

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1317
93RD GENERAL ASSEMBLY

Reported from the Committee on Crime Prevention and Public Safety February 23, 2006 with recommendation that House Committee Substitute for House Bill No. 1317 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

3678L.04C

AN ACT

To repeal sections 595.209 and 610.105, RSMo, and to enact in lieu thereof three new sections relating to crime victim's rights.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 595.209 and 610.105, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 217.439, 595.209, and 610.105, to read as
3 follows:

**217.439. Upon the victim's request, a photograph shall be taken of the incarcerated
2 individual prior to release from incarceration and a copy of the photograph shall be
3 provided to the crime victim.**

595.209. 1. The following rights shall automatically be afforded to victims of dangerous
2 felonies, as defined in section 556.061, RSMo, victims of murder in the first degree, as defined
3 in section 565.020, RSMo, victims of voluntary manslaughter, as defined in section 565.023,
4 RSMo, and victims of an attempt to commit one of the preceding crimes, as defined in section
5 564.011, RSMo; and, upon written request, the following rights shall be afforded to victims of
6 all other crimes and witnesses of crimes:

7 (1) For victims, the right to be present at all criminal justice proceedings at which the
8 defendant has such right, including juvenile proceedings where the offense would have been a
9 felony if committed by an adult, even if the victim is called to testify or may be called to testify
10 as a witness in the case;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 (2) For victims, the right to information about the crime, as provided for in subdivision
12 (5) of this subsection;

13 (3) For victims and witnesses, to be informed, in a timely manner, by the prosecutor's
14 office of the filing of charges, preliminary hearing dates, trial dates, continuances and the final
15 disposition of the case. Final disposition information shall be provided within five days;

16 (4) For victims, the right to confer with and to be informed by the prosecutor regarding
17 bail hearings, guilty pleas, pleas under chapter 552, RSMo, or its successors, hearings, sentencing
18 and probation revocation hearings and the right to be heard at such hearings, including juvenile
19 proceedings, unless in the determination of the court the interests of justice require otherwise;

20 (5) The right to be informed by local law enforcement agencies, the appropriate juvenile
21 authorities or the custodial authority of the following:

22 (a) The status of any case concerning a crime against the victim, including juvenile
23 offenses;

24 (b) The right to be informed by local law enforcement agencies or the appropriate
25 juvenile authorities of the availability of victim compensation assistance, assistance in obtaining
26 documentation of the victim's losses, including, but not limited to and subject to existing law
27 concerning protected information or closed records, access to copies of complete, unaltered,
28 unedited investigation reports of motor vehicle, pedestrian, and other similar accidents upon
29 request to the appropriate law enforcement agency by the victim or the victim's representative,
30 and emergency crisis intervention services available in the community;

31 (c) Any release of such person on bond or for any other reason;

32 (d) Within twenty-four hours, any escape by such person from a municipal detention
33 facility, county jail, a correctional facility operated by the department of corrections, mental
34 health facility, or the division of youth services or any agency thereof, and any subsequent
35 recapture of such person;

36 (6) For victims, the right to be informed by appropriate juvenile authorities of probation
37 revocation hearings initiated by the juvenile authority and the right to be heard at such hearings
38 or to offer a written statement, video or audio tape, **counsel or a representative designated by**
39 **the victim** in lieu of a personal appearance, the right to be informed by the board of probation
40 and parole of probation revocation hearings initiated by the board and of parole hearings, the
41 right to be present at each and every phase of parole hearings and the right to be heard at
42 probation revocation and parole hearings or to offer a written statement, video or audio tape,
43 **counsel or a representative designated by the victim** in lieu of a personal appearance, and the
44 right to be informed by the custodial mental health facility or agency thereof of any hearings for
45 the release of a person committed pursuant to the provisions of chapter 552, RSMo, the right to
46 be present at such hearings, the right to be heard at such hearings or to offer a written statement,

47 video or audio tape, **counsel or a representative designated by the victim** in lieu of personal
48 appearance;

49 (7) For victims and witnesses, upon their written request, the right to be informed by the
50 appropriate custodial authority, including any municipal detention facility, juvenile detention
51 facility, county jail, correctional facility operated by the department of corrections, mental health
52 facility, division of youth services or agency thereof if the offense would have been a felony if
53 committed by an adult, postconviction or commitment pursuant to the provisions of chapter 552,
54 RSMo, of the following:

55 (a) The projected date of such person's release from confinement;

56 (b) Any release of such person on bond;

57 (c) Any release of such person on furlough, work release, trial release, electronic
58 monitoring program, or to a community correctional facility or program or release for any other
59 reason, in advance of such release;

60 (d) Any scheduled parole or release hearings, including hearings under section 217.362,
61 RSMo, regarding such person and any changes in the scheduling of such hearings. No such
62 hearing shall be conducted without thirty days' advance notice;

63 (e) Within twenty-four hours, any escape by such person from a municipal detention
64 facility, county jail, a correctional facility operated by the department of corrections, mental
65 health facility, or the division of youth services or any agency thereof, and any subsequent
66 recapture of such person;

67 (f) Any decision by a parole board, by a juvenile releasing authority or by a circuit court
68 presiding over releases pursuant to the provisions of chapter 552, RSMo, or by a circuit court
69 presiding over releases under section 217.362, RSMo, to release such person or any decision by
70 the governor to commute the sentence of such person or pardon such person;

71 (g) Notification within thirty days of the death of such person;

72 (8) For witnesses who have been summoned by the prosecuting attorney and for victims,
73 to be notified by the prosecuting attorney in a timely manner when a court proceeding will not
74 go on as scheduled;

75 (9) For victims and witnesses, the right to reasonable protection from the defendant or
76 any person acting on behalf of the defendant from harm and threats of harm arising out of their
77 cooperation with law enforcement and prosecution efforts;

78 (10) For victims and witnesses, on charged cases or submitted cases where no charge
79 decision has yet been made, to be informed by the prosecuting attorney of the status of the case
80 and of the availability of victim compensation assistance and of financial assistance and
81 emergency and crisis intervention services available within the community and information

82 relative to applying for such assistance or services, and of any final decision by the prosecuting
83 attorney not to file charges;

84 (11) For victims, to be informed by the prosecuting attorney of the right to restitution
85 which shall be enforceable in the same manner as any other cause of action as otherwise
86 provided by law;

87 (12) For victims and witnesses, to be informed by the court and the prosecuting attorney
88 of procedures to be followed in order to apply for and receive any witness fee to which they are
89 entitled;

90 (13) When a victim's property is no longer needed for evidentiary reasons or needs to be
91 retained pending an appeal, the prosecuting attorney or any law enforcement agency having
92 possession of the property shall, upon request of the victim, return such property to the victim
93 within five working days unless the property is contraband or subject to forfeiture proceedings,
94 or provide written explanation of the reason why such property shall not be returned;

95 (14) An employer may not discharge or discipline any witness, victim or member of a
96 victim's immediate family for honoring a subpoena to testify in a criminal proceeding, **attending**
97 **a criminal proceeding**, or for participating in the preparation of a criminal proceeding, **or**
98 **require any witness, victim, or member of a victim's immediate family to use vacation time,**
99 **personal time, or sick leave for honoring a subpoena to testify in a criminal proceeding,**
100 **attending a criminal proceeding, or participating in the preparation of a criminal**
101 **proceeding;**

102 (15) For victims, to be provided with creditor intercession services by the prosecuting
103 attorney if the victim is unable, as a result of the crime, temporarily to meet financial obligations;

104 (16) For victims and witnesses, the right to speedy disposition of their cases, and for
105 victims, the right to speedy appellate review of their cases, provided that nothing in this
106 subdivision shall prevent the defendant from having sufficient time to prepare such defendant's
107 defense. The attorney general shall provide victims, upon their written request, case status
108 information throughout the appellate process of their cases. The provisions of this subdivision
109 shall apply only to proceedings involving the particular case to which the person is a victim or
110 witness;

111 (17) For victims and witnesses, to be provided by the court, a secure waiting area during
112 court proceedings and to receive notification of the date, time and location of any hearing
113 conducted by the court for reconsideration of any sentence imposed, modification of such
114 sentence or recall and release of any defendant from incarceration;

115 (18) **For victims, the right to receive upon request a photograph taken of the**
116 **defendant prior to release from incarceration.**

117 2. The provisions of subsection 1 of this section shall not be construed to imply any
118 victim who is incarcerated by the department of corrections or any local law enforcement agency
119 has a right to be released to attend any hearing or that the department of corrections or the local
120 law enforcement agency has any duty to transport such incarcerated victim to any hearing.

121 3. Those persons entitled to notice of events pursuant to the provisions of subsection 1
122 of this section shall provide the appropriate person or agency with their current addresses and
123 telephone numbers or the addresses or telephone numbers at which they wish notification to be
124 given.

125 4. Notification by the appropriate person or agency utilizing the statewide automated
126 crime victim notification system as established in section 650.310, RSMo, shall constitute
127 compliance with the victim notification requirement of this section. If notification utilizing the
128 statewide automated crime victim notification system cannot be used, then written notification
129 shall be sent by certified mail to the most current address provided by the victim.

130 5. Victims' rights as established in section 32 of article I of the Missouri Constitution or
131 the laws of this state pertaining to the rights of victims of crime shall be granted and enforced
132 regardless of the desires of a defendant and no privileges of confidentiality shall exist in favor
133 of the defendant to exclude victims or prevent their full participation in each and every phase of
134 parole hearings or probation revocation hearings. The rights of the victims granted in this section
135 are absolute and the policy of this state is that the victim's rights are paramount to the defendant's
136 rights. The victim has an absolute right to be present at any hearing in which the defendant is
137 present before a probation and parole hearing officer.

610.105. 1. If the person arrested is charged but the case is subsequently nolle prossed,
2 dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court
3 in which the action is prosecuted, official records pertaining to the case shall thereafter be closed
4 records when such case is finally terminated except as provided in **subsection 2 of this section**
5 **and** section 610.120 and except that the court's judgment or order or the final action taken by the
6 prosecutor in such matters may be accessed. If the accused is found not guilty due to mental
7 disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall
8 thereafter be closed records upon such findings, except that the disposition may be accessed only
9 by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo,
10 and in-home services provider agencies as defined in section 660.250, RSMo, in the manner
11 established by section 610.120.

12 **2. If the person arrested is charged with an offense found in chapter 566, RSMo,**
13 **section 568.045, 568.050, 568.060, 568.065, 568.080, 568.090, or 568.175, RSMo, and an**
14 **imposition of sentence is suspended in the court in which the action is prosecuted, the**
15 **official records pertaining to the case shall be made available to the victim, for the purpose**

16 of using the records in his or her own judicial proceedings, or if the victim is a minor to the
17 victim's parents or guardian, upon request.

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