounding provisions in subdivision 3(a). The plain language of Minn. Stat. § 611A.045, subd. 3(a), makes clear that district courts will be called upon to resolve “dispute[s] as to the proper amount or type of restitution.” The use of the disjunctive “or” shows that these two disputes are distinct. *Aberle v. Faribault*

Fire Dep't Relief Ass'n, 41 N.W.2d 813, 817 (Minn. 1950) (“The word ‘or’ is a disjunctive and ordinarily refers to different things as alternatives.”). Therefore, disputes over the *amount* of restitution are distinct from disputes over the “*type* of restitution.” In other words, the defendant’s ability to pay the amount of restitution is distinct from the appropriateness of the type of restitution being ordered.

This interpretation of the State’s burden of proof also reflects the types of challenges that the restitution statutes explicitly identify as available to defendants. Minnesota Statutes § 611A.04 (2022), which describes a victim’s right to restitution, provides that “[a]t 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.” Minn. Stat. § 611A.04, subd. 1(a) (emphasis added). Further, before delineating the State’s burden of proof, Minn. Stat. § 611A.045, subd. 3(a), states that “the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution *or specific items of restitution* or their dollar amounts.” (Emphasis added.) These statutory phrases make clear that (1) a defendant can challenge items of restitution and the amount of restitution ordered for specific items and that (2) these challenges are distinct from one another.

Cloutier asserts that this interpretation violates the canon against surplusage because the inquiry of whether a particular item claimed for restitution is appropriate is already covered by the statute’s mandate that the State prove “the amount of loss sustained by a victim as a result of the offense.” *Id.* We are unpersuaded by Cloutier’s argument in light

of our past interpretations of the statute. We have previously interpreted the phrase “as a result of the offense” in Minn. Stat. § 611A.045 to mean “as a consequence of the defendant’s violation of the law.”⁶ *Riggs*, 865 N.W.2d at 686. In other words, whether a victim’s loss is “as a result of the offense” is an issue of causation. *See id.* at 687 (Gildea, C.J., dissenting).

Determining whether a victim’s loss is causally linked to a defendant’s offense is not the same inquiry as determining whether a loss is properly compensated through restitution. For example, consider a defendant who is convicted of a homicide offense and ordered to pay restitution for the victim’s funeral expenses. The cost of the funeral may consist of many individual expenses, all of which are losses the victim sustains “as a result of the offense,” Minn. Stat. § 611A.045, subd. 3(a), for there would be no funeral but for the defendant’s offense. It may, however, be the case that not all of the funeral expenses are appropriately compensated through restitution. For instance, the cost of a casket for the victim would certainly be a quantifiable amount of loss sustained as a result of the homicide, but the State may struggle to prove that the cost of a diamond-encrusted gold casket is the type of loss that should be included in a restitution order. Thus, there is no surplusage issue with requiring the State to prove both the amount of loss sustained by the

⁶ In *Riggs*, we interpreted the statute’s mandate in subdivision 1(a)(1) that the district court consider “‘the amount of economic loss sustained by the victim as a result of the offense.’” 865 N.W.2d at 685 (quoting Minn. Stat. § 611A.045, subd. 1(a)(1)). Unlike subdivision 1(a)(1), subdivision 3(a) does not include the word “economic.” Our analysis in *Riggs*, however, did not focus on that word. *See* 865 N.W.2d at 685–86. The key language that is consistent in both subdivision 1(a) and subdivision 3(a) is “as a result of the offense.” *See* Minn. Stat. § 611A.045, subs. 1(a)(1), 3(a).

victim as a result of the offense and that the type of loss for which restitution is sought is appropriate.

We also conclude that Cloutier’s interpretation of the “type of restitution” in subdivision 3(a) to mean either full or partial restitution is unreasonable in light of the plain language of Minnesota’s statutory scheme for restitution. Cloutier asserts that Minn. Stat. § 611A.04, subd. 1(c), identifies these different “types” of restitution. However, this statute does not use the term “full restitution.” Additionally, the ordinary way in which the term “restitution” is used does not differentiate between full or partial restitution as individual “types” of restitution. Rather, it is the award or order of restitution that is full or partial. *See Restitution, Black’s Law Dictionary* (11th ed. 2019) (defining “restitution” as “[c]ompensation for loss, esp., full or partial compensation paid by a criminal to a victim . . . ordered as part of a criminal sentence or as a condition of probation”).

We are similarly unpersuaded by Cloutier’s argument that the whole-statute canon requires that the State—or any party—bear a burden to prove information about a defendant’s income, resources, and obligations. The whole-statute canon provides that “a statute is to be read and construed as a whole so as to harmonize and give effect to all its parts.” *State v. Friese*, 959 N.W.2d 205, 212 (Minn. 2021) (citation omitted) (internal quotation marks omitted). Cloutier argues that because the district court must consider a defendant’s income, resources, and obligations pursuant to Minn. Stat. § 611A.045, subd. 1(a)(2), a burden to prove this factor must necessarily be assigned to one of the parties. It is true that subdivision 1(a)(2) of the statute directs courts to consider a defendant’s ability to pay restitution. However, the fact that one part of the statute requires

the district court to *consider* a factor does not mean that the statute must also require a party to *prove* that factor. In other words, the district court can fulfill its statutory mandate to consider a defendant's income, resources, and obligations in a process that assigns no party a burden of proof.

This result is consistent with our precedents. In *Wigham*, we stated that while a district court must affirmatively consider a defendant's ability to pay, our holding stopped short of requiring the district court to "make specific findings regarding the defendant's income, resources, and obligations." 967 N.W.2d at 663. Moreover, we noted that "[a]lthough the statutory requirement mandates that courts consider a defendant's ability to pay, it does not require courts to limit a restitution award amount to only what the defendant can afford." *Id.* at 664 n.4 (citing *State v. Lindsey*, 632 N.W.2d 652, 663–64 (Minn. 2001)). If the district court's discretion to award restitution is not bound by the defendant's ability to pay the amount ordered, it makes little sense to impose a burden on the State to prove a defendant's ability to pay in light of their income, resources, and obligations. Thus, the whole-statute canon does not require us to assign a burden of proof regarding a defendant's income, resources, and obligations.

Because we conclude that the plain language of Minn. Stat. § 611A.045, subd. 3(a), does not impose a burden on the State to prove a defendant's income, resources, and obligations, we need not resort to the canons of construction, including the statute's legislative history. See *Thonesavanh*, 904 N.W.2d at 435; Minn. Stat. § 645.16(5), (7). However, even if we were to find Cloutier's interpretation reasonable, we note that the legislative history of Minn. Stat. § 611A.045 provides compelling support for our

conclusion that the State has no burden to prove a defendant's income, resources, and obligations.

When Minn. Stat. § 611A.045 was originally enacted in 1985, district courts were required to consider just one factor when ordering restitution: “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.” Act of May 10, 1985, ch. 110, § 2, 1985 Minn. Laws 305, 306 (codified as amended at Minn. Stat. § 611A.045 (2022)). The prosecution's burden of proof under the original statute was identical to what the statute now mandates: “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.” *Id.* The original statute made no reference to a defendant's income, resources, and obligations.

When the statute was amended in 1989, the Legislature made three key changes. *See* Act of Apr. 4, 1989, ch. 21, § 7, 1989 Minn. Laws 38, 42–43 (codified as amended at Minn. Stat. § 611A.045 (2022)). First, the Legislature directed courts to consider an additional factor when determining whether to order restitution: “the income, resources, and obligations of the defendant.” *Id.* at 42. Second, the Legislature amended subdivision 2 to require presentence investigation reports to contain information about both factors. *Id.* Third, the Legislature added subdivision 2a, which requires district courts to “include in every restitution order a provision requiring a payment schedule or structure.” *Id.* at 42–43. Notably, although the Legislature added consideration of a defendant's ability

to pay to the district court’s statutory requirements, the *prosecution’s* burden of proof in restitution disputes remained unchanged. *See id.*

The Legislature has since made other changes to the statute. *See, e.g.,* Act of Apr. 12, 1999, ch. 38, § 1, 1999 Minn. Laws 159, 159–60 (codified as amended at Minn. Stat. § 611A.045 (2022)) (adding subdivision 3(b), which requires defendants to challenge restitution “within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later”). However, the State’s burden of proof in restitution disputes has remained unchanged since the statute was adopted. The fact that the Legislature never changed the State’s burden of proof suggests that it has never changed the meaning of that burden of proof—a burden of proof that clearly did not include proving anything about a defendant’s income, resources, and obligations when the statute was first adopted. Had the Legislature intended, as Cloutier argues, for the State’s burden to prove “the appropriateness of a particular type of restitution” to encompass a defendant’s “income, resources, and obligations” when those words were subsequently added to the statute, we believe that “the Legislature would have taken a much more direct path to do so.” *Buzzell v. Walz*, 974 N.W.2d 256, 265 (Minn. 2022).

In sum, we conclude that the State’s statutory burden under Minn. Stat. § 611A.045, subd. 3(a), to prove “the appropriateness of a particular type of restitution” means the State must prove that specific items of restitution are appropriate. This burden does not require the State to prove anything regarding a defendant’s income, resources, and obligations,

including that the defendant is able to pay restitution based on their income, resources, and obligations.

CONCLUSION

For the forgoing reasons, we affirm the decision of the court of appeals.

Affirmed.