

CRIME VICTIMS:
WITNESSES:

A victim of a crime has the right to remain in
the courtroom during the testimony of other

witnesses during trial regardless of whether the trial court has otherwise excluded
witnesses.

February 7, 2001

OPINION NO. 126-2001

Dwight K. Scroggins, Jr.
Prosecuting Attorney
Buchanan County, Missouri
Buchanan County Court House
St. Joseph, MO 64501

Dear Mr. Scroggins:

You have submitted the following question to this office:

Do sections 595.209.1, 595.209.1(1), 595.209.5,
RSMo, and Article I, Section 32.1(1) of the Constitution of
Missouri require that a trial court permit the victim of a crime
remain in the courtroom during the testimony of other
witnesses after a party moves to invoke the rule excluding
witnesses from the courtroom during trial?

It is unclear from your request whether a defendant has attempted to exclude a
victim of a crime who is also a witness at a trial through the request to exclude all
witnesses from the courtroom or, if such an attempt has been made, what action a judge
has taken in response thereto. Nevertheless, this office recognizes that it is a common
practice for attorneys to request that witnesses be excluded during trial and that courts
often grant such a request.

There is no "rule" that requires a court to exclude witnesses from a trial, whether
criminal or civil. Although trial attorneys often seek "to invoke the rule", that is a
misnomer. Whether to exclude witnesses is purely discretionary with the court. State v.
Sexton, 929 S.W.2d 909 (Mo. App. 1996), State v. Kinder, 942 S.W.2d 313 (Mo. banc

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1996), certiorari denied 118 S.Ct. 149, 522 U.S. 854, 139 L.Ed.2d 95, State v. McMillian, 779 S.W.2d 670 (Mo. App. 1989).

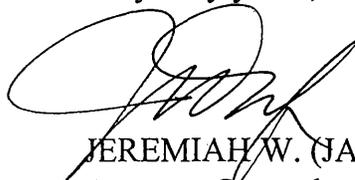
However, even if such a "rule" were codified, it would not be enforceable in light of constitutional and statutory provisions. Article I, Section 32.1(1) of the Missouri Constitution provides that crime victims have "the right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult."

The legislature has enacted provisions to implement these constitutional provisions at Section 595.209 RSMo 1999 Supp. In addition to recodifying the constitutional provisions cited above, this legislation establishes that victims have certain rights to be informed of the progress of the litigation. These provisions make it absolutely clear that the legislature intended victims of crimes to have the right to observe and participate in all the stages of the criminal justice system involving the defendants accused of the crime of which they were the victim.

CONCLUSION

A victim of a crime has the right to remain in the courtroom during the testimony of other witnesses during trial regardless of whether the trial court has otherwise excluded witnesses.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General