

SECOND REGULAR SESSION

# HOUSE BILL NO. 1779

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELLINGTON.

5342H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 595.209, RSMo, and to enact in lieu thereof one new section relating to full orders of protection, with penalty provisions.

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*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Section A. Section 595.209, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 595.209, to read as follows: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, victims of murder in the first degree, as defined in section 565.020, victims of voluntary manslaughter, as defined in section 565.023, victims of any offense under chapter 566, victims of an attempt to commit one of the preceding crimes, as defined in section 562.012, and victims of domestic assault, as defined in sections 565.072 to 565.076; 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;

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

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.

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

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

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

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

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

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

37 (6) For victims, the right to be informed by appropriate juvenile authorities of probation  
38 revocation hearings initiated by the juvenile authority and the right to be heard at such hearings  
39 or to offer a written statement, video or audio tape, counsel or a representative designated by the  
40 victim in lieu of a personal appearance, the right to be informed by the board of probation and  
41 parole of probation revocation hearings initiated by the board and of parole hearings, the right  
42 to be present at each and every phase of parole hearings, the right to be heard at probation  
43 revocation and parole hearings or to offer a written statement, video or audio tape, counsel or a  
44 representative designated by the victim in lieu of a personal appearance, and the right to have,  
45 upon written request of the victim, a partition set up in the probation or parole hearing room in  
46 such a way that the victim is shielded from the view of the probationer or parolee, and the right  
47 to be informed by the custodial mental health facility or agency thereof of any hearings for the  
48 release of a person committed pursuant to the provisions of chapter 552, the right to be present  
49 at such hearings, the right to be heard at such hearings or to offer a written statement, video or  
50 audio tape, counsel or a representative designated by the victim in lieu of personal appearance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 (18) For victims, the right to receive upon request from the department of corrections  
117 a photograph taken of the defendant prior to release from incarceration; **and**

118 **(19) For victims and witnesses, a full order of protection if such victims or witnesses**  
119 **fear for their safety. A victim or witness obtaining a full order of protection under this**  
120 **subdivision shall not be required to release his or her Social Security number, date of birth,**  
121 **or contact number; however, the victim's or witness's last known address may be released**  
122 **upon written request of the defendant or defense counsel, but only if such release is**  
123 **approved by the court. If the victim's or witness's last known address was released without**

124 **approval of the court, the person releasing such information shall be held in contempt of**  
125 **court and fined one thousand dollars.**

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

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

134           4. Notification by the appropriate person or agency utilizing the statewide automated  
135 crime victim notification system as established in section 650.310 shall constitute compliance  
136 with the victim notification requirement of this section. If notification utilizing the statewide  
137 automated crime victim notification system cannot be used, then written notification shall be sent  
138 by certified mail to the most current address provided by the victim.

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

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