

# PROSECUTOR BEST PRACTICES 2019

Presented by the  
Missouri Municipal Attorneys Association-  
Municipal Prosecutors Committee

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## OVERVIEW OF PRESENTATION

- ▶ Functions and Duties of a Prosecutor
- ▶ Reviewing Citations and Issuing Charges
- ▶ Changes to Rule 37
- ▶ Minimum Operating Standards related to fines
- ▶ Discovery Requests
- ▶ Restitution
- ▶ Probation Revocation
- ▶ Prosecutor Records Retention
- ▶ Trial Preparation
- ▶ Separation of Prosecution and Court Functions
- ▶ Immigration issues within Municipal Court
- ▶ Deferred prosecution as an alternative

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## The Function of a Prosecutor

- ▶ The American Bar Associate Standards discusses the functions of a prosecutor which include:
  - ▶ The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of her or her functions
  - ▶ The duty of the prosecutor is to seek justice, not merely to convict
  - ▶ It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.
  - ▶ A prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests.

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## MAIN PROSECUTING DUTIES

- ✓ Review tickets/citations for issuance of charges
- ✓ Make Recommendations to the Court for disposition of cases
- ✓ Represent county/city at any preliminary hearings
- ✓ Negotiate with Defense Counsel
- ✓ Prepare for trial (make witness decisions, contact and prep witnesses, etc.)
- ✓ Subpoena witnesses in preparation of trial
- ✓ Proceed to trial
- ✓ Motion the Court to revoke probation when needed
- ✓ Dispose of Prosecutor Files in accordance of law.

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## REVIEWING CITATIONS AND ISSUING CHARGES

- ▶ Missouri Supreme Court Rule 37.34: "All ordinance violations shall be prosecuted by information. An information charging the commission of an ordinance violation may be based upon a violation notice..."
  - ▶ Violation Notice - ticket written by law enforcement
  - ▶ Rule 37.33 states the required content for Violation Notices.
  - ▶ Rule 37.35 provides what content is needed for Informations.
  - ▶ Prosecutors should look to make sure the traffic ticket contain both sets of required contents if the traffic ticket written by the officer will be used as your Information.

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## Violation Notices RULE 37.33

- ▶ Name and Address of Court
- ▶ NEW ADDITION: State the court date and time for initial appearance
- ▶ Name of the Prosecuting County or Municipality
- ▶ NEW ADDITION: State the name and date of birth of the accused
- ▶ State the date and place of the ordinance violation as definitely as can be done
- ▶ State the facts that support a finding of probable cause to believe the violation was committed
- ▶ Cite chapter and section of ordinance alleged to have been violated
- ▶ NEW ADDITION: State the state-approved charge code if one exists.

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## Information Content

### RULE 37.35

- ▶ State the name of the defendant
- ▶ State plainly the essential facts
- ▶ State date and place of ordinance violation as definitely as can be done
- ▶ Cite chapter and section of the ordinance alleged to have been violated
- ▶ NEW ADDITION: Cite the state approved charge code if one exists
- ▶ MUST BE IN WRITING AND SIGNED BY PROSECUTOR

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## FILING BY INFORMATION (NOT USING VIOLATION NOTICE AS YOUR CHARGING DOCUMENT)

- ▶ Ticket is destroyed
- ▶ Arrest pending review
- ▶ Prosecutor issuing additional charges

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## Ordinance Violation- Information

### RULE 37.34

- ▶ All ordinance violations shall be prosecuted by information. An information charging the commission of an ordinance violation may be based on the prosecutor's information and believe that the ordinance violation was committed. The information shall be supported by a violation notice or a statement of probable cause as prescribed by Rule 37.
- ▶ (New language in bold.)

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## Statement of Probable Cause

### RULE 37.435

- ▶ A statement of probable cause must be in writing and shall:
  - a) State the name of the accused or, if not known, designate the accused by any name or description by which the accused can be identified with reasonable certainty;
  - b) State the date and place of the ordinance violation as definitely as can be done;
  - c) State the facts that support a finding of probable cause to believe an ordinance violation was committed and that the accused committed it;
  - d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the accused will not appear upon the summons or that the defendant poses a danger to a crime victim, the community, or any other person;
  - e) State the facts contained therein are true;
  - f) Be signed and on a form bearing notice that false statements made therein are punishable by law; and
  - g) Shall accompany an information when an arrest warrant is sought.

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## Presence of the Defendant

### RULE 37.57

- ▶ No trial shall be conducted or a plea of guilty entered unless the defendant is present, except the court, the prosecuting attorney, and the defendant may agree that the defendant need not be present.
- ▶ A verdict may be received by the court in absence of the defendant when such absence is voluntary.
- ▶ If there is a record entry showing that the defendant was present at the commencement or at any stage of the trial, it shall be presumed, in absence of any record entry to the contrary, that he was present during the entire trial.

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## Minimum Operating Standard #1

- ▶ Municipal Divisions shall ensure that when individuals must be held in jail in the interests of justice, this is done strictly in accordance with the principals of due process of law.
  - ▶ RSMo. 479.353(2) No person is sentenced to confinement on "minor traffic violations" or "municipal ordinance violations" with the exception of violations:
    - ▶ Involving alcohol or drugs
    - ▶ Endangering the health or welfare of others
    - ▶ Involving eluding or giving false information to police officers

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## Minimum Operating Standard #4

- ▶ Municipal divisions shall neither assess nor collect unauthorized fines, costs, or surcharges
- ▶ Fine and costs assessed on MTVs do not exceed \$225
- ▶ Fines and costs assessed on MOVs meet the mandatory maximum schedule in RSMo. 479.353 (\$200, \$275, \$350, \$450)
- ▶ Dismissal on Payment of Court Costs is NOT permitted.

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## Minor Traffic Violations

- A minor traffic violation is any municipal traffic violation not explicitly excluded from the statute.
- Exclusions:
  - Accident or injury
  - Involving a commercial motor vehicle
  - DOR is authorized to assess more than four points
  - Exceeding the speed limit by more than 19 mph
  - Violation occurred within a construction or school zone.
- Maximum Fine \$225, No Jail

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## Municipal Ordinance Violations

- Defined as: a municipal or county ordinance violation prosecuted for which penalties are authorized by statutes under sections 64.160, 64.200, 64.295, 64.690, 64.895, 67.398, 71.285, 89.120, and 89.490.
- These sections relate to property or structures located on the property (more commonly known as code or housing violations)
- Fine schedule
  - First time offense: no more than \$200
  - Second offense within a year of first, no more than \$275
  - Third offense within a year of the first, no more than \$300
  - Fourth or subsequent violation capped at \$450

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## DISCOVERY REQUESTS

- ▶ Supreme Court Rule 37.54
  - ▶ "Discovery shall be permitted solely in the judge's discretion as justice requires"
  - ▶ According to this rule, before Defense counsel is entitled to any discovery, they must first file a written motion for discovery, set it for hearing, give the prosecutor proper notice of that hearing, and argue to the Judge why they are entitled to any evidence the prosecutor may have.

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## RESTITUTION

- ▶ Prosecutors can seek restitution in accident cases, stealing cases, property damage cases, etc.
- ▶ Negotiate plea deal conditions on the payment of restitution
- ▶ Talk to victims of the crime. Let them know that payment of restitution is not guaranteed. There is always civil court.

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Defense Attorney  
123 Main Street  
St. Peter, MD 21376

RE: St Charles County vs. Lightning McQueen, Case # 13000000-1

Dear Defense Attorney,

We have received your entry of appearance and request for recommendation in the above mentioned case(s). Before we can provide a recommendation we will need to determine if restitution has been made to the victim(s) in this matter. Please provide our office proof of restitution by 4/12/2012. If your client's insurance company paid for the damages caused during this incident, please provide our office with a letter from the company on their letterhead stating your client had insurance coverage on the date of the accident.

Once the information is received the file will be reviewed for recommendation.

Sincerely,

PA Assistant  
St Charles County Counselor's Office

Restitution  
Letter sent by  
PA Assistant  
to Defense  
Counsel

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## MOTION TO REVOKE PROBATION

- ▶ RSMo. § 539.036.7
  - ▶ The prosecuting attorney may file a motion to revoke probation at any time during the term of probation
  - ▶ Notice to appear to answer charge of violation shall be served upon probationer
  - ▶ The Court may immediately enter an order suspending the period of probation (this is important to file)
  - ▶ The probation shall remain suspended until the court rules on the prosecutor's motion.
    - ▶ Cases to keep in mind:
      - ▶ *State ex rel. Strauser v. Martinez*, 416 SW3d 798 (Mo. 2014): Court must make every reasonable effort to conduct hearings on pending probation revocation motions prior to the expiration of defendants' probation so as to have the authority to conduct the hearings after their probation terms ended.
      - ▶ *Petree v. State*, 490 SW3d 641 (Mo. App. WD 2006): Delays in proceeding with Motions to Revoke must be reasonable and must not prejudice the Defendant. The burden is on the Defendant.

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## PROSECUTOR RECORDS RETENTION

- ▶ Prosecutor Schedule differs from the Court's Schedule
- ▶ Different Procedures and Schedules for each type of case below:
  - ▶ Charge File (Pros 001)
  - ▶ Criminal Case Files (Pros 002)
  - ▶ Traffic Enforcement Records (Pros 009)
  - ▶ Deferred Prosecution Case Files (Pros 008)

All found on Missouri Secretary of State website:  
[www.sos.mo.gov/CMS/index.cfm?localRecords/Prosecutor.pdf](http://www.sos.mo.gov/CMS/index.cfm?localRecords/Prosecutor.pdf)

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## Charge File (card file)

- A listing of charges filed, can be alphabetical by person or chronological by charge
- Content: Name of Defendant, charge, date of filing, disposition
- RETENTION: 75 years

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## Criminal Case Files

- What you probably refer to as "Prosecutor File"
- What might be in your file?
  - Copy of the ticket/information
  - Any motions filed with the court
  - Criminal Histories, DOR print outs
  - Police Reports \*\*\*\*
  - Other documents used at trial
- It is a record of proceedings against a given defendant on misdemeanors and serious traffic violations
- Everything that is NOT simple traffic tickets
- DWI files and DWS/R files are included in this (anything that could potentially be enhanceable)

### RETENTION:

- All DWI's- 10 years
- Enhanceable Misdemeanors- 10 years
- All other Misdemeanors, Infractions, Ordinance, or Other Violations- 3 years

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## Traffic Enforcement Records

- All non-serious traffic offenses
- No DWI's or DWS/R

### RETENTION: UNTIL FINAL DISPOSITION

- Once the case is closed, trash that PA file on simple Traffic
- Note: This does not include "CHARGE FILE"

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## Deferred Prosecution Case Files

- Active or Inactive Deferred Prosecution Files
- Cases Not Filed (refused tickets)
- Dismissals (NP's)

- RETENTION: 1 year

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"Perhaps you would like to rephrase your last answer."

## Trial Preparation

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## Trial Prep

- ▶ Subpoena witnesses for Trial
  - ▶ Get a list of trials sent to Prosecutor by Clerk
  - ▶ Fill out Subpoenas and provide to Clerk for signature
  - ▶ Send fully executed subpoenas to civil process for proper service
- ▶ Information to Include on your subpoena
  - ▶ Name and style of the case
  - ▶ Date and time you need the witness to appear to testify
  - ▶ Location of the Court
  - ▶ Your name and phone number

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## Prepping Witnesses

- ▶ Don't wait till the day of trial
- ▶ Review all evidence with your witness (Video, Police Report, etc.)
- ▶ Interview all witnesses separately
- ▶ Look for issues or obstructions or weaknesses in case and discuss these with your witness
- ▶ Take lay witnesses to the courtroom or prepare them for what it will look like (who all the players are)
- ▶ Boilerplate reminders for all witnesses-
  - ▶ ALWAYS tell the truth
  - ▶ Answer the question asked and only the question asked
  - ▶ Correct any mistakes
  - ▶ How to handle objections
  - ▶ Do not argue with defendant or defense counsel

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## Fundamentals of Direct Examination

- ▶ Never ask a question without knowing the answer
- ▶ Know what your witness will say, not just what you think they will say
- ▶ Prepare your witness for your questions and for possible cross examination questions

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## Municipal Trials in a Nutshell

- Same three questions to ask in every case:
  1. Jurisdiction/Venue- "Did this incident occur within the boundaries of St. Charles Missouri?"
  2. Ordinance- State in your opening statement that the Defendant violated St. Charles County Ordinance 300.200 and then Introduce that ordinance and ask the court to admit (or take judicial notice)
  3. ID of the Defendant- "Officer, do you see the person you witnessed violate the stop sign, in the Courtroom today? Please describe what he is wearing." Then ask the Court to take notice that the Officer identified the Defendant.
- Then tailor your examination questions to meet each element of the crime (look to the specific ordinance for this).

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## Ordinance Admission

Certified copy of the ordinance

A must-have for any circuit court appeals, handy for muni court trials

A city may prove its ordinance in one of three ways:

1. In accordance with the first clause of RSMo. 490.240- a handwritten or printed certified copy of the ordinance
2. in accordance with the second clause of RSMo. 490.240- the prosecutor can bring into a court a printed volume of the current municipal ordinances published by the city and reference that volume in trial
- OR 3. under RSMo. 479.250- adducing a certified copy of the ordinance or filing a certified copy of the ordinance with the clerk of the court and provided that it is kept by the clerk readily available for inspection by the parties, the court can take judicial notice of it.

See *City of Joplin v. Klein*, 345 S.W.3d 351 (MO App. SD 2011).

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## Separation of Prosecution and Court Functions

*Standard #7: "Municipal divisions shall be operated in a manner that upholds the constitutional principles of separation of powers and integrity of the judiciary as a separate and independent branch of government."*

- Court staff should not be doing prosecutorial functions and vice versa.
- Court staff work under the direction of the Judge with respect to judicial functions/ Prosecutor's Assistant works under the supervision of the Executive Branch.
- Physical separation of court staff from other branches of city government.

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## Immigration Issues in Municipal Court

Different field offices of the US Citizenship and Immigration Services (USCIS) have different standards with respect to the impact of various convictions.

DWIs often an issue and can result in disparate impact of punishment.

Deferred prosecution can be a useful mechanism in this regard.

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## Deferred Prosecution

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## MMAA Municipal Prosecutor Committee Members

- Amanda Jennings, St. Charles County [ajennings@secmo.org](mailto:ajennings@secmo.org)
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