

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1955

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HILGEMANN, CARNAHAN, HOSMER,
VILLA AND DAUS (Co-sponsors).

Read 1st time February 14, 2002, and 1000 copies ordered printed.

Read 2nd time February 18, 2002, and referred to the Committee on Criminal Law, February 28, 2002.

Reported from the Committee on Criminal Law March 14, 2002, with recommendation that the bill Do Pass by Consent.

Perfectured by Consent April 2, 2002.

TED WEDEL, Chief Clerk

4612L.01P

AN ACT

To repeal section 595.209, RSMo, and to enact in lieu thereof one new section 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Section A. Section 595.209, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 595.209, to read as follows:

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, **and neighborhood groups, community groups, and local social services agencies**:

(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;

(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 this bill is not enacted and is intended to be omitted in the law.

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 written
42 statement, video or audio tape in lieu of a personal appearance, and the right to be informed by
43 the custodial mental health facility or agency thereof of any hearings for the release of a person
44 committed pursuant to the provisions of chapter 552, RSMo, the right to be present at such
45 hearings, the right to be heard at such hearings or to offer a written statement, video or audio tape
46 in lieu of personal appearance;

47 (7) For victims and witnesses, upon their written request, the right to be informed by the
48 appropriate custodial authority, including any municipal detention facility, juvenile detention

49 facility, county jail, correctional facility operated by the department of corrections, mental health
50 facility, division of youth services or agency thereof if the offense would have been a felony if
51 committed by an adult, postconviction or commitment pursuant to the provisions of chapter 552,
52 RSMo, of the following:

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

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

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

58 (d) Any scheduled parole or release hearings regarding such person and any changes in
59 the scheduling of such hearings. No such hearing shall be conducted without thirty days' advance
60 notice;

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

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

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

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

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

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

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

84 (12) For victims and witnesses, to be informed by the court and the prosecuting attorney

85 of procedures to be followed in order to apply for and receive any witness fee to which they are
86 entitled;

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

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

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

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

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

108 **2. For neighborhood groups, community groups, and local social services agencies,**
109 **in any case involving a felony controlled substance offense, the right for a representative**
110 **of such group or agency to be present at any sentencing hearing and the right to present**
111 **a neighborhood or community impact statement either in person, in writing, or on a video**
112 **or audio tape, containing information about how the controlled substance offense has**
113 **affected the quality of life in the neighborhood or community where it occurred. Such**
114 **statement shall include a summary of the financial, emotional, and physical effects of the**
115 **controlled substance offense experienced by persons residing or conducting business within**
116 **the neighborhood or community, and may include recommendations as to what type of**
117 **sentence should be imposed, including suggestions for innovative types of community**
118 **service in the event the offender is ordered to perform community service.**

119 **3. As used in this section the following terms shall mean:**

120 **(1) "Local social services agency", any agency or group which provides social**

121 **services to the neighborhood or community where the controlled substance offense**
122 **occurred;**

123 **(2) "Neighborhood group" or "community group", any organized group of persons**
124 **located in the neighborhood or community where the controlled substance offense occurred**
125 **whose purpose is the betterment of or to provide services to a particular neighborhood or**
126 **community.**

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

131 [3.] 5. Those persons entitled to notice of events pursuant to the provisions of subsection
132 1 of this section shall provide the appropriate person or agency with their current addresses and
133 telephone numbers or the addresses or telephone numbers at which they wish notification to be
134 given.

135 [4.] 6. Notification by the appropriate person or agency by certified mail to the most
136 current address provided by the victim shall constitute compliance with the victim notification
137 requirement of this section.

138 [5.] 7. Victims' rights as established in section 32 of article I of the Missouri Constitution
139 or the laws of this state pertaining to the rights of victims of crime shall be granted and enforced
140 regardless of the desires of a defendant and no privileges of confidentiality shall exist in favor
141 of the defendant to exclude victims or prevent their full participation in each and every phase of
142 parole hearings or probation revocation hearings. The rights of the victims granted in this section
143 are absolute and the policy of this state is that the victim's rights are paramount to the defendant's
144 rights. The victim has an absolute right to be present at any hearing in which the defendant is
145 present before a probation and parole hearing officer.