

DEPARTMENT GENERAL ORDER 99-52

OFFICE of the CHIEF OF POLICE
REPLACES/AMENDS: None

DATE: October 6, 1999

VICTIM/WITNESS RIGHTS

I. PURPOSE.

The State of Missouri has, through statutory means, established certain victim and witness rights in criminal cases. However, the responsibility as a point of contact will generally fall to the law enforcement agencies located throughout the state, wherein victims and/or witnesses will be apprised of the various statutory assistance programs which are available to them. As such, Police Department personnel shall not only familiarize themselves with the guidelines established by the state, but will also ensure that victims and/or witnesses are treated with fairness, compassion, and dignity.

II. DEFINITIONS.

Family Member - A spouse, child, sibling, parent, grandparent, or legal guardian of a victim.

Restitution - Money or services which a court orders a defendant to pay or render to a victim as an integral part of a sentencing disposition.

Victim - A person, other than a perpetrator or accomplice, who suffers direct or threatened physical, emotional, or financial harm as a result of the commission or attempted commission of a crime. The term "victim" also includes the family members and/or legal guardian of a minor, family members and/or legal guardian of a homicide victim, or those may be deemed incompetent to manage their own affairs.

Crime - An act which would constitute a violation of any criminal statute, including any offense which may result in the adjudication of a juvenile offender.

Witness - A person who (as determined by a law enforcement agency) has information or

evidence relevant to the investigation and prosecution of a specific crime. All victims are considered witnesses. In addition, when a witness is a minor, the term “witness” will also include an appropriate family member. Defense witnesses, perpetrators, and/or accomplices to a crime, shall be excluded from consideration as a witness as defined herein.

III. STATUTORY RIGHTS.

A summary of the provisions provided by those state statutes governing victim and witness rights are as follows:

A. RSMo595.206 - Victims Eligible for Services.

A victim has the rights and is eligible for the services set forth in Sections 595.200 to 595.215 only if such victim reported the crime to law enforcement authorities within five days of its occurrence or discovery, unless the prosecuting attorney finds that a good cause existed for not having done so.

B. RSMo595.209 - Rights of Victims and Witnesses - Written Notification - Requirements.

The following rights shall automatically be afforded to victims of dangerous felonies, as such term is defined in Section 556.061 RSMo, except for Burglary in the Second Degree pursuant to Section 569.170 RSMo, and upon written request, 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 (including juveniles) has such right.
- 2). For victims, the right to information about the crime.
- 3). For victims and witnesses, the right to be informed, in a timely manner, by the prosecutor’s office, of the filing of charges, hearing and trial dates, continuances, and the final disposition of the case.
- 4). For victims, the right to confer with, and be informed by the prosecutor of bail hearings, guilty pleas, pleas under chapter 552 RSMo, hearings, sentencing, probation revocation hearings, and the right to be heard at such hearings (to include juvenile hearings), unless a determination by the court holds otherwise.
- 5). The right to be informed by local law enforcement authorities, juvenile authorities, or custodial authorities of the following:

- a. The status of any case concerning a crime against the victim.
 - b. The availability of victim compensation assistance, assistance in obtaining documentation of the victim's losses, including, but not limited to, access to copies of complete, unaltered, unedited investigation reports of motor vehicle, pedestrian, and other similar accidents (subject to existing law concerning protected information or closed records) upon request to the appropriate law enforcement agency, and emergency crisis intervention services available in the community.
 - c. Any release of such person on bond or for any other reason.
 - d. Within twenty-four hours, any escape by such person from a municipal detention facility, county jail, state correctional facility, mental health facility, or the division of youth services, and any subsequent recapture of such person.
- 6). For victims, the right to be informed of probation hearings initiated by the appropriate juvenile authorities, the right to be informed of parole and probation revocation hearings by the board of probation and parole and the right to be heard at such hearings or to offer a written statement, video, or audio tape in lieu of a personal appearance. Further, in the case of parole hearings, the right to be present at each and every phase of the hearings.
- 7). For victims and witnesses, upon their written request, the right to be informed by the appropriate custodial authority (to include any juvenile detention facility where the offense would have been a felony if committed by an adult), of the following post-conviction information:
- a. The projected date of such person's release from confinement.
 - b. Any release of such person on bond.
 - c. Any release of such person on work-release, furlough, electronic monitoring program, or to a community correctional facility or program, or release for any other reason, prior to such release.
 - d. Any scheduled parole or release hearings regarding such person, and any changes in the scheduling of such hearings. No such hearings will be held without thirty days advance notice.

- e. Any escape by such person from confinement, within twenty-four hours.
 - f. Any decision by a parole board to release such person ,or a decision by the governor to pardon an individual or otherwise commute their sentence.
 - g. Notification within thirty days of the death of such person.
- 8). For witnesses, to be notified by the prosecuting attorney in a timely manner when a court proceeding will be delayed or rescheduled.
 - 9). For victims and witnesses, the right to reasonable protection from the defendant or any person acting on behalf of the defendant from physical harm or threats of harm arising out of their cooperation with law enforcement and prosecution efforts.
 - 10). For victims and witnesses, on charged cases or submitted cases which are under consideration, to be informed by the prosecuting attorney of the status of the case and of the availability of victim compensation assistance, financial assistance, emergency and crisis intervention services within the community, and the information necessary to apply for such assistance. Finally, the right to be notified of any decision by the prosecuting attorney not file charges.
 - 11). For victims, to be informed by the prosecuting attorney of the right to restitution which shall be enforceable in the same manner as any other cause of action as provided by law.
 - 12). For victims and witnesses, to be informed by the court and the prosecuting attorney of procedures to be followed in order to apply for and receive any witness fees to which they are entitled.
 - 13). When a victim's property is no longer needed for evidentiary reasons or needs to be retained pending an appeal, the prosecuting attorney or any law enforcement agency having possession of the property shall, upon the request of the victim, return such property within five working days unless the property is contraband or subject to future proceedings, or provide a written explanation of the reason why such property shall not be returned.
 - 14). An employer may not discharge or discipline any witness, victim, or member of the victim's immediate family for honoring a subpoena to testify in a criminal proceeding, or for participating in the preparation of a criminal proceeding.

- 15). For victims, to be provided with creditor intercession services by the prosecuting attorney if the victim is unable, as a result of the crime, to temporarily meet their financial obligations.
- 16). For victims and witnesses, the right to a speedy disposition of their cases, and for victims, the right to speedy appellate review of their cases, provided that nothing in this subsection shall prevent the defendant from having sufficient time to prepare his/her defense. The attorney general shall provide victims, upon their written request, case status information throughout the appellate process of their cases.
- 17). For victims and witnesses, to be provided a secure waiting area by the court during criminal proceedings, and to receive notification of the date, time, and location of any hearing conducted by the court for reconsideration of any sentence imposed, modification of such sentence, or the recall and release of any defendant from incarceration.

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

Those persons requesting notice of events pursuant to subsection 1 of this section shall be required to provide the appropriate person or agency with their current addresses and phone numbers at which they want notification to be given.

C. RSMo595.212 - Prosecuting Attorneys to Maintain Program to Afford Rights to Victims/Witnesses - Funding and Approval of Agency Programs.

- 1). Each prosecuting attorney shall create and maintain, but not be limited to, a program to afford victims and witnesses of crime, the rights and services described in Sections 595.200 - 595.215 RSMo.
- 2). State funding shall be only for rights and services actually afforded victims and witnesses of crime as set forth in Sections 595.200 - 595.215 RSMo.

D. RSMo595.215 - Duty of Cooperation for Prosecutor, Law Enforcement, and Social Service Agencies.

The prosecuting attorney, local law enforcement agencies, local social service agencies, and courts shall cooperate to afford victims and witnesses of crime

the rights and services enumerated in the appropriate statutes.

E. RSMo575.270 - Tampering with a Witness/Victim.

A person commits the crime of “Tampering with a Witness,” if, with purpose to induce a witness or prospective witness in an official proceeding to disobey a subpoena or other legal process, or to absent him/herself or avoid subpoena or other legal process, or to withhold evidence, information, or documents, or to testify falsely, he/she:

- 1). Threatens or causes harm to any person or property, or
- 2). Uses force, threats, or deception, or
- 3). Offers, confers, or agrees to confer any benefit, direct or indirect, upon such witness, or
- 4). Conveys any of the foregoing to another in furtherance of a conspiracy.

A person commits the crime of “Victim Tampering” if, with purpose to do so, he/she prevents, dissuades, or attempts to prevent or dissuade any person who has been a victim of any crime or a person who is acting on behalf of a victim from:

- 1). Making any report of such victimization to any peace officer, or state, local, or federal law enforcement officer or prosecuting attorney, or to any judge,
- 2). Causing a complaint, indictment or information to be sought and prosecuted, or assisting in the prosecution thereof,
- 3). Arresting or causing or seeking the arrest of any person in connection with such victimization.

F. RSMo491.600 - Courts with Criminal Jurisdiction may Issue Orders to Protect Witnesses or Victim.

Any court with jurisdiction over any criminal matter may, in its discretion, upon substantial evidence, which may include hearsay, that intimidation or dissuading of any person who is a victim or witness has occurred or is likely to occur, issue orders including but not limited to the following:

- 1). That a defendant maintain a prescribed geographical distance from a witness or victim,
- 2). That a person before the court, other than the defendant, maintain a

prescribed geographical distance from a witness or victim,

- 3). That any person described in subsections 1 and 2, of this section, have no connection whatsoever with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

G. RSMo491.640 - Department of Public Safety may Provide for Security of Witnesses and Families, When - Powers - Request by Law Enforcement Agencies, Content.

The Director of the Department of Public Safety may, upon the director's own initiative, or at the request of the Attorney General or any prosecuting attorney or law enforcement agency, provide for the security of witnesses, victims, and their immediate families in criminal proceedings instituted or investigations pending against a person alleged to have engaged in a violation of state law. Providing for witnesses, victims, and their immediate families may include provision of housing facilities and for the health, safety, and welfare of such persons, if testimony by such individuals might subject the witnesses, victims, or family members to danger of bodily injury, and may continue so long as such danger exists.

H. RSMo610.100 - Arrest and Incident Records shall be Available to the Public

- 3). Except as provided, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that is likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person, or jeopardize a criminal investigation, including records which would disclose the source wishing to remain confidential, or would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions, that portion of the record shall be closed and redacted from any record disclosed.
- 4). Within thirty days of a request for an incident report, the agency may file a motion with the court stating that the safety of the victim and/or witness cannot be reasonably ensured, and request that the court order the record closed.
- 7). The victim of an offense as provided for in Chapter 576, RSMo, may request that his/her identity be kept confidential until a charge relating to such incident is filed.

IV. ORDERS OF PROTECTION.

Any adult who has been subject to abuse or stalking may seek relief under Sections 455.010 - 455.085 RSMo by filing a verified petition with the court. A petitioner seeking a protection order shall not be required to reveal any current address or place of residence except to the judge in camera for the purpose of determining jurisdiction and venue. Orders of protection shall consist of two primary types:

1). Ex Parte Order of Protection

Order issued by the court upon application of one person in the absence of the other person. If granted, will be in effect until a date is set for a hearing with both parties present. Such hearings are normally scheduled for fifteen days from the date the Ex Parte Order was issued.

2). Full Order of Protection

Following a full hearing, wherein a petitioner has proved the allegations of abuse or stalking, the judge may issue a Full Order of Protection which shall be in effect for a definite period of time, not to exceed one hundred eighty (180) days.

Any Full or Ex Parte Order of Protection granted under the above statutes may include, but not be limited to:

- 1). Temporarily enjoining the respondent from, abusing, threatening to abuse, molesting, stalking, or disturbing the peace of the petitioner.
- 2). Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner (either jointly or singly owned).
- 3). Award custody of minor children, and establish visitation and maintenance schedules.
- 4). Order the respondent responsible for payment of fees, debts, court costs and other financial obligations.
- 5). Order respondent to undergo court-approved counseling.

A copy of any Ex Parte Order of Protection granted by a court shall be issued to the petitioner and the local law enforcement agency in the jurisdiction where the petitioner resides. In addition, a copy of the order shall be served on the respondent at least five days prior to a court hearing.

Orders of protection shall be effective throughout the state in all cities and counties.

V. CRIME VICTIMS COMPENSATION FUND.

Established by the State of Missouri, the Crime Victims Compensation Fund is administered by the Division of Worker's compensation and is intended to reimburse residents who have suffered injuries causing a financial loss due to certain crimes of violence. Those eligible for benefits under the program are:

- 1). Victims of violent crimes.
- 2). Surviving spouse, child, or other dependent of a deceased violent crime victim.
- 3). A family member, who, in the event of victim's death, legally assumes the obligations or voluntarily pays the medical and/or burial expenses incurred as a direct result of the crime.

Conditions for eligibility include:

- 1). The injury must have occurred in the State of Missouri.
- 2). The incident was reported to the proper law enforcement authorities within 48 hours of its occurrence; unless the victim was a minor, or there is good cause shown for late reporting.
- 3). The victim must cooperate with law enforcement officials in their investigation and prosecution efforts.
- 4). A claim must be filed within one year of the incident unless the victim is a minor, then one year within discovery, or documented good cause is shown for filing late. Under no circumstances will the filing time be extended for more than two years from the incident.

Available benefits include:

- 1). Loss of earnings or support.
- 2). Funeral expenses.
- 3). Reasonable medical, drug, and counseling expenses.

Total recoverable financial awards may not exceed \$10,000.00.

VI. DEPARTMENT COMPLIANCE.

Department personnel shall provide timely assistance and information to victims and witnesses of criminal acts in compliance with established statutory requirements. As such, officers will inform victims and witnesses of the assistance programs which are available, and for which they may qualify. A list of these resources shall be maintained and updated by the Communications Unit, and information in regard to available victim/witness services will distributed upon request. Should this agency be contacted by a social services or governmental agency in regard to a victim or witness with whom this department has had, or expects to have, contact with, the department will render such cooperation as is necessary.

BY ORDER OF:

RICHARD T. MORRIS
Chief of Police

RTM: dld

CALEA Reference: 55.1.1