

Mississippi Crime Victims' Bill of Rights

Section 26A in Article 3 of the Mississippi Constitution of 1890 gives the following rights to victims of violent crime:

Victims of crime, as defined by law, shall have the right to be treated with fairness, dignity and respect throughout the criminal justice process; and to be informed, to be present and to be heard, when authorized by law, during public hearings.

To implement the constitutional amendment, the Mississippi legislature passed the victims' bill of rights, which provides certain rights to victims of the following offenses:

- Felonies which involve physical injury or the threat of physical injury;
- Any sexual offense;
- Any offense involving spousal abuse or domestic violence;

If the crime that has been committed against you fits into one of those categories, you may assert your rights by signing the accompanying form and sending it to the prosecuting attorney. If the victim of the crime is physically or emotionally unable to exercise these rights, he/she may designate in writing a person to be his/her representative. If the victim is deceased, the court will appoint a representative who is not a witness to the crime. If the victim is a minor, a family member may be designated as the victim's representative or the court may appoint a representative for the child. The victim who is represented by another person may decide to personally exercise his/her rights as soon as he/she is physically, mentally, emotionally or legally competent to do so.

As a way of informing you of your rights and guiding you through the judicial process, this packet contains information about the criminal justice system and the availability of support services within your area. This packet also gives you the name, address and telephone number of the appropriate prosecuting attorney. By signing and mailing the accompanying form, and by continuing to provide the prosecuting attorney with any changes to your address or telephone number, you are asserting the following rights as prescribed in Chapter 43 Miss. Code Ann. (1972):

- To receive a copy of the initial incident report at no cost.
- To be notified of all charges filed against any person for the crime committed against you.
- To be notified of any criminal proceedings, other than the initial appearance, as soon as practicable, and of any changes that may occur.
- To talk with the prosecutor prior to the final disposition of your case, including giving your views on any nol pros (dismissal), reduction of charge, sentence recommendation, and pretrial diversion programs.
- To talk with the prosecutor prior to the beginning of the trial.
- To receive a transcript of the trial, at your own cost.
- To have the trial held without unreasonable delay. (The trial judge, in determining whether to grant a continuance, should make every reasonable effort to consider what effect granting the continuance would have on the victim.)
- To be present throughout all criminal proceedings, including any hearings, arguments or other matters scheduled by and held before a judge, but not including lineups, grand jury hearings or any other matter not held in the presence of the judge.

- To be provided a waiting area at trial separate from the defendant, his relatives and his witnesses. (If a separate waiting room is not available or its use is impractical, the judge is to do what is possible to minimize contact of the victim with the defendant, his relatives or defense witnesses.)
- To have the prosecutor petition the court that you or any other witness not be compelled to testify at any pre-trial proceeding or at trial to any facts concerning your identity, residence or place of employment that could put you in danger if you have been threatened with physical violence or intimidated by the defendant or anyone connected with him.
- To be present at any proceeding where the defendant is going to enter a guilty plea and be sentenced. (The judge cannot accept a guilty plea unless you are present or the prosecutor can assure the judge that every reasonable effort has been made to contact you and notify you of your right to be present. At the hearing, the victim has the right to present to the judge an impact statement or any information about the criminal offense or the sentence.)
- To be given the date of a conviction, acquittal or dismissal of the charges.
- To be given, after a conviction, information about the function of a pre-sentence report and the name, address and telephone number of the probation officer preparing this report for the judge and about the right of the defendant to view the pre-sentence report.
- To make an oral or written impact statement to the probation officer preparing the pre-sentence report for the judge. (In making his report, the probation officer will consider the economic, physical and psychological impact of the crime on the victim and the victim's family.)
- To be present at sentencing and to give the judge an impact statement or any information that concerns the criminal offense or the sentence.
- To be informed as soon as practicable of the sentence imposed on the defendant.
- To be given the names, addresses and telephone numbers of the appropriate agencies and departments to whom further requests for notice should be provided.
- To be given by the Attorney General's Office or the District Attorney, information about the status of any appellate proceeding and any appellate decisions within five (5) business days after the status is known or the decision issued.
- To be notified upon any post-arrest release of the defendant. Sexual assault or domestic violence victims are to be notified whether or not they have invoked their rights.
- To be notified of any escape and subsequent recapture of the defendant.
- To have any property belonging to you that was taken during the investigation returned as soon as possible. (If the property is necessary evidence, the prosecuting attorney may ask to be allowed to substitute photographs where possible.)
- To be notified within fifteen (15) days prior to the end of the sentence of the date the prisoner is to be released and to be notified of any medical release or of the death of the prisoner.
- To be notified that you may submit a written statement, audio or video recording to be placed with the prisoner's records and considered at any review for community status of the prisoner or prior to release of the prisoner.
- To be notified and allowed to submit a written or recorded statement when any change in custodial status is considered, whether such action be by executive order or judicial action.

- To testify at a criminal proceeding or participate in the preparation of the trial without any loss of employment, intimidation or threat or fear of the loss of employment.

These rights do not include the right to direct the prosecution. The district, city or county attorney has the responsibility to prosecute criminal cases. They will decide how the case will be handled, but they will confer with you and will consider your wishes and your needs. Additionally, the exercise of these rights is at your discretion (a Request to Exercise Victims' Rights is included in this packet). The absence of the victim at a proceeding will not prevent the court from going forward. The duty of the prosecutor is to make reasonable attempts to inform; you must do your part by keeping the prosecutor informed of any changes in your name, address or telephone number.

STATE OF MISSISSIPPI

PROCEDURAL STEPS IN DELINQUENCY CASES

DEFINITIONS

"Child", also commonly referred to as "youth", means a person who has not reached his eighteenth (18) birthday. A child who has not reached his eighteenth (18) birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of the Youth Court Act.

"Child in need of supervision" means a child who has reached his seventh (7) birthday and is in need of treatment or rehabilitation because the child:

- ◆ Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or
- ◆ While being required to attend school, willfully and habitually violates the rules or willfully and habitually absents himself from school; or
- ◆ Runs away from home without good cause; or
- ◆ Has committed a delinquent act or acts

"Delinquent act" is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior. "Delinquent child" means a child who has reached his tenth (10) birthday and who has committed a delinquent act.

OPERATION OF COURT – Delinquency cases are of a civil nature rather than criminal, and are conducted as follows:

- ◆ Without a jury
- ◆ The general public is excluded
- ◆ With a direct interest in the cause have the right to appear and be represented by counsel
- ◆ All parties to a youth court cause have the right to attend any hearing in which an investigation, record or report is admitted in evidence:
- ◆ To subpoena, confront and examine the person who prepared or furnished data for the report

- ◆ To introduce evidence contradicting the contents of the report

INTAKE/REPORTING REQUIREMENTS - Youth matters are commenced by a report being made to the intake unit of the youth court. Upon receiving a report, the Youth Court Intake Unit must promptly make a preliminary inquiry to determine whether the interest of the child or the public requires the youth court to take further action. If it appears from the preliminary investigation that the child is within the jurisdiction of the youth court, the intake unit recommends to the youth court that:

- ◆ No action be taken
- ◆ An informal adjustment be made
- ◆ Department of Human Services monitor the case
- ◆ The child is warned or counseled informally
- ◆ The child be referred to the youth court/drug court
- ◆ A petition be filed

After reviewing the recommendation, the youth court, without a hearing, enters an order.

INFORMAL ADJUSTMENT – The informal adjustment process is an informal process in which the child and his parents, guardian, or custodian agree to abide by certain conditions recommended by the informal adjustment counselor. Upon successful completion of the informal adjustment process, the matter is concluded. If the informal adjustment is unsuccessful, the matter is referred back to the Youth Court Intake Unit for further recommendations.

PETITION FILED/COMMENCEMENT OF FORMAL PROCEEDINGS - Delinquency proceedings are initiated by the proper filing of a petition by the Youth Court Prosecutor or other designated person. The petition is filed:

- ◆ Within five (5) days from the date of the detention hearing continuing custody
- ◆ In non-custody cases, unless another period of time is authorized by the Youth Court or its designee, within ten (10) days of the court order authorizing the filing of the petition. The court may dismiss the petition for failure to comply with this time schedule.

PERSONS SUMMONED – When a petition has been filed and the date of the hearing has been set, the judge or the judge's designee orders the clerk of the Youth Court to issue a summons to:

- ◆ The child named in the petition
- ◆ The person or persons who have custody or control of the child
- ◆ The parent or guardian of the child if such parent or guardian does not have custody of the child
- ◆ Any other person whom the court deems necessary

DETENTION HEARINGS – A child who has been ordered or taken into custody for delinquency may be held in custody for longer than temporary custody (21 days) if:

- ◆ A written complaint or petition is filed
- ◆ A detention hearing is conducted
- ◆ The court enters an order for continued custody

At the Detention Hearing:

- ◆ The parties may present evidence and cross-examine witnesses
- ◆ The court may receive hearsay and opinion testimony without regard to formal rules of evidence
- ◆ Testimony, though required to be under oath, may be given in narrative form

At the conclusion of the detention hearing, the court enters an order releasing the child to the custody of the child's parent, guardian or custodian, unless it finds and its detention order recites that there is probable cause that the youth court has jurisdiction, and custody is necessary because the child is endangered, any person would be endangered by the child, to ensure the child's attendance in court, or a parent, guardian or custodian is not available.

ADJUDICATION HEARING –

If the child is not in detention, the hearing is held within ninety (90) days after the filing of the petition unless continued for good cause or the person who is a subject to the cause has admitted the allegations. Otherwise, the case is dismissed with prejudice.

If the child is in detention, the hearing is held as soon as possible but no later than twenty-one (21) days after the child is first detained by the youth court unless postponed:

- ◆ On the motion of the child
- ◆ Because process was not completed
- ◆ Because a material witness is not presently available

Otherwise, the court may release the child from detention.

EVIDENCE ADMISSIBLE AT ADJUDICATION HEARING - The youth court considers only evidence which has been formally admitted. All testimony is under oath and may be in a narrative form. The youth court only admits evidence that would be admissible in a criminal proceeding.

ACCEPTANCE OF ADMISSIONS – At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations.

Plea bargaining is not permitted.

If the child does not have legal counsel, the youth court appoints an attorney to represent the child and continues the hearing for a reasonable time to allow the child to consult with the attorney. After conducting these preliminary matters, and provided there is not a continuance, the youth court may then inquire whether the parties admit or deny the allegations:

If the parties to the cause admit the allegations in the petition, and it meets the requirements for the acceptance of admission, then the judge may accept this as proof of the allegations.

If the party to the cause denies the allegations in the petition, then an adjudicatory hearing is held.

STANDARD OF PROOF – in delinquency cases, proof of each and every element in the charge is required beyond a reasonable doubt.

An adjudication of delinquency does not:

- ◆ Constitute a criminal conviction
- ◆ Impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction

Further, a person who has been prosecuted in the youth court may deny, without any penalty, the existence of the proceedings and any adjudication made.

DISPOSITIONAL HEARINGS – If the child is adjudicated delinquent, the youth court immediately sets a time and place for a disposition hearing. This hearing is separate and distinct from the adjudicatory hearing. If the child has been taken into custody, a disposition hearing is held within fourteen (14) days after the adjudicatory hearing unless good cause is shown for postponement.

DISPOSITIONAL ALTERNATIVES –

The disposition order may include any of the following alternatives:

- ◆ Release of the child without further action
- ◆ Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe
- ◆ Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe
- ◆ Order terms of treatment calculated to assist the child and the child's parents or guardian which are within the ability of the parent or guardian to perform
- ◆ Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of \$500, or restitution not in excess of actual damages caused by the child to be paid out of the child's own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year
- ◆ Suspend the child's driver's license by taking and keeping it in the custody of the court for not more than one (1) year
- ◆ Give legal custody of the child to any of the following:
 - ◆ DHS for appropriate placement

- ◆ Any public or private organization, preferably community based, able to assume the education, care and maintenance of the child
- ◆ DYS for placement in the Oakley Youth Development Center or another appropriate facility
- ◆ Recommend to the child and the child's parents or guardian that the child participate in the Youth Challenge Program
- ◆ Order the child to the Statewide Juvenile Work Program if the program is established in the court's jurisdiction
- ◆ Order the child into a juvenile detention center for a period not to exceed ninety (90) days
- ◆ Order the child to participate in a youth court work program as or to perform community service, or order house arrest under intense supervision
- ◆ Referral to A-team provided system of care services

JURISDICTION -

Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court. Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which is prohibited by law, or a shotgun or rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court.

Jurisdiction of the child attaches at the time of the offense and continues for that offense until the child's twentieth (20) birthday, unless sooner terminated by the order of the youth court.

The youth court does not have jurisdiction over offenses committed by a child on or after his eighteenth (18) birthday.

No child who has not reached his thirteenth (13) birthday can be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of the child may be civilly liable for any criminal acts of the child. No child under the jurisdiction of the youth court can be held criminally responsible or criminally prosecuted by any act designated as a delinquent act, unless jurisdiction is transferred to another court.

The youth court has jurisdiction of offenses committed by a child which have been transferred to the youth court by order of a circuit court having original jurisdiction of the offense.

The circuit court can assume jurisdiction over a youth who has committed an act of delinquency upon a youth court's ruling that a transfer is appropriate.

In any case wherein the child is in the original jurisdiction of the circuit court, the circuit court judge, upon a finding that it would be in the best interest of the child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction.

ALSO –

The court may order drug testing as part of a disposition order.

The judge does not sentence the child to the state training school for any length of time. The state training school may retain custody of the committed child until the child's twentieth (20) birthday but for no longer. The superintendent of the state training school decides when release of a child is deemed to be in his best interest. Ten (10) days prior to release, the training school must notify the committing court of the pending release. The youth court may then arrange subsequent placement after a reconvened disposition hearing except that **it may not recommit the child to the training school** or any other secure facility without an adjudication of a new offense or probation or parole violation.

The court cannot commit a child under ten (10) years of age to a state training school.

MISSISSIPPI CRIME VICTIMS' COMPENSATION ACT

Miss. Code Ann. §99-41-1 et. seq.

If you or a family member have been a victim of a violent crime and have financial losses resulting from the injuries that are not covered in full by insurance or any other source, the Crime Victim Compensation Program may be of some assistance to you. A single violent crime can have a profound impact on a person's life, resulting in serious physical injury, psychological trauma, absence from work and other financial strains. While no amount of financial aid can erase the trauma of crime, it is the goal of this Program to ease the aftermath of crime for the victim whenever possible.

GENERAL ELIGIBILITY REQUIREMENTS

- The crime must be reported to law enforcement officials within 72 hours after the crime or show good cause for not reporting.
- Application must be received within 36 months after the date of the crime.
- In cases of child sexual abuse, the application must be filed within 36 months after the crime was reported, but not later than the victim's 25th birthday.
- The victim or claimant must fully cooperate with law enforcement investigation and prosecution.
- The victim must not have contributed, provoked or in any way caused the injury or death; such claims may be denied or reduced.
- All other sources of payment such as Medicaid, Medicare or Workers' Compensation must pay first.
- Other limitations apply.

To obtain an application or receive additional information, contact:

**Crime Victim Compensation Division
Post Office Box 220
Jackson, MS 39205
1-800-829-6766
601-359-6766
www.agjimhood.com**

RESTITUTION TO VICTIMS OF CRIME

Miss. Code Ann. §99-37-1 et. seq.

When a person is convicted of a crime, in addition to any other sentence, the judge may order that restitution be made to the victim for any loss suffered. The judge may order that the restitution be paid in full or in part, in a lump sum or in installments. The victim should make sure that the prosecutor has full information on the extent of the loss so that he or she may recommend restitution to the judge. The losses of the victim should also be a part of the impact statement given to the judge prior to sentencing.

CONTACT INFORMATION

***The following contact information should be provided by the law enforcement agency assigned to your case:**

- The name of and contact information for the officer assigned to your case.
- The name of and contact information for the youth court prosecutor

Please call the law enforcement agency assigned to your case if the following occurs:

- You are threatened or intimidated as a result of your involvement in this case
- Within 60 days you are not notified of an arrest in your case

MISSISSIPPI CRIME VICTIMS' BILL OF RIGHTS

REQUEST TO EXERCISE VICTIMS' RIGHTS

FOR VICTIM TO SIGN:

I, _____, victim of the crime of _____,
(victim) (crime committed)
committed on _____, by _____ in _____,
(date) (name of offender, if known) (city, county)

request that I be given all rights provided in the Victims' Bill of Rights, Mississippi Code Annotated, Section 99-43-1 et. seq. I understand that it is my responsibility to provide the prosecutor with any change in my name, address or telephone number in order to continue to exercise these rights.

FOR VICTIM'S REPRESENTATIVE TO SIGN:

I, _____, representative of _____, who
(victim representative) (victim)
was the victim of the crime of _____ committed on _____, by
(crime committed) (date)
_____ in _____ request that, on behalf of
(Name of offender, if known) (city, county)

_____, I be given all the rights provided in the Victims' Bill of Rights, Mississippi Code
(victim)

Annotated, Section 99-43-1 et. seq. I understand that it is my responsibility to provide the prosecutor with any change in my name, address or telephone number in order to continue to exercise these rights.

NAME (print)

ADDRESS (Street/P.O. Box) (City) (State) (Zip)

TELEPHONE NUMBER(S)

() _____

Return this form to the officer or youth court prosecutor assigned to your case.