

TABLE OF CONTENTS



KANSAS VICTIMS BILL OF RIGHTS

I. THE PROCESS BEGINS

- What Should I Do When a Crime Occurs?
- What is My Role as a Victim or Witness?
- What if I Want to “Drop” Charges?
- What if Someone Threatens Me?
- What Happens to the Accused?
- What is the Purpose of Bond?
- What is a Subpoena?
- How Many Times Must I Appear in Court?
- What if the Defense Attorney Contacts Me?
- Do All Cases Go to Trial?
- What Happens if the Defendant is Mentally Ill?

II. THE TRIAL COMMENCES

- What Happens at Trial?
- How Do I Testify?
- Will the Defendant be Punished?
- Can the Defendant Appeal the Conviction?
- Will the Defendant Pay Me for the Loss?
- What if I Need an Interpreter?
- Am I Eligible for Crime Victims’ Compensation?

III. MORE CRIME VICTIM INFORMATION

- When Will my Property Be Returned?
- Will I be Notified of Court Hearings?
- What About Parole?
- What if My Employer Won’t Let Me Come to Court?
- What Victim/Witness Service Does The County Attorney’s Office Provide?

KANSAS VICTIMS BILL OF RIGHTS

In order to ensure the fair and compassionate treatment of victims of crime and to increase the effectiveness of the criminal justice system by affording victims of crime certain basic rights and considerations, victims of crime shall have the following rights:

1. Victims should be treated with courtesy, compassion, and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
2. Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they have suffered.
3. Information regarding the availability of criminal restitution, recovery of damages in a civil cause of action, the crime victims’ compensation fund and other remedies, and the mechanisms to obtain such remedies should be made available to victims.
4. Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress, and ultimate disposition of the proceedings.
5. The views and concerns of victims should be ascertained and the appropriate assistance provided throughout the criminal process.
6. When the personal interests of victims are affected, the views or concerns of the victim should, when appropriate and consistent with criminal law and procedure, be brought to the attention of the Court.
7. Measures may be taken when necessary to provide for the safety of victims and their families and to protect them from intimidation and retaliation.
8. Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims, and guidelines should be developed for this purpose.
9. Victims should be informed of the availability of health and social services and other relevant assistance that they might continue to receive the necessary medical, psychological, an social assistance through existing programs and services.
10. Victims should report the crime and cooperate with law enforcement authorities.

An Informational Guide

for

Crime Victims & Witnesses

Office of the Rice County Attorney
Rice County Courthouse
101 West Commercial
Lyons, Kansas 67554
Phone: 620-257-3081

I. THE PROCESS BEGINS

What Should I do When a Crime Occurs?

First, call 911. Emergency Communications will dispatch officers in priority situations. In those instances where follow-up is not immediately required, your call will be transferred to the appropriate law enforcement agency to make a full report.

If a suspect has been identified by the police and sufficient evidence is available, the case is presented to the County Attorney. The County Attorney is the people's representative in the criminal justice system, with sole responsibility for deciding whether charges should be filed and what those charges should be.

Kansas law classifies criminal offenses into two broad categories: misdemeanors and felonies.

- Misdemeanor: the less serious crimes punishable by a term of imprisonment not exceeding one year in the county jail and/or a fine up to \$2,500.
- Felony: the most serious class of criminal offense punishable by imprisonment with the Department of Corrections. In addition, fines in varying amounts may be imposed.

What Is My Role As A Victim Or Witness?

You are a witness because you have seen, heard, or know something about a crime that has been committed. If you are the victim of a violent crime, or owner of property that has been stolen, damaged or misused, often the case cannot be prosecuted unless you cooperate and participate by appearing to testify.

You may not think that what you know about the case is very significant; however, small pieces of information are often required to determine what really happened.

Your presence and willingness to testify may be the deciding factor in determining what will be done in the case. If the defendant decides to plead guilty, the plea may come at the last moment because the defendant is hoping you, the witness, will not show up, or that the case will be dropped for other reasons.

What If I Want to "Drop" Charges?

The decision whether to pursue criminal charges lies solely with the prosecutor. Especially in domestic violence cases, the County Attorney will not dismiss charges simply because the victim requests charges be dropped. This is because such crimes affect society as a whole, and not just the individual victim. However, the County Attorney is interested in hearing your concerns and discussing the matter with you.

What If Someone Threatens Me?

Concerns about your well being and safety after being victimized or witnessing a crime are normal. If you have any fears or receive any threats concerning your involvement in a case, you should immediately contact the law enforcement agency that investigated the case. In an emergency situation, call 911. Do so as soon as possible so that the threats can be documented and appropriate action taken. There are laws to protect you against people who attempt to bribe, intimidate, threaten, or harass you.

What Happens To The Accused?

The person charged with a crime is now called the defendant. After arrest by a law enforcement officer, the defendant is taken before a judge who informs the defendant of the reason he/she has been arrested, and of the facts contained in the complaint. This is called the first appearance. At this time, the judge sets the amount of bond and advises the defendant of his/her rights, which include the right to a preliminary hearing. Unless the defendant can post bond in the amount set by the judge, he/she remains in custody and is normally transferred to the county jail to await further action in the case.

What Is The Purpose Of Bond?

Bond is allowed in most all criminal cases, including felonies. The amount of bond is not set by the County Attorney but by the judge. Its legal purpose is to assure the defendant's appearance in court when ordered for later proceedings and to assure the public safety. In

setting the amount, the judge is required to consider a number of factors, including: the seriousness of the offense charged against the defendant, the defendant's prior criminal history, and the likelihood the defendant will return to court to face the charges.

What Is A Subpoena?

A subpoena is a court order directing you to appear in court at a particular time and place. It may be delivered by mail or in person. It does not mean that you are charged with an offense. Its purpose is to call you to court so that you may tell what you know about a case.

Usually you are notified well in advance of the court date. If you change your address or telephone number, immediately notify the Victim/Witness Coordinator at the County Attorney's Office. They may need to contact you if there is a change in the date or time you are to appear. Our telephone number will be provided for your use in the event you have questions regarding your appearance. **Be sure to call before you report to the courthouse.**

When subpoenaed, you must appear or risk being held in contempt of court and/or fined. Inform your employer that you have been called to testify and arrange to be absent from work for that period of time. Your employer should not discharge, punish, or threaten you for attending a criminal proceeding when you have been subpoenaed. If you are experiencing difficulties with your employer regarding a court appearance, please contact the County Attorney's Office immediately.

How Many Times Will I Have To Appear In Court?

No one can tell you in advance how many times or how long you will have to be in court. The process of justice takes time. The number of times you may be called to appear in court and the delays you may encounter are the result of our criminal justice process that is based on the principle that every person is presumed innocent until proven guilty. The constitutional rights that protect the defendant are the same rights that would protect you if you were accused of a crime.

The primary stages involved in processing a criminal case are summarized below to help you understand what happens when a person is accused of a crime.

- In cases involving misdemeanor offenses, usually your first and only appearance will be for the actual trial.
- In a felony case, the first time you appear as a witness will usually be for the preliminary hearing.

What If The Defense Attorney Contacts Me?

You are not required to discuss the case with the defense attorney or their investigator prior to testifying in court. Whether you choose to do so is completely up to you.

Do All Cases Go To Trial?

If the prosecuting attorney handling a criminal case determines there is not sufficient evidence to take the case to trial, the case may be dismissed. This action is taken only after the case has been completely investigated, and normally after the police and prosecutor have exhausted all avenues for obtaining additional evidence.

The reduction of charges or the dismissal of some counts in an existing case occurs from time to time. This procedure, which is called plea negotiations, plays an important part in the criminal justice system. As a case develops, certain facts may be discovered that require the reduction of charges against a defendant. In some instances it is because things not known at the time of charging are brought to light; sometimes it is because evidence or statements made by the defendant thought to be available at the trial are not available; sometimes important witnesses cannot be located. In any event, when plea negotiation is used by the County Attorney's Office, it is only after a careful determination that justice is best being served. While the ultimate decision belongs to the County Attorney, the victim and police agencies are made aware of the reasons and necessity of the plea negotiation, and their concerns are considered.

What Happens If The Defendant Is Mentally Ill?

The defense of insanity and diminished capacity are recognized in Kansas. In cases where the defense is raised, the final decision as to the defendant's mental condition at the time of the commission of the crime is made by the judge or jury.

If during the court proceedings the judge finds that the defendant is mentally incompetent and unable to assist in his/her own defense or unable to understand the nature and purpose of the criminal proceedings, the defendant is committed to an institution until such time as competency is restored.

II THE TRIAL COMMENCES

What Happens At Trial?

The trial of a person charged with a felony is held in district court before a judge and a jury of 12 people, randomly selected, who will determine whether the accused is guilty. Misdemeanor cases are tried in district court before a judge and a jury of 6 people. The verdict is based on the testimony of witnesses and evidence presented according to our state law.

Trials follow a certain procedure. Some of the events that you should be aware of are as follows:

- **OPENING STATEMENTS:** In their opening statements, the county attorney and defense attorney outline the evidence expected to be presented to the jury. Opening statements are not evidence, but are only explanations by the attorneys of what each side expects the evidence to prove. A defense attorney may give an opening statement immediately after that of the county attorney or at the close of the State's case. Likewise, a defense attorney may elect to give no opening statement at all.
- **STATE'S CASE:** The county attorney on behalf of the State will present evidence against the defendant. This begins with the State attorney's examination of a witness. Next the defense attorney may cross-examine the witness. Upon completion, the county attorney may again question the witness. This is called redirect examination.
- **THE DEFENDANT'S CASE:** After presentation of evidence for the State has been completed, the defense attorney may present witnesses for his/her side. This is the usual procedure. However, since the burden to prove that the defendant committed the alleged offense is on the State, the defense need not present any evidence if they so choose. The defendant is not required to testify on his/her own behalf.
- **CLOSING ARGUMENTS:** At the conclusion of all of the evidence, closing arguments will be presented. Closing arguments are not evidence, but are only summaries by both sides of the evidence

presented during the trial from their respective viewpoints.

- **JURY INSTRUCTIONS:** Jury instructions follow closing arguments. At this time, the judge will inform the jury of the issues to be decided and the rules of law that apply to the case.
- **JURY DELIBERATIONS:** Following the judge's instructions and closing arguments, the jury considers the evidence and decides whether the defendant is guilty.
- **JURY VERDICT:** Jury deliberations are concluded when a unanimous verdict has been reached. When this is done, the jury returns to the courtroom and the jury verdict is announced. If the jury is unable to arrive at a unanimous verdict, the judge will declare a mistrial. This means that a new trial will probably be scheduled at a later date.

How Do I Testify?

Witnesses naturally feel apprehensive about their first appearance in court because they do not know what to expect. The witness' job is to simply tell the truth. The following suggestions should help you prepare for your court appearance:

- If you have been summoned by a subpoena, bring it to court with you. The subpoena will provide information on when and where to appear.
- If you are going to testify about records, familiarize yourself with them before the trial.
- The trial of a criminal case is a serious matter. While in the courthouse, conduct yourself in a dignified manner.
- Tell the truth.
- Do not try to memorize what you will say in court, but try to recall just what you observed at the time of the incident.
- A neat appearance is important.
- Remember jury members are ordinary people like yourself. Don't be embarrassed. Speak frankly and loudly enough for them to hear you.
- Look at the jurors and speak to them when testifying. A jury considers attitude, facial expressions, and body language when evaluating testimony.
- **Do not lose your temper.** Be courteous.

- **Do not exaggerate.**
- Do not avoid questions or try to argue with the defense attorney.
- Listen carefully to the questions. If improper, an attorney will object. Never answer a question you don't understand or give a snap answer without thinking. Have the question repeated if necessary.
- If you can't answer a question with a yes or no, you should say so.
- Directly and simply answer **only** the question asked. **Do not** volunteer information.
- If your answer was not correctly stated, correct it immediately.
- Do not give your opinions or conclusions unless asked. Testify only to **facts** you observed or know, not what you think about those facts.
- You will be asked to take an oath to tell the truth. Remember the seriousness of this oath during the entire time you are testifying. If you willfully fail to tell the truth while testifying, you will be subject to penalties for perjury.
- If asked whether you have discussed the case with anyone, you should indicate any occasion that you have talked with the prosecutor, the defense lawyer, or anyone else.
- If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.
- You should never attempt to talk to a juror about the case or any other matter while the case is being tried. This includes meetings during recesses, in hallways, at lunch, or any other place.

Will The Defendant Be Punished?

If a defendant is convicted of a criminal offense, the judge will determine the appropriate sentence. The trial judge generally has some discretion in what specific punishment is ordered. This discretion must be exercised in accord with the sentencing guidelines enacted by the Kansas Legislature. The guidelines allow the judge to impose a sentence between minimum and maximum penalties.

Sentencing will occur following the preparation of a presentence investigation report (PSI). A PSI report is

prepared by a court officer who obtains the victim's statements and gathers information on defendant's criminal history. The victim's statement is your opportunity to tell the judge the injuries you suffered and the crime's effect on your life and finances. The victim's statement must be considered by the court when the defendant is sentenced. As a victim, you have the right to be present at sentencing and address the court if the judge allows.

The trial judge also has the authority to place the defendant on probation. Probation may include supervision by Community Corrections, work release, or a house arrest program. This procedure permits the court to try to fit the particular punishment to the crime and to the defendant. The Kansas Legislature has directed that most non-violent offenders should receive probation.

Can The Defendant Appeal The Conviction?

It is possible that the case in which you testify will be appealed if the defendant is convicted. This is a right guaranteed to the defendant. When the case is tried in district court, the convicted defendant may appeal to the State Supreme Court or Court of Appeals that will determine if there was any legal error in the trial as revealed by the written record. There is no trial or testimony during the appeal. The appeal is "on the record" which means the appellate court will consider the transcript of the proceedings at trial.

Will The Defendant Pay Me For The Loss?

A victim may be reimbursed for damages or losses suffered as a result of a crime if the court orders the defendant to make restitution. "Restitution" means that the defendant must compensate the victim. To assist the court in determining the amount of restitution, keep any receipts, bills, or estimates regarding the loss. Promptly complete and return the restitution form to the County Attorney's Office. If you have suffered monetary losses, you may have the right to pursue a lawsuit in civil court. The County Attorney is not involved in civil lawsuits for monetary damages. You may wish to

discuss the possibility of a civil lawsuit, and your rights, with an attorney.

What If I Need An Interpreter?

Foreign language interpreters and interpreters for the hearing and/or speech impaired are available. If you are in need of interpreting services while in attendance at court, contact the County Attorney's Office as soon as possible.

Am I Eligible For Crime Victim's Compensation?

Victims of violent crime (including intentionally inflicted injuries and DUI) may apply for money under the Kansas Crime Victim's Compensation Program administered by the Kansas Attorney General's Office. An application form can be obtained through the County Attorney's Office.

III MORE VICTIM INFORMATION

When Will My Property Be Returned?

The court or law enforcement officials hold property until it is no longer needed as evidence. At that time, it will be returned to you. If more than one person claims an interest in the property (i.e. pawn shop), the court must decide to whom the property should be returned.

Will I Be Notified Of Court Hearings?

As a crime victim, you have the right to be notified and to attend public hearings in which the defendant has a right to be present.

What About Parole?

Beginning July 1, 1993, Kansas no longer has parole. A defendant sentenced to prison will not be released until he/she has served their sentence minus any good time they earn (generally up to 15% of the original sentence). The Department of Corrections determines whether to award good time.

After a defendant is released from prison, he/she may have to report for post-release supervision, and may have to abide by certain conditions. If you have any questions, contact the County Attorney.

What If My Employer Won't Let Me Come To Court?

If you are lawfully subpoenaed to court, an employer cannot prevent court attendance. When appropriate, the County Attorney's Office will contact your employer to discuss the importance of your role as a witness.

What Victim/Witness Services Does The County Attorney's Office Provide?

The County Attorney's Office is designed to help you understand the criminal justice process and your role as a victim or witness. In addition to this support,

coordinators will send you subpoenas and/or notify you of court hearings in an effort to keep you better informed. Contact them at 620-257-3081.