

Talking Points

Rev. 7/24

1. As a victim of a crime, you have the right to be present at anything at which the defendant has a right to be present. But, you have other rights, too. It is recommended that you read and understand your rights as a victim of a crime. The statutory language (Sections 595.200– 595.218 RSMo) can be accessed online at www.moga.mo.gov under MO Revised Statutes. If you have questions about your rights, utilize the victim advocates available in the prosecutor's office or other organizations. Remember, you only have one opportunity to participate in the process and much of it may be out of your control. Therefore, it is not only important to be on the same team as the prosecutor, but also to proactively assert your rights, pay attention to what's occurring, ask pertinent questions, and try to make sure the system works the very best it can for you, your family and your loved one/s. The system isn't perfect so your participation in the process will help to prevent rights violations before they occur and ensure that you are not unnecessarily surprised by the outcome.

Keep in mind that some cases can be more difficult than others to prosecute. Strategy may be involved for the prosecutor and there is no guarantee of conviction. In the event that an offender confesses, under the law, the offender is still entitled to due process, negotiating a plea or going to a jury trial. Also, a prosecutor's case is based on reports and information submitted by law enforcement. A prosecutor cannot use hearsay, rumors, social media posts, pictures, etc., that are not properly submitted via a police report. Therefore, any of these items must be reported to the investigating officer so that they may be presented to the prosecutor to be included in the case.

2. Exercise your 'right to confer' with the prosecutor assigned to your case. He or she is the one person in the system that can help you the most! Do not misinterpret your right to 'confer' as a right to direct the prosecution of the case or to veto decisions of the prosecutor. It is not your right to control the prosecution, but the law does require the prosecutor **to hear the victim's concerns and get the victim's input**. Commonly, a prosecutor is willing to work toward an outcome that a participating victim desires, but, most likely, will not actively try to keep a victim involved who is not responsive to the prosecutor's contacts.

3. In Missouri, the prosecutor represents the state of Missouri, not the victim. Victims in Missouri have no legal standing in the courtroom in a criminal case; therefore, a victim may not have an attorney representing them in the criminal case. (This should not be confused with the fact that a victim may hire an attorney for a civil matter related to the criminal act.)

4. As a victim of a crime, you have a right to information. If you do not understand something, ask for an explanation. Don't be afraid to ask about relevant rules, policies, or laws. Before calling or meeting with someone, have your questions ready. Clearly determine ahead of time specifically what you want to say, ask, or discuss, and what you want to know. Write down responses given to help you remember. When speaking to employees in the prosecutor's office, be aware that it is quite likely that many are not attorneys. So if you are unable to get clear answers to questions that require legal expertise, make sure you speak with the prosecuting attorney assigned to your case.

5. Remember that people can be busy and may not be able to talk to you right away. Leave a complete message about why you are calling along with your contact information. When trying to communicate with the prosecutor's office, it can be more efficient to make regular, consistent contact with the victim advocate, if available, rather than the prosecutor assigned to the case. Reserve contact with the prosecutor for important issues the victim advocate is unable to address adequately. If you wish to meet with the prosecutor, rather than trying to catch the prosecutor randomly at court or his/her office, call and set up an in-person or phone appointment.

6. If you feel your efforts are being ignored, call or write the individual or agency to request a meeting. If you are ignored, denied a meeting, or problems continue, take further action by using the appropriate chain of command within an office or agency, or contact a victim advocate for assistance.

7. Relying on memory is not the most reliable method of recordkeeping. Take notes of conversations and dates and ask for the names and titles of people with whom you speak. Keep all your correspondence. Regarding restitution, expenses you have must be supported with receipts, bills, affidavits, or expert testimony (i.e. for future losses).

Decide whether you prefer to talk to the prosecutor in person or over the phone. Tell the prosecutor a little bit about you and your life, the crash/incident (especially if there are details you want to make sure he/she is aware of), your injuries or losses, and how the crash has impacted you. **Be courteous and keep in mind that the prosecutor is the most powerful law enforcement agent in the county and the one person in the process who can help you the most!**

Here are some questions to ask the assigned prosecutor. This list may also help you to generate some of your own questions.

REGARDING THE PROSECUTION PROCESS:

- Who is the prosecutor or assistant prosecutor assigned to the case? _____
- What are the charges against the offender? _____
- Please explain the charges and associated punishment. _____
- What can he/she discuss with you about the case? Strengths/weaknesses of the case? _____
- How solid is the case/evidence? _____
- Are there lab results that show impairment - alcohol or drugs? _____
 - What were the results? _____
- Do you think this case will go to trial or will a plea bargain be negotiated? _____
- If a plea, what would you consider offering? _____
 - I would like to give my input into the plea offer. _____
- From start to finish, how long do you think this case will take? _____
- How much experience/success have you had with this type of case? _____
- When is the next hearing date and what will be addressed? _____
- Ensure the prosecutor knows the extent of your injuries/losses/impact of crime. _____
- Have you received my Letter to Secure Rights? _____
- Do you have a victim advocate in your office? Who is it? _____

REGARDING SENTENCING/OUTCOME & PROBATION:

- Who will be the judge hearing this case? _____ Is Judge tough or lenient? _____
- What maximum outcome/sentence is possible? _____ I prefer: _____
- What do you anticipate will occur as far as sentencing? _____
- If multiple charges, will the sentences run Concurrently or Consecutively? ** _____ I prefer: _____
- If incarceration is ordered, how much time will the defendant actually serve? _____
- Will the defendant be placed in an alcohol/drug treatment program as part of the sentence? _____
- How will the conviction affect the defendant's driver's license? _____
- Will defendant be put on probation instead of incarceration? _____ I prefer: _____
 - I realize there are different types of probation -SIS or SES*. I prefer: _____
 - If probation, will it be supervised or unsupervised? I prefer: _____
 - Will defendant be allowed to earn Compliance Credits*** on probation? _____ I prefer: _____
 - How long will the probation period last and what conditions will the defendant be required to follow? _____
 - I would like to request the following 'special conditions': _____
 - Will the defendant be placed in an alcohol/drug treatment program as part of the probation? _____
- I prefer the following to occur as part of the plea agreement or sentencing: _____

REGARDING RESTITUTION

- Can restitution be ordered for me or my family? _____
- What expenses may I ask to have reimbursed with restitution? _____

What do I need to provide to you regarding those expenses? _____
How much time will the defendant be given to pay? _____
How efficient/effective is the restitution process in this county? _____
How do I collect it once it's ordered? What is the process? _____
If the defendant defaults, how many months of non-payment are allowed before it's considered a probation violation? What then? _____

REGARDING THE VICTIM IMPACT STATEMENT:

What are the parameters for doing a Victim Impact Statement? (For example: Time limit? May I show pictures? A video? Present it myself orally? In written format? Have someone else read it?) _____
Will you provide me with guidelines/samples for preparing my Victim Impact Statement? _____
How effective do you, the prosecutor, believe the Victim Impact Statement is? _____

QUESTIONS: _____

***SIS/SES** — These are acronyms that stand for 2 types of probation, a Suspended Imposition of Sentence (SIS) and a Suspended Execution of Sentence (SES). There is a significant difference between the two. In general, both types 'suspend' the sentence of incarceration as long as the offender completes the probationary period successfully. However, when an offender completes the probationary period successfully, if an **SIS** probation was ordered, the conviction **will not remain on the offender's record. Neither will it affect the offender's driver's license record.** If an **SES** probation was ordered, the conviction **will remain on the offender's record and will affect the driver's license record.**

Felony convictions on the record can adversely impact a person's life in all sorts of ways. For instance, a person found guilty of a felony or having pled guilty to one: will not be eligible for federal assistance and certain professional licenses, may effect employment possibilities, may suffer driver's license sanctions, may no longer have the right to carry firearms, vote, and hold public office. A conviction disqualifies one from jury service, and could limit foreign travel, etc. Other state statutes may apply to someone convicted of certain felonies or other types of crimes.

****Concurrent/Consecutive** - There is a significant difference between the two. Concurrent sentences overlap (eg. 7 yrs. + 4 yrs. = 7 yrs.). Consecutive sentences follow one after the other (eg. 7 yrs. + 4 yrs. = 11 yrs.).

*****Earned Compliance Credits** - A type of probation in which the person on probation earns 2 months for every 1 month served. Therefore, a 5 year probation can be completed in 2 1/2 years. To avoid this type of probation, the Judge must mandate as part of the sentence that the offender be 'excluded and ineligible to earn Compliance Credits.' Otherwise, it's up to the probation officer. Specific convictions may be excluded from ECC's.

Extensive Continuances - Continuances of hearings are common in the courts. But, if extensive continuances of hearings are being allowed, address the issue with the prosecutor because victims also have a right to speedy disposition and proceedings free from unreasonable delay. Inquire about why so many continuances are being allowed for the defendant. Ask the prosecutor to object to any further continuances. Are there other ways to overcome this obstacle?