

FIRST REGULAR SESSION

HOUSE BILL NO. 1040

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE STORCH.

Read 1st time March 1, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2521L.01I

AN ACT

To repeal section 595.209, RSMo, and to enact in lieu thereof two new sections relating to victims' rights.

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

Section A. Section 595.209, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 217.145 and 595.209, to read as follows:

217.145. The department of corrections shall establish and maintain on the department's Internet web site a listing of all victims' rights under chapter 595, RSMo, which involve the department.

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

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

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

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.

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 in lieu of a personal appearance, the right to
39 be informed by the board of probation and parole of probation revocation hearings initiated by
40 the board and of parole hearings, the right to be present at each and every phase of parole
41 hearings [and] , the right to be heard at probation revocation and parole hearings or to offer a
42 written statement, video or audio tape, **counsel or a representative designated by the victim**
43 **in lieu of a personal appearance, the right to have upon written request of the victim, a**
44 **partition set up in the probation or parole hearing room, set up in such a way that the**
45 **victim is shielded from the view of the probationer or parolee, the right to be notified of the**
46 **hearing, and the right to be notified, in writing, of each of these rights at the time of notice**
47 **for probation revocation hearings and parole revocation hearings,** and the right to be
48 informed by the custodial mental health facility or agency thereof of any hearings for the release

49 of a person committed pursuant to the provisions of chapter 552, RSMo, the right to be present
50 at such hearings, the right to be heard at such hearings or to offer a written statement, video or
51 audio tape in lieu of personal appearance. **If a victim's request to have a partition set up in
52 the hearing room cannot be accommodated at the time of the scheduled hearing, the
53 hearing shall be delayed for not more than thirty days until such time as a partition is set
54 up for the hearing;**

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

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

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

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

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

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

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

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

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

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

84 (10) For victims and witnesses, on charged cases or submitted cases where no charge
85 decision has yet been made, to be informed by the prosecuting attorney of the status of the case
86 and of the availability of victim compensation assistance and of financial assistance and
87 emergency and crisis intervention services available within the community and information
88 relative to applying for such assistance or services, and of any final decision by the prosecuting
89 attorney not to file charges;

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

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

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

101 (14) An employer may not discharge or discipline any witness, victim or member of a
102 victim's immediate family for honoring a subpoena to testify in a criminal proceeding or for
103 participating in the preparation of a criminal proceeding;

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

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

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

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