

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 1159

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

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TERRY L. SPIELER, Secretary.

3977S.07P

AN ACT

To repeal sections 191.225 and 595.045, RSMo, and to enact in lieu thereof three new sections relating to forensic examinations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.225 and 595.045, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 191.225, 595.045,
3 and 595.107, to read as follows:

191.225. 1. [The department of health and senior services shall make
2 payments to appropriate medical providers, out of appropriations made for that
3 purpose, to cover the charges of the forensic examination of persons who may be
4 a victim of a sexual offense if:

5 (1) The victim or the victim's guardian consents in writing to the
6 examination;

7 (2) The report of the examination is made on a form approved by the
8 attorney general with the advice of the department of health and senior services;
9 and

10 (3) The report of the examination is filed with the prosecuting attorney
11 of the county in which the alleged incident occurred.] **For purposes of this**
12 **section, the following terms mean:**

13 (1) "Appropriate medical provider", any licensed nurse,
14 physician, or physician assistant, and any institution employing

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 licensed nurses, physicians, or physician assistants; provided that such
16 licensed professionals are the only persons at such institution to
17 perform tasks under the provisions of this section;

18 (2) "Evidentiary collection kit", a kit used during a forensic
19 examination that includes materials necessary for appropriate medical
20 providers to gather evidence in accordance with the forms and
21 procedures developed by the attorney general for forensic
22 examinations;

23 (3) "Forensic examination", an examination performed by an
24 appropriate medical provider on a victim of an alleged offense included
25 under chapter 566, RSMo, to gather and collect forensic evidence;

26 (4) "Medical treatment", the treatment of all injuries and health
27 concerns resulting directly from a patient's sexual assault or
28 victimization.

29 2. The appropriate medical provider shall file [the] a forensic report of
30 the examination [within three business days of completion of the forensic exam]
31 with the prosecuting attorney of the county in which the alleged
32 offense occurred.

33 [2.] 3. A minor may consent to examination under this section. Such
34 consent is not subject to disaffirmance because of minority, and consent of parent
35 or guardian of the minor is not required for such examination. The appropriate
36 medical provider making the examination shall give written notice to the parent
37 or guardian of a minor that such an examination has taken place. If the
38 appropriate medical provider reasonably believes the offender could be
39 a parent or guardian of the victim and the victim is a minor under the
40 age of eighteen, the medical provider shall only be required to provide
41 written notice to the nonoffending parent or guardian of the
42 examination.

43 [3.] 4. The attorney general, with the advice of the department of health
44 and senior services, shall develop the forms and procedures for gathering
45 evidence during the forensic examination under the provisions of this
46 section. The department of health and senior services shall develop a checklist,
47 and evidentiary collection kit when appropriate, for appropriate medical
48 providers to refer to while providing medical treatment to victims of a sexual
49 offense.

50 [4.] 5. Evidentiary collection kits shall be developed and made available,

51 subject to appropriation, to appropriate medical providers by the highway patrol
52 or its designees and eligible crime laboratories. Such kits shall be distributed
53 with the forms and procedures for gathering evidence during forensic
54 examinations of victims of a sexual offense to appropriate medical providers upon
55 request of the provider, in the amount requested, and at no charge to the medical
56 provider. All appropriate medical providers shall, with the written consent of the
57 victim, perform a forensic examination using the evidentiary collection kit and
58 forms and procedures for gathering evidence following the checklist for any
59 person presenting as a victim of a sexual offense.

60 [5.] **6.** All [appropriate medical provider charges] **costs** for eligible
61 forensic examinations **performed by appropriate medical providers** shall
62 be billed to and paid by the department of [health and senior services] **public**
63 **safety as provided in section 595.107, RSMo.** No appropriate medical
64 provider conducting forensic examinations and providing medical treatment to
65 victims of sexual offenses shall charge the victim for the forensic
66 examination. For appropriate medical provider charges related to the medical
67 treatment of victims of sexual offenses, if the victim is an eligible claimant under
68 the crime victims' compensation fund, the appropriate medical provider shall seek
69 compensation under sections 595.010 to 595.075, RSMo.

70 [6. For purposes of this section, the following terms mean:

71 (1) "Appropriate medical provider", any licensed nurse, physician, or
72 physician assistant, and any institution employing licensed nurses, physicians,
73 or physician assistants; provided that such licensed professionals are the only
74 persons at such institution to perform tasks under the provisions of this section;

75 (2) "Evidentiary collection kit", a kit used during a forensic examination
76 that includes materials necessary for appropriate medical providers to gather
77 evidence in accordance with the forms and procedures developed by the attorney
78 general for forensic examinations;

79 (3) "Forensic examination", an examination performed by an appropriate
80 medical provider on a victim of an alleged sexual offense to gather evidence for
81 the evidentiary collection kit;

82 (4) "Medical treatment", the treatment of all injuries and health concerns
83 resulting directly from a patient's sexual assault or victimization.]

595.045. 1. There is established in the state treasury the "Crime Victims'
2 Compensation Fund". A surcharge of seven dollars and fifty cents shall be
3 assessed as costs in each court proceeding filed in any court in the state in all

4 criminal cases including violations of any county ordinance or any violation of
5 criminal or traffic laws of the state, including an infraction and violation of a
6 municipal ordinance; except that no such fee shall be collected in any proceeding
7 in any court when the proceeding or the defendant has been dismissed by the
8 court or when costs are to be paid by the state, county, or municipality. A
9 surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile
10 court proceeding in which a child is found by the court to come within the
11 applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

12 2. Notwithstanding any other provision of law to the contrary, the moneys
13 collected by clerks of the courts pursuant to the provisions of subsection 1 of this
14 section shall be collected and disbursed in accordance with sections 488.010 to
15 488.020, RSMo, and shall be payable to the director of the department of revenue.

16 3. The director of revenue shall deposit annually the amount of two
17 hundred fifty thousand dollars to the state forensic laboratory account
18 administered by the department of public safety to provide financial assistance
19 to defray expenses of crime laboratories if such analytical laboratories are
20 registered with the federal Drug Enforcement Agency or the Missouri department
21 of health and senior services. Subject to appropriations made therefor, such
22 funds shall be distributed by the department of public safety to the crime
23 laboratories serving the courts of this state making analysis of a controlled
24 substance or analysis of blood, breath or urine in relation to a court proceeding.

25 4. **Notwithstanding any other provision of law to the contrary,**
26 **money in the crime victims' compensation fund may be deposited into**
27 **the sexual offense forensic examination compensation fund created**
28 **under section 595.107.**

29 5. The remaining funds collected under subsection 1 of this section shall
30 be denoted to the payment of an annual appropriation for the administrative and
31 operational costs of the office for victims of crime and, if a statewide automated
32 crime victim notification system is established pursuant to section 650.310,
33 RSMo, to the monthly payment of expenditures actually incurred in the operation
34 of such system. Additional remaining funds shall be subject to the following
35 provisions:

36 (1) On the first of every month, the director of revenue or the director's
37 designee shall determine the balance of the funds in the crime victims'
38 compensation fund available to satisfy the amount of compensation payable
39 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

40 (2) Beginning on September 1, 2004, and on the first of each month, the
41 director of revenue or the director's designee shall deposit fifty percent of the
42 balance of funds available to the credit of the crime victims' compensation fund
43 and fifty percent to the services to victims' fund established in section 595.100;

44 **(3) Subject to appropriations, the director of revenue or the**
45 **director's designee shall transfer money from the crime victims'**
46 **compensation fund into the sexual offense forensic examination**
47 **compensation fund as created under section 595.107.**

48 [5.] 6. The director of revenue or such director's designee shall at least
49 monthly report the moneys paid pursuant to this section into the crime victims'
50 compensation fund and the services to victims fund to the [division of workers'
51 compensation and the] department of public safety[, respectively].

52 [6.] 7. The moneys collected by clerks of municipal courts pursuant to
53 subsection 1 of this section shall be collected and disbursed as provided by
54 sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable
55 to the city treasury of the city from which such funds were collected. The
56 remaining ninety-five percent of such moneys shall be payable to the director of
57 revenue. The funds received by the director of revenue pursuant to this
58 subsection shall be distributed as follows:

59 (1) On the first of every month, the director of revenue or the director's
60 designee shall determine the balance of the funds in the crime victims'
61 compensation fund available to satisfy the amount of compensation payable
62 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

63 (2) Beginning on September 1, 2004, and on the first of each month the
64 director of revenue or the director's designee shall deposit fifty percent of the
65 balance of funds available to the credit of the crime victims' compensation fund
66 and fifty percent to the services to victims' fund established in section 595.100;

67 **(3) Subject to appropriations, the director of revenue or the**
68 **director's designee shall transfer money from the crime victims'**
69 **compensation fund into the sexual offense forensic examination**
70 **compensation fund as created under section 595.107.**

71 [7.] 8. These funds shall be subject to a biennial audit by the Missouri
72 state auditor. Such audit shall include all records associated with crime victims'
73 compensation funds collected, held or disbursed by any state agency.

74 [8.] 9. In addition to the moneys collected pursuant to subsection 1 of
75 this section, the court shall enter a judgment in favor of the state of Missouri,

76 payable to the crime victims' compensation fund, of sixty-eight dollars upon a plea
77 of guilty or a finding of guilt for a class A or B felony; forty-six dollars upon a
78 plea of guilty or finding of guilt for a class C or D felony; and ten dollars upon a
79 plea of guilty or a finding of guilt for any misdemeanor under Missouri law except
80 for those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo,
81 relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating
82 to motor vehicle financial responsibility, chapter 304, RSMo, relating to traffic
83 regulations, chapter 306, RSMo, relating to watercraft regulation and licensing,
84 and chapter 307, RSMo, relating to vehicle equipment regulations. Any clerk of
85 the court receiving moneys pursuant to such judgments shall collect and disburse
86 such crime victims' compensation judgments in the manner provided by sections
87 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and
88 deposited to the credit of the crime victims' compensation fund.

89 **[9.] 10.** The clerk of the court processing such funds shall maintain
90 records of all dispositions described in subsection 1 of this section and all
91 dispositions where a judgment has been entered against a defendant in favor of
92 the state of Missouri in accordance with this section; all payments made on
93 judgments for alcohol-related traffic offenses; and any judgment or portion of a
94 judgment entered but not collected. These records shall be subject to audit by the
95 state auditor. The clerk of each court transmitting such funds shall report
96 separately the amount of dollars collected on judgments entered for
97 alcohol-related traffic offenses from other crime victims' compensation collections
98 or services to victims collections.

99 **[10.] 11.** The department of revenue shall maintain records of funds
100 transmitted to the crime victims' compensation fund by each reporting court and
101 collections pursuant to subsection 16 of this section and shall maintain separate
102 records of collection for alcohol-related offenses.

103 **[11.] 12.** The state courts administrator shall include in the annual
104 report required by section 476.350, RSMo, the circuit court caseloads and the
105 number of crime victims' compensation judgments entered.

106 **[12.] 13.** All awards made to injured victims under sections 595.010 to
107 595.105 and all appropriations for administration of sections 595.010 to 595.105,
108 except sections 595.050 and 595.055, shall be made from the crime victims'
109 compensation fund. Any unexpended balance remaining in the crime victims'
110 compensation fund at the end of each biennium shall not be subject to the
111 provision of section 33.080, RSMo, requiring the transfer of such unexpended

112 balance to the ordinary revenue fund of the state, but shall remain in the crime
113 victims' compensation fund. In the event that there are insufficient funds in the
114 crime victims' compensation fund to pay all claims in full, all claims shall be paid
115 on a pro rata basis. If there are no funds in the crime victims' compensation
116 fund, then no claim shall be paid until funds have again accumulated in the crime
117 victims' compensation fund. When sufficient funds become available from the
118 fund, awards which have not been paid shall be paid in chronological order with
119 the oldest paid first. In the event an award was to be paid in installments and
120 some remaining installments have not been paid due to a lack of funds, then
121 when funds do become available that award shall be paid in full. All such awards
122 on which installments remain due shall be paid in full in chronological order
123 before any other postdated award shall be paid. Any award pursuant to this
124 subsection is specifically not a claim against the state, if it cannot be paid due to
125 a lack of funds in the crime victims' compensation fund.

126 [13.] 14. When judgment is entered against a defendant as provided in
127 this section and such sum, or any part thereof, remains unpaid, there shall be
128 withheld from any disbursement, payment, benefit, compensation, salary, or other
129 transfer of money from the state of Missouri to such defendant an amount equal
130 to the unpaid amount of such judgment. Such amount shall be paid forthwith to
131 the crime victims' compensation fund and satisfaction of such judgment shall be
132 entered on the court record. Under no circumstances shall the general revenue
133 fund be used to reimburse court costs or pay for such judgment. The director of
134 the department of corrections shall have the authority to pay into the crime
135 victims' compensation fund from an offender's compensation or account the
136 amount owed by the offender to the crime victims' compensation fund, provided
137 that the offender has failed to pay the amount owed to the fund prior to entering
138 a correctional facility of the department of corrections.

139 [14.] 15. All interest earned as a result of investing funds in the crime
140 victims' compensation fund shall be paid into the crime victims' compensation
141 fund and not into the general revenue of this state.

142 [15.] 16. Any person who knowingly makes a fraudulent claim or false
143 statement in connection with any claim hereunder is guilty of a class A
144 misdemeanor.

145 [16.] 17. Any gifts, contributions, grants or federal funds specifically
146 given to the [division] **department** for the benefit of victims of crime shall be
147 credited to the crime victims' compensation fund. Payment or expenditure of

148 moneys in such funds shall comply with any applicable federal crime victims'
149 compensation laws, rules, regulations or other applicable federal guidelines.

595.107. 1. There is hereby created in the state treasury the
2 "Sexual Offense Forensic Examination Compensation Fund", which shall
3 consist of funds from the crime victims' compensation fund and state
4 general revenue fund. The state treasurer shall be the custodian of the
5 fund and may approve disbursements from the fund in accordance with
6 sections 30.170 and 30.180, RSMo. The department of public safety shall
7 administer the fund, which shall be used solely to make payments to
8 appropriate medical providers to cover the charges of the forensic
9 examination of persons who may be a victim of a sexual offense if:

10 (1) The victim or the victim's guardian consents in writing to the
11 examination, so as to demonstrate cooperation with law enforcement
12 authorities;

13 (2) The report of the examination is made on a form approved by
14 the attorney general with the advice of the department of health and
15 senior services; and

16 (3) The report of the examination is filed with the prosecuting
17 attorney of the county in which the alleged incident occurred.

18 Notwithstanding the provisions of section 33.080, RSMo, to the
19 contrary, any moneys remaining in the fund at the end of the biennium
20 shall not revert to the credit of the general revenue fund. The state
21 treasurer shall invest moneys in the fund in the same manner as other
22 funds are invested. Any interest and moneys earned on such
23 investments shall be credited to the fund.

24 2. Federal funds may also be used to make payments to
25 appropriate medical providers to cover the charges of the forensic
26 examinations described under subsection 1 of this section.

27 3. The department of public safety shall promulgate rules and
28 regulations establishing which procedures performed by appropriate
29 medical providers shall qualify for coverage under the sexual offense
30 forensic examination compensation fund and establishing the
31 reimbursement rates for such procedures. The checklists for
32 appropriate medical providers under section 191.225, RSMo, shall be
33 used and considered when promulgating the rules and regulations. Any
34 rule or portion of a rule, as that term is defined in section 536.010,
35 RSMo, that is created under the authority delegated in this section

36 shall become effective only if it complies with and is subject to all of
37 the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
38 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
39 of the powers vested with the general assembly pursuant to chapter
40 536, RSMo, to review, to delay the effective date, or to disapprove and
41 annul a rule are subsequently held unconstitutional, then the grant of
42 rulemaking authority and any rule proposed or adopted after August
43 28, 2008, shall be invalid and void.

44 4. For the purposes of this section, the following terms shall
45 mean:

46 (1) "Appropriate medical provider", any licensed nurse,
47 physician, or physician assistant, and any institution employing
48 licensed nurses, physicians, or physician assistant; provided that such
49 licensed professionals are the only persons at such institution to
50 perform tasks under the provisions of this section;

51 (2) "Evidentiary collection kit", a kit used during a forensic
52 examination that includes materials necessary for appropriate medical
53 providers to gather evidence in accordance with the forms and
54 procedures developed by the attorney general for forensic
55 examinations;

56 (3) "Forensic examination", an examination performed by an
57 appropriate medical provider on a victim of an alleged offense included
58 under chapter 566, RSMo, to gather and collect evidence;

59 (4) "Medical treatment", the treatment of all injuries and health
60 concerns resulting directly from a patient's sexual assault or
61 victimization.