

**Missouri Association of Prosecuting Attorneys Best Practices Recommendations
Victims' Rights**

Note: A best practices recommendation of the Missouri Association of Prosecuting Attorneys is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

RECOMMENDATION: Absent extenuating circumstances, a prosecutor should complete review of any law enforcement referral within three business days.

Commentary: Pursuant to the Missouri Constitution, crime victims have the right to a speedy disposition of their cases. No case can be disposed of in a speedy manner unless the review and charging decision is completed promptly. The review can result in declination of charges, filing of charges, or a request for additional investigation or information to be provided within a specified timeframe. While the statute of limitations is the ultimate time standard under the law, prosecutors should make decisions on cases as soon as practicable.

RECOMMENDATION: Crime victims should be notified at the time a charging decision is made. Crime victims should also be notified if the prosecutor decides to request additional investigation or information from law enforcement prior to making a charging decision. Unless a crime victim's safety or the status of an investigation would be jeopardized, written communication of this decision should be sent to the crime victim's last known address.

Commentary: It may be appropriate in certain cases to notify the victim in person, by phone, or by other means. This recommendation complies with sections 595.209.1 (3) and (10), RSMo.

RECOMMENDATION: A prosecutor should meet with a crime victim each time prior to a crime victim offering testimony. A prosecutor should also meet with a crime victim upon request.

Commentary: No crime victim should ever testify without having had the opportunity to meet with a prosecutor and discuss what will happen prior to testifying. A prosecutor should make time for crime victims to speak their mind, voice any concerns, and ask any questions they may have prior to testifying. A prosecutor should include an additional staff member such as an investigator or victim advocate in meetings with victims. An additional staff member should be present in addition to the prosecutor in the event a statement by a crime victim needs to be reduced to writing and disclosed to the defense. Doing so may avoid the prosecutor becoming a necessary witness in a case.

RECOMMENDATION: A prosecutor should provide crime victims information on how to request the rights provided by the Missouri Constitution and state statutes.

Commentary: Section 32.1(8) of the Missouri Constitution grants crime victims the right to information about how the criminal justice system works. Section 595.209, RSMo sets out the procedure for crime victims to obtain this information, which includes a request in writing. It is fundamentally important to inform victims of their rights to request in writing the benefits of section 595.209, RSMo.

RECOMMENDATION: Notification should be given to crime victims within three business days of the setting of court dates for bond hearings, preliminary hearings, grand jury sessions, depositions, 491 motions, bench or jury trials, guilty pleas, sentencing, and probation revocation hearings. Whenever possible, a prosecutor should ask for a court date or time that accommodates a crime victim's schedule.

RECOMMENDATION: Crime victims should be apprised of the right to be heard at any bond hearing or sentencing hearing. Crime victims should be given the opportunity to meet in person with a prosecutor prior to any bond hearing or sentencing hearing to discuss what they wish to express and the manner in which they wish it to be expressed

Commentary: Some crime victims will wish to express their thoughts in person, by letter to the court, via the prosecutor, or some other manner. Prosecutors should make every reasonable effort to accommodate crime victims' wishes in this regard.

RECOMMENDATION: A prosecutor should make a reasonable effort to seek input from a crime victim about the disposition of a case prior to making a plea recommendation.

Commentary: Missouri law provides crime victims the right to be heard, and good communication with a crime victim is critical so that a prosecutor can make an informed decision regarding disposition of a case by plea. Relevant factors for discussion could include: (1) the range of punishment; (2) factors that impact a plea recommendation; and (3) a reasonable effort to gather information from a crime victim.

Missouri Association of Prosecuting Attorneys
Victim Services Best Practices Subcommittee
(Restitution)
(Approved August 2016)

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RECOMMENDATION #8 (Restitution)

8.1 - A prosecutor should seek restitution, including interest, on behalf of victims in all eligible cases pursuant to Section 559.110 RSMo. All reasonable efforts to determine accurate restitution amount should be made as soon as practical prior to resolution of any case.

Commentary: Art. I, Sec. 32.1(4) of the Missouri's Constitution grant crime victims the right to restitution as provided by law. A victim can include the original victim of the crime, the crime victim compensation fund, or an insurance company. Section 559.100 RSMo mandates that prosecutors enforce this right and provide the legal process for collection of restitution in eligible cases. Collection can occur as part of a diversion program or as part of a plea agreement. A prosecutor should ask the court to order specific amount of restitution at the time of sentencing, along with a minimum monthly amount. A payment schedule (showing interest) should be provided to the defendant. If the schedule changes due to missed payments, an updated schedule should be provided to the defendant as soon as practical. Restitution should be distributed to the crime victim as soon as possible, and on a regular schedule, ideally within 24 to 48 hours of receipt. Any outstanding balance should be placed on the record at the time of probation revocation and also recorded in the Judgment and Sentence, as well as the Commitment Report in order to allow the Department of Corrections to collect restitution from the defendant while incarcerated. Upon a defendant's parole, the prosecutor should request notification from the Department of Corrections for any case in which restitution was ordered, so that the prosecutor may take appropriate steps to continue collection of restitution.

8.2 – In any case where restitution is ordered as a condition of probation, a prosecutor should request a defendant not receive earned compliance credits until the restitution has been paid in full. In accordance with Section 559.105.2 RSMo, a defendant cannot be discharged from probation until restitution has been paid in full.

Commentary: Art. I, Sec. 32.1(4) of the Missouri's Constitution grant crime victims the right to restitution as provided by law. Section 559.100 RSMo mandates that prosecutors enforce this right and provides the legal process for collection of restitution in eligible cases. Section 559.105.2 RSMo provides:

No person ordered by the court to pay restitution pursuant to this section shall be released from probation until such restitution is complete. If full restitution is not made within the original term of probation, the court shall order the maximum term of probation allowed for such offense.

8.3 - A prosecutor should accept payment for restitution in a form that protects the victim, the prosecutor and the defendant. Payment may include money order, cashier's check or credit card. Accepting cash and personal checks is discouraged.

Commentary: Accepting cash and personal checks as payment is discouraged because it leaves all parties to the transaction at unnecessary risk. A safer form of payment is money order or cashier's check. If a prosecutor's office chooses to accept credit cards it cannot come at a cost to the prosecutor's office. Charges or convenience fees must be incurred by the defendant with their full knowledge and consent. A receipt should be provided to a defendant upon every payment along with an updated payment schedule.

Missouri Association of Prosecuting Attorneys

Victim Services Best Practices Subcommittee (Training) (Approved)

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RECOMMENDATION #9 (Training)

9.1 (Prosecutors) – A prosecutor should attend a basics of victim advocacy course offered through MVSA, or its equivalent, and remain well-versed and current with Victims’ Rights.

Commentary: The training offered through MVSA would familiarize a prosecuting attorney with Missouri Victims’ Rights, crisis theory, crisis reactions and how trauma affects memory, and the basic skills of response to crisis.

9.2 (Prosecutors) – All Prosecutors who are handling cases with child victims or child witnesses should complete ChildFirst or an equivalent training.

Commentary: The training at ChildFirst would familiarize a prosecutor with Effective interviewing, How Children Experience Sexual Abuse, Process of Disclosure, Culture and the Forensic Interview, Child Development, Blocks and Problems to Disclosure, Hearsay, Testifying in Court, Medical, Suggestibility and Working as a Multi-Disciplinary Team to Obtain Corroborating Evidence in Cases of Child Abuse.

9.3 (Investigators) – Prosecutor based Investigators should remain well versed and current with Victim Rights by attending a victim related training.

Commentary: Suggested trainings to consider are: ChildFirst, Missouri Victim Services Academy, Missouri Victim Services Academy – Basic Training, National Center for Victims of Crime trainings, and National District Attorney Association trainings. Attending the above suggested trainings would familiarize the prosecutor based investigator with victim interactions that occur before, during and after a case is over.

9.4 (Support Staff) - Every Prosecuting Attorney's Office should have an office policy requiring basic victim related training.

Commentary: Support staff often have the initial contact with crime victims on behalf of the Prosecutors Office. The training would familiarize staff members with: Missouri Victims' Rights, crisis theory, crisis reactions, and basic skills of crisis response. Understanding these areas can better equip staff to fulfill requirements related to RSMO 595 and minimize ongoing trauma to crime victims. The ongoing training can be accomplished at no cost through webinars.

9.5 (Victim Advocate) – Victim Advocates should attend a basics of victim advocacy course which is offered through MVSA, or its equivalent, complete 15 hours of ongoing training each year and remain well-versed with Victims' Rights.

Commentary: Victim Advocates have the task of providing frontline support and resources to victims. The training at MVSA would familiarize the Victim Advocate with crisis theory, crisis reactions and how trauma affects memory and basic skills of response to crisis. Victim Advocates should attend the Nuts and Bolts course offered through the Missouri Victim Services Academy within the first six months of employment. ChildFirst would familiarize a victim advocate with: Effective interviewing, How Children Experience Sexual Abuse, Process of Disclosure, Culture and the Forensic Interview, Child Development, Blocks and Problems to Disclosure, Hearsay, Testifying in Court, Medical, Suggestibility and Working as a Multi-Disciplinary Team to Obtain Corroborating Evidence in Cases of Child Abuse. The ongoing 15 hours of training is a mechanism to ensure the victim advocates remain well-versed and current with Victim Rights. Training provides professional networking opportunities for the victim advocates to remain current and energized in his/her role.

Missouri Association of Prosecuting Attorneys
Victim Services Best Practices Subcommittee
(Employment)
(Approved August 2016)

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RECOMMENDATION #10: (Prosecutor Based Victim Advocate)

10.1 - Prosecutors should hire an individual to be a victim advocate who will fulfill the requirements of Chapter 595 of the Missouri Revised Statutes and the program standards for service provision and staff development as delineated by the Missouri Department of Public Safety Crime Victim Services Unit.

Commentary: Section 595.21.1, RSMo states: Each prosecuting attorney shall create and maintain, but not be limited to, a program to afford victims and witnesses of crimes the rights and services described in sections 595.200 and 595.215. It is the duty and privilege of Missouri Prosecutors to uphold these statutes. A crucial key to successful prosecution is a victim who is cooperative; and with the support of an advocate, that goal is more likely to be achieved.