

FIRST REGULAR SESSION

# SENATE BILL NO. 338

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 9, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1772S.011

## AN ACT

To repeal sections 191.225, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.037, 595.040, 595.045, and 595.060, RSMo, and to enact in lieu thereof twelve new sections relating to crime victims.

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

Section A. Sections 191.225, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.037, 595.040, 595.045, and 595.060, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.037, 595.040, 595.045, 595.060, and 595.220, to read as follows:

595.010. 1. As used in sections 595.010 to 595.075, unless the context requires otherwise, the following terms shall mean:

(1) "Child", a dependent, unmarried person who is under eighteen years of age and includes a posthumous child, stepchild, or an adopted child;

(2) "Claimant", a victim or a dependent, relative, survivor, or member of the family, of a victim eligible for compensation pursuant to sections 595.010 to 595.075;

(3) "Conservator", a person or corporation appointed by a court to have the care and custody of the estate of a minor or a disabled person, including a limited conservator;

(4) "Counseling", problem-solving and support concerning emotional issues that result from criminal victimization licensed pursuant to section 595.030. Counseling is a confidential service provided either on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning after

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

16 victimization. Counseling does not include victim advocacy services such as crisis  
17 telephone counseling, attendance at medical procedures, law enforcement  
18 interviews or criminal justice proceedings;

19 (5) "Crime", an act committed in this state which, if committed by a  
20 mentally competent, criminally responsible person who had no legal exemption  
21 or defense, would constitute a crime; provided that, such act involves the  
22 application of force or violence or the threat of force or violence by the offender  
23 upon the victim but shall include the crime of driving while intoxicated, vehicular  
24 manslaughter and hit and run; and provided, further, that no act involving the  
25 operation of a motor vehicle except driving while intoxicated, vehicular  
26 manslaughter and hit and run which results in injury to another shall constitute  
27 a crime for the purpose of sections 595.010 to 595.075, unless such injury was  
28 intentionally inflicted through the use of a motor vehicle. A crime shall also  
29 include an act of terrorism, as defined in 18 U.S.C. section 2331, which has been  
30 committed outside of the United States against a resident of Missouri;

31 (6) "Crisis intervention counseling", helping to reduce psychological  
32 trauma where victimization occurs;

33 (7) "Department", the department of public safety;

34 (8) "Dependent", mother, father, spouse, spouse's mother, spouse's father,  
35 child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly  
36 or partially dependent for support upon, and living with, but shall include  
37 children entitled to child support but not living with, the victim at the time of his  
38 injury or death due to a crime alleged in a claim pursuant to sections 595.010 to  
39 **[595.070] 595.075;**

40 (9) "Direct service", providing physical services to a victim of crime  
41 including, but not limited to, transportation, funeral arrangements, child care,  
42 emergency food, clothing, shelter, notification and information;

43 (10) "Director", the director of public safety of this state or a person  
44 designated by him for the purposes of sections 595.010 to **[595.070] 595.075;**

45 (11) "Disabled person", one who is unable by reason of any physical or  
46 mental condition to receive and evaluate information or to communicate decisions  
47 to such an extent that the person lacks ability to manage his financial resources,  
48 including a partially disabled person who lacks the ability, in part, to manage his  
49 financial resources;

50 (12) **["Division", the division of workers' compensation of the state of**  
51 **Missouri;**

52           (13)] "Emergency service", those services provided within thirty days to  
53   alleviate the immediate effects of the criminal act or offense, and may include  
54   cash grants of not more than one hundred dollars;

55           [(14)] **(13)** "Earnings", net income or net wages;

56           [(15)] **(14)** "Family", the spouse, parent, grandparent, stepmother,  
57   stepfather, child, grandchild, brother, sister, half brother, half sister, adopted  
58   children of parent, or spouse's parents;

59           [(16)] **(15)** "Funeral expenses", the expenses of the funeral, burial,  
60   cremation or other chosen method of interment, including plot or tomb and other  
61   necessary incidents to the disposition of the remains;

62           [(17)] **(16)** "Gainful employment", engaging on a regular and continuous  
63   basis, up to the date of the incident upon which the claim is based, in a lawful  
64   activity from which a person derives a livelihood;

65           [(18)] **(17)** "Guardian", one appointed by a court to have the care and  
66   custody of the person of a minor or of an incapacitated person, including a limited  
67   guardian;

68           [(19)] **(18)** "Hit and run", the crime of leaving the scene of a motor  
69   vehicle accident as defined in section 577.060, RSMo;

70           [(20)] **(19)** "Incapacitated person", one who is unable by reason of any  
71   physical or mental condition to receive and evaluate information or to  
72   communicate decisions to such an extent that he lacks capacity to meet essential  
73   requirements for food, clothing, shelter, safety or other care such that serious  
74   physical injury, illness, or disease is likely to occur, including a partially  
75   incapacitated person who lacks the capacity to meet, in part, such essential  
76   requirements;

77           [(21)] **(20)** "Injured victim", a person:

78           (a) Killed or receiving a personal physical injury in this state as a result  
79   of another person's commission of or attempt to commit any crime;

80           (b) Killed or receiving a personal physical injury in this state while in a  
81   good faith attempt to assist a person against whom a crime is being perpetrated  
82   or attempted;

83           (c) Killed or receiving a personal physical injury in this state while  
84   assisting a law enforcement officer in the apprehension of a person who the  
85   officer has reason to believe has perpetrated or attempted a crime;

86           [(22)] **(21)** "Law enforcement official", a sheriff and his regular deputies,  
87   municipal police officer or member of the Missouri state highway patrol and such

88 other persons as may be designated by law as peace officers;  
89 [(23)] (22) "Offender", a person who commits a crime;  
90 [(24)] (23) "Personal physical injury", actual bodily harm only with  
91 respect to the victim. Personal physical injury may include mental or nervous  
92 shock resulting from the specific incident upon which the claim is based;  
93 [(25)] (24) "Private agency", a not-for-profit corporation, in good standing  
94 in this state, which provides services to victims of crime and their dependents;  
95 [(26)] (25) "Public agency", a part of any local or state government  
96 organization which provides services to victims of crime;  
97 [(27)] (26) "Relative", the spouse of the victim or a person related to the  
98 victim within the third degree of consanguinity or affinity as calculated according  
99 to civil law;  
100 [(28)] (27) "Survivor", the spouse, parent, legal guardian, grandparent,  
101 sibling or child of the deceased victim of the victim's household at the time of the  
102 crime;  
103 [(29)] (28) "Victim", a person who suffers personal physical injury or  
104 death as a direct result of a crime, as defined in subdivision (5) of this subsection;  
105 [(30)] (29) "Victim advocacy", assisting the victim of a crime and his  
106 dependents to acquire services from existing community resources.  
107 2. As used in sections 565.024 and 565.060, RSMo, and sections 595.010  
108 to 595.075, the term "alcohol-related traffic offense" means those offenses defined  
109 by sections 577.001, 577.010, and 577.012, RSMo, and any county or municipal  
110 ordinance which prohibits operation of a motor vehicle while under the influence  
111 of alcohol.

595.015. 1. The [division of workers' compensation] **department of**  
2 **public safety** shall, pursuant to the provisions of sections 595.010 to 595.075,  
3 have jurisdiction to determine and award compensation to, or on behalf of, victims  
4 of crimes. The [division of workers' compensation] **department of public**  
5 **safety** may pay directly to the provider of the services compensation for medical  
6 or funeral expenses, or expenses for other services as described in section  
7 595.030, incurred by the claimant. The [division] **department** is not required  
8 to provide compensation in any case, nor is it required to award the full amount  
9 claimed. The [division] **department** shall make its award of compensation based  
10 upon independent verification obtained during its investigation.

11 2. Such claims shall be made by filing an application for compensation  
12 with the [division of workers' compensation] **department of public safety**. The

13 application form shall be furnished by the [division] **department** and the  
14 signature shall be notarized. The application shall include:

- 15 (1) The name and address of the victim;
- 16 (2) If the claimant is not the victim, the name and address of the claimant  
17 and relationship to the victim, the names and addresses of the victim's  
18 dependents, if any, and the extent to which each is so dependent;
- 19 (3) The date and nature of the crime or attempted crime on which the  
20 application for compensation is based;
- 21 (4) The date and place where, and the law enforcement officials to whom,  
22 notification of the crime was given;
- 23 (5) The nature and extent of the injuries sustained by the victim, the  
24 names and addresses of those giving medical and hospital treatment to the victim  
25 and whether death resulted;
- 26 (6) The loss to the claimant or a dependent resulting from the injury or  
27 death;
- 28 (7) The amount of benefits, payments or awards, if any, payable from any  
29 source which the claimant or dependent has received or for which the claimant  
30 or dependent is eligible as a result of the injury or death;
- 31 (8) Releases authorizing the surrender to the [division] **department** of  
32 reports, documents and other information relating to the matters specified under  
33 this section; and
- 34 (9) Such other information as the [division] **department** determines is  
35 necessary.

36 3. In addition to the application, the [division] **department** may require  
37 that the claimant submit materials substantiating the facts stated in the  
38 application.

39 4. If the [division] **department** finds that an application does not contain  
40 the required information or that the facts stated therein have not been  
41 substantiated, it shall notify the claimant in writing of the specific additional  
42 items of information or materials required and that the claimant has thirty days  
43 from the date of mailing in which to furnish those items to the  
44 [division] **department**. Unless a claimant requests and is granted an extension  
45 of time by the [division] **department**, the [division] **department** shall reject  
46 with prejudice the claim of the claimant for failure to file the additional  
47 information or materials within the specified time.

48 5. The claimant may file an amended application or additional

49 substantiating materials to correct inadvertent errors or omissions at any time  
50 before the [division] **department** has completed its consideration of the original  
51 application.

52         6. The claimant, victim or dependent shall cooperate with law enforcement  
53 officials in the apprehension and prosecution of the offender in order to be  
54 eligible, or the [division] **department** has found that the failure to cooperate was  
55 for good cause.

56         7. Any state or local agency, including a prosecuting attorney or law  
57 enforcement agency, shall make available without cost to the fund, all reports,  
58 files and other appropriate information which the [division] **department**  
59 requests in order to make a determination that a claimant is eligible for an award  
60 pursuant to sections 595.010 to 595.075.

              595.020. 1. Except as hereinafter provided, the following persons shall  
2 be eligible for compensation pursuant to sections 595.010 to 595.075:

3         (1) A victim of a crime;

4         (2) In the case of a sexual assault victim:

5             (a) A relative of the victim requiring counseling in order to better assist  
6 the victim in his recovery; and

7             (3) In the case of the death of the victim as a direct result of the crime:

8             (a) A dependent of the victim;

9             (b) Any member of the family who legally assumes the obligation, or who  
10 pays the medical or burial expenses incurred as a direct result thereof; and

11            (c) A survivor of the victim requiring counseling as a direct result of the  
12 death of the victim.

13         2. An offender or an accomplice of an offender shall in no case be eligible  
14 to receive compensation with respect to a crime committed by the offender. No  
15 victim or dependent shall be denied compensation solely because he is a relative  
16 of the offender or was living with the offender as a family or household member  
17 at the time of the injury or death. However, the [division] **department** may  
18 award compensation to a victim or dependent who is a relative, family or  
19 household member of the offender only if the [division] **department** can  
20 reasonably determine the offender will receive no substantial economic benefit or  
21 unjust enrichment from the compensation.

22         3. No compensation of any kind may be made to a victim or intervenor  
23 injured while confined in any federal, state, county, or municipal jail, prison or  
24 other correctional facility, including house arrest or **electronic monitoring**.

25           4. No compensation of any kind may be made to a victim who has been  
26 finally adjudicated and found guilty, in a criminal prosecution under the laws of  
27 this state, of two felonies within the past ten years, of which one or both involves  
28 illegal drugs or violence. The [division] **department** may waive this restriction  
29 if it determines that the interest of justice would be served otherwise.

30           5. In the case of a claimant who is not otherwise ineligible pursuant to  
31 subsection 4 of this section, who is incarcerated as a result of a conviction of a  
32 crime not related to the incident upon which the claim is based at the time of  
33 application, or at any time following the filing of the application:

34           (1) The [division] **department** shall suspend all proceedings and  
35 payments until such time as the claimant is released from incarceration;

36           (2) The [division] **department** shall notify the applicant at the time the  
37 proceedings are suspended of the right to reactivate the claim within six months  
38 of release from incarceration. The notice shall be deemed sufficient if mailed to  
39 the applicant at the applicant's last known address;

40           (3) The claimant shall file an application to request that the case be  
41 reactivated not later than six months after the date the claimant is released from  
42 incarceration. Failure to file such request within the six-month period shall serve  
43 as a bar to any recovery.

44           6. Victims of crime who are not residents of the state of Missouri may be  
45 compensated only when federal funds are available for that  
46 purpose. Compensation for nonresident victims shall terminate when federal  
47 funds for that purpose are no longer available.

48           7. A Missouri resident who suffers personal physical injury or, in the case  
49 of death, a dependent of the victim or any member of the family who legally  
50 assumes the obligation, or who pays the medical or burial expenses incurred as  
51 a direct result thereof, in another state, possession or territory of the United  
52 States may make application for compensation in Missouri if:

53           (1) The victim of the crime would be compensated if the crime had  
54 occurred in the state of Missouri;

55           (2) The place that the crime occurred is a state, possession or territory of  
56 the United States, or location outside of the United States that is covered and  
57 defined in 18 U.S.C. section 2331, that does not have a crime victims'  
58 compensation program for which the victim is eligible and which provides at least  
59 the same compensation that the victim would have received if he had been  
60 injured in Missouri.

595.025. 1. A claim for compensation may be filed by a person eligible for  
2 compensation or, if the person is an incapacitated or disabled person, or a minor,  
3 by the person's spouse, parent, conservator, or guardian.

4 2. A claim shall be filed not later than two years after the occurrence of  
5 the crime or the discovery of the crime upon which it is based.

6 3. Each claim shall be filed in person or by mail. The [division of workers'  
7 compensation] **department of public safety** shall investigate such claim, prior  
8 to the opening of formal proceedings. The claimant shall be notified of the date  
9 and time of any hearing on such claim. In determining the amount of  
10 compensation for which a claimant is eligible, the [division] **department** shall  
11 consider the facts stated on the application filed pursuant to section 595.015, and:

12 (1) Need not consider whether or not the alleged assailant has been  
13 apprehended or brought to trial or the result of any criminal proceedings against  
14 that person; however, if any person is convicted of the crime which is the basis  
15 for an application for compensation, proof of the conviction shall be conclusive  
16 evidence that the crime was committed;

17 (2) Shall determine the amount of the loss to the claimant, or the victim's  
18 survivors or dependents;

19 (3) Shall determine the degree or extent to which the victim's acts or  
20 conduct provoked, incited, or contributed to the injuries or death of the victim.

21 4. The claimant may present evidence and testimony on his own behalf  
22 or may retain counsel. The [division of workers' compensation] **department of**  
23 **public safety** may, as part of any award entered under sections 595.010 to  
24 595.075, determine and allow reasonable attorney's fees, which shall not exceed  
25 fifteen percent of the amount awarded as compensation under sections 595.010  
26 to 595.075, which fee shall be paid out of, but not in addition to, the amount of  
27 compensation, to the attorney representing the claimant. No attorney for the  
28 claimant shall ask for, contract for or receive any larger sum than the amount so  
29 allowed.

30 5. The person filing a claim shall, prior to any hearing thereon, submit  
31 reports, if available, from all hospitals, physicians or surgeons who treated or  
32 examined the victim for the injury for which compensation is sought. If, in the  
33 opinion of the [division of workers' compensation] **department of public**  
34 **safety**, an examination of the injured victim and a report thereon, or a report on  
35 the cause of death of the victim, would be of material aid, the [division of  
36 workers' compensation] **department of public safety** may appoint a duly

37 qualified, impartial physician to make such examination and report.

38           6. Each and every payment shall be exempt from attachment,  
39 garnishment or any other remedy available to creditors for the collection of a  
40 debt.

41           7. Payments of compensation shall not be made directly to any person  
42 legally incompetent to receive them but shall be made to the parent, guardian or  
43 conservator for the benefit of such minor, disabled or incapacitated person.

          595.027. 1. Upon request by the [division] **department** for verification  
2 of injuries of victims, medical providers shall submit the information requested  
3 by the [division] **department** within twenty working days of the request at no  
4 cost to the fund.

5           2. For purposes of this section, "medical providers" means physicians,  
6 **pharmacists**, dentists, clinical psychologists, optometrists, podiatrists,  
7 registered nurses, physician's assistants, chiropractors, physical therapists,  
8 hospitals, **pharmacies**, ambulatory surgical centers, and nursing homes.

9           3. Failure to submit the information as required by this section shall be  
10 an infraction.

          595.030. 1. No compensation shall be paid unless the claimant has  
2 incurred an out-of-pocket loss of at least fifty dollars or has lost two continuous  
3 weeks of earnings or support from gainful employment. "Out-of-pocket loss" shall  
4 mean unreimbursed or unreimbursable expenses or indebtedness reasonably  
5 incurred:

6           (1) For medical care or other services, including psychiatric, psychological  
7 or counseling expenses, necessary as a result of the crime upon which the claim  
8 is based, except that the amount paid for psychiatric, psychological or counseling  
9 expenses per eligible claim shall not exceed two thousand five hundred dollars;  
10 or

11           (2) As a result of personal property being seized in an investigation by law  
12 enforcement. Compensation paid for an out-of-pocket loss under this subdivision  
13 shall be in an amount equal to the loss sustained, but shall not exceed two  
14 hundred fifty dollars.

15           2. No compensation shall be paid unless the [division of workers'  
16 compensation] **department of public safety** finds that a crime was committed,  
17 that such crime directly resulted in personal physical injury to, or the death of,  
18 the victim, and that police records show that such crime was promptly reported  
19 to the proper authorities. In no case may compensation be paid if the police

20 records show that such report was made more than forty-eight hours after the  
21 occurrence of such crime, unless the [division of workers' compensation]  
22 **department of public safety** finds that the report to the police was delayed for  
23 good cause. If the victim is under eighteen years of age such report may be made  
24 by the victim's parent, guardian or custodian; by a physician, a nurse, or hospital  
25 emergency room personnel; by the division of family services personnel; or by any  
26 other member of the victim's family. In the case of a sexual offense, filing a  
27 report of the offense to the proper authorities may include, but not be limited to,  
28 the filing of the report of the forensic examination by the appropriate medical  
29 provider, as defined in section [191.225, RSMo] **595.220**, with the prosecuting  
30 attorney of the county in which the alleged incident occurred.

31         3. No compensation shall be paid for medical care if the service provider  
32 is not a medical provider as that term is defined in section 595.027, and the  
33 individual providing the medical care is not licensed by the state of Missouri or  
34 the state in which the medical care is provided.

35         4. No compensation shall be paid for psychiatric treatment or other  
36 counseling services, including psychotherapy, unless the service provider is a:

37             (1) Physician licensed pursuant to chapter 334, RSMo, or licensed to  
38 practice medicine in the state in which the service is provided;

39             (2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to  
40 practice psychology in the state in which the service is provided;

41             (3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

42             (4) Professional counselor licensed pursuant to chapter 337, RSMo.

43         5. Any compensation paid pursuant to sections 595.010 to 595.075 for  
44 death or personal injury shall be in an amount not exceeding out-of-pocket loss,  
45 together with loss of earnings or support from gainful employment, not to exceed  
46 two hundred dollars per week, resulting from such injury or death. In the event  
47 of death of the victim, an award may be made for reasonable and necessary  
48 expenses actually incurred for preparation and burial not to exceed five thousand  
49 dollars.

50         6. Any compensation for loss of earnings or support from gainful  
51 employment shall be in an amount equal to the actual loss sustained not to  
52 exceed two hundred dollars per week; provided, however, that no award pursuant  
53 to sections 595.010 to 595.075 shall exceed twenty-five thousand dollars. If two  
54 or more persons are entitled to compensation as a result of the death of a person  
55 which is the direct result of a crime or in the case of a sexual assault, the

56 compensation shall be apportioned by the [division of workers' compensation]  
57 **department of public safety** among the claimants in proportion to their loss.

58 7. The method and timing of the payment of any compensation pursuant  
59 to sections 595.010 to 595.075 shall be determined by the [division] **department**.

595.035. 1. For the purpose of determining the amount of compensation  
2 payable pursuant to sections 595.010 to 595.075, the [division of workers'  
3 compensation] **department of public safety** shall, insofar as practicable,  
4 formulate standards for the uniform application of sections 595.010 to 595.075,  
5 taking into consideration the provisions of sections 595.010 to 595.075, the rates  
6 and amounts of compensation payable for injuries and death pursuant to other  
7 laws of this state and of the United States, excluding pain and suffering, and the  
8 availability of funds appropriated for the purpose of sections 595.010 to 595.075. All  
9 decisions of the [division of workers' compensation] **department of public**  
10 **safety** on claims [heard] pursuant to sections 595.010 to 595.075 shall be in  
11 writing, setting forth the name of the claimant, the amount of compensation and  
12 the reasons for the decision. The [division of workers' compensation]  
13 **department of public safety** shall immediately notify the claimant in writing  
14 of the decision and shall forward to the state treasurer a certified copy of the  
15 decision and a warrant for the amount of the claim. The state treasurer, upon  
16 certification by the commissioner of administration, shall, if there are sufficient  
17 funds in the crime victims' compensation fund, pay to or on behalf of the claimant  
18 the amount determined by the [division] **department**.

19 2. The crime victims' compensation fund is not a state health program and  
20 is not intended to be used as a primary payor to other health care assistance  
21 programs, but is a public, quasi-charitable fund whose fundamental purpose is  
22 to assist victims of violent crimes through a period of financial hardship, as a  
23 payor of last resort. Accordingly, any compensation paid pursuant to sections  
24 595.010 to 595.075 shall be reduced by the amount of any payments, benefits or  
25 awards received or to be received as a result of the injury or death:

26 (1) From or on behalf of the offender;

27 (2) Under private or public insurance programs, including champus,  
28 Medicare, Medicaid and other state or federal programs, but not including any  
29 life insurance proceeds; or

30 (3) From any other public or private funds, including an award payable  
31 pursuant to the workers' compensation laws of this state.

32 3. In determining the amount of compensation payable, the [division of

workers' compensation] **department of public safety** shall determine whether, because of the victim's consent, provocation, incitement or negligence, the victim contributed to the infliction of the victim's injury or death, and shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided, however, that the [division of workers' compensation] **department of public safety** may disregard the responsibility of the victim for his or her own injury where such responsibility was attributable to efforts by the victim to aid a victim, or to prevent a crime or an attempted crime from occurring in his or her presence, or to apprehend a person who had committed a crime in his or her presence or had in fact committed a felony.

4. In determining the amount of compensation payable pursuant to sections 595.010 to [595.070] **595.075**, monthly Social Security disability or retirement benefits received by the victim shall not be considered by the [division] **department** as a factor for reduction of benefits.

5. The [division] **department** shall not be liable for payment of compensation for any out-of-pocket expenses incurred more than three years following the date of the occurrence of the crime upon which the claim is based.

595.037. 1. All information submitted to the **department or division of workers' compensation** and any hearing of the division **of workers' compensation** on a claim filed pursuant to sections 595.010 to [595.070] **595.075** shall be open to the public except for the following claims which shall be deemed closed and confidential:

(1) A claim in which the alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either the apprehension, or the trial, of the alleged assailant;

(2) A claim in which the offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and it is determined by the **department or division of workers' compensation** to be in the best interest of the victim or of the victim's dependents that the information be kept confidential or that the public be excluded from the hearing;

(3) A claim in which the victim or alleged assailant is a minor; or

(4) A claim in which any record or report obtained by the **department or division of workers' compensation**, the confidentiality of which is protected by any other law, shall remain confidential subject to such law.

2. The **department and division of workers' compensation**, by separate order, may close any record, report or hearing if it determines that the

20 interest of justice would be frustrated rather than furthered if such record or  
21 report was disclosed or if the hearing was open to the public.

595.040. 1. Acceptance of any compensation under sections 595.010 to  
2 595.075 shall subrogate this state, to the extent of such compensation paid, to any  
3 right or right of action accruing to the claimant or to the victim to recover  
4 payments on account of losses resulting from the crime with respect to which the  
5 compensation has been paid. The attorney general may enforce the subrogation,  
6 and he shall bring suit to recover from any person to whom compensation is paid,  
7 to the extent of the compensation actually paid under sections 595.010 to 595.075,  
8 any amount received by the claimant from any source exceeding the actual loss  
9 to the victim.

10 2. The [division] **department** shall have a lien on any compensation  
11 received by the claimant, in addition to compensation received under provisions  
12 of sections 595.010 to 595.075, for injuries or death resulting from the incident  
13 upon which the claim is based. The claimant shall retain, as trustee for the  
14 [division] **department**, so much of the recovered funds as necessary to reimburse  
15 the Missouri crime victims' compensation fund to the extent that compensation  
16 was awarded to the claimant from that fund.

17 3. If a claimant initiates any legal proceeding to recover restitution or  
18 damages related to the crime upon which the claim is based, or if the claimant  
19 enters into negotiations to receive any proceeds in settlement of a claim for  
20 restitution or damages related to the crime, the claimant shall give the [division]  
21 **department** written notice within fifteen days of the filing of the action or  
22 entering into negotiations. The [division] **department** may intervene in the  
23 proceeding of a complainant to recover the compensation awarded. If a claimant  
24 fails to give such written notice to the [division] **department** within the stated  
25 time period, or prior to any attempt by claimant to reach a negotiated settlement  
26 of claims for recovery of damages related to the crime upon which the claim is  
27 based, the [division's] **department's** right of subrogation to receive or recover  
28 funds from claimant, to the extent that compensation was awarded by the  
29 [division] **department**, shall not be reduced in any amount or percentage by the  
30 costs incurred by claimant attributable to such legal proceedings or settlement,  
31 including, but not limited to, attorney's fees, investigative cost or cost of court. If  
32 such notice is given, attorney fees may be awarded in an amount not to exceed  
33 fifteen percent of the amount subrogated to the [division] **department**.

34 4. Whenever compensation is awarded to a claimant who is entitled to

35 restitution from a criminal defendant, the [division] **department** may initiate  
36 restitution hearings in such criminal proceedings or intervene in the same. The  
37 [division] **department** shall be entitled to receive restitution in such proceedings  
38 to the extent compensation was awarded; provided, however, the [division]  
39 **department** shall be exempt from the payment of any fees or other charges for  
40 the recording of restitution orders in the offices of the judges of probate. The  
41 claimant shall notify this [division] **department** when restitution is  
42 ordered. Failure to notify the [division] **department** will result in possible  
43 forfeiture of any amount already received from the [division] **department**.

44 5. Whenever the [division] **department** shall deem it necessary to  
45 protect, maintain or enforce the [division's] **department's** right to subrogation  
46 or to exercise any of its powers or to carry out any of its duties or responsibilities,  
47 the attorney general may initiate legal proceedings or intervene in legal  
48 proceedings as the [division's] **department's** legal representative.

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

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

36         (2) Beginning on September 1, 2004, and on the first of each month, the  
37 director of revenue or the director's designee shall deposit fifty percent of the  
38 balance of funds available to the credit of the crime victims' compensation fund  
39 and fifty percent to the services to victims' fund established in section 595.100.

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

44         6. The moneys collected by clerks of municipal courts pursuant to  
45 subsection 1 of this section shall be collected and disbursed as provided by  
46 sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable  
47 to the city treasury of the city from which such funds were collected. The  
48 remaining ninety-five percent of such moneys shall be payable to the director of  
49 revenue. The funds received by the director of revenue pursuant to this  
50 subsection shall be distributed as follows:

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

55         (2) Beginning on September 1, 2004, and on the first of each month the  
56 director of revenue or the director's designee shall deposit fifty percent of the  
57 balance of funds available to the credit of the crime victims' compensation fund  
58 and fifty percent to the services to victims' fund established in section 595.100.

59           7. These funds shall be subject to a biennial audit by the Missouri state  
60 auditor. Such audit shall include all records associated with crime victims'  
61 compensation funds collected, held or disbursed by any state agency.

62           8. In addition to the moneys collected pursuant to subsection 1 of this  
63 section, the court shall enter a judgment in favor of the state of Missouri, payable  
64 to the crime victims' compensation fund, of sixty-eight dollars upon a plea of  
65 guilty or a finding of guilt for a class A or B felony; forty-six dollars upon a plea  
66 of guilty or finding of guilt for a class C or D felony; and ten dollars upon a plea  
67 of guilty or a finding of guilt for any misdemeanor under Missouri law except for  
68 those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo,  
69 relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating  
70 to motor vehicle financial responsibility, chapter 304, RSMo, relating to traffic  
71 regulations, chapter 306, RSMo, relating to watercraft regulation and licensing,  
72 and chapter 307, RSMo, relating to vehicle equipment regulations. Any clerk of  
73 the court receiving moneys pursuant to such judgments shall collect and disburse  
74 such crime victims' compensation judgments in the manner provided by sections  
75 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and  
76 deposited to the credit of the crime victims' compensation fund.

77           9. The clerk of the court processing such funds shall maintain records of  
78 all dispositions described in subsection 1 of this section and all dispositions where  
79 a judgment has been entered against a defendant in favor of the state of Missouri  
80 in accordance with this section; all payments made on judgments for  
81 alcohol-related traffic offenses; and any judgment or portion of a judgment  
82 entered but not collected. These records shall be subject to audit by the state  
83 auditor. The clerk of each court transmitting such funds shall report separately  
84 the amount of dollars collected on judgments entered for alcohol-related traffic  
85 offenses from other crime victims' compensation collections or services to victims  
86 collections.

87           10. The department of revenue shall maintain records of funds  
88 transmitted to the crime victims' compensation fund by each reporting court and  
89 collections pursuant to subsection 16 of this section and shall maintain separate  
90 records of collection for alcohol-related offenses.

91           11. The state courts administrator shall include in the annual report  
92 required by section 476.350, RSMo, the circuit court caseloads and the number  
93 of crime victims' compensation judgments entered.

94           12. All awards made to injured victims under sections 595.010 to 595.105

95 and all appropriations for administration of sections 595.010 to 595.105, except  
96 sections 595.050 and 595.055, shall be made from the crime victims' compensation  
97 fund. Any unexpended balance remaining in the crime victims' compensation  
98 fund at the end of each biennium shall not be subject to the provision of section  
99 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary  
100 revenue fund of the state, but shall remain in the crime victims' compensation  
101 fund. In the event that there are insufficient funds in the crime victims'  
102 compensation fund to pay all claims in full, all claims shall be paid on a pro rata  
103 basis. If there are no funds in the crime victims' compensation fund, then no  
104 claim shall be paid until funds have again accumulated in the crime victims'  
105 compensation fund. When sufficient funds become available from the fund,  
106 awards which have not been paid shall be paid in chronological order with the  
107 oldest paid first. In the event an award was to be paid in installments and some  
108 remaining installments have not been paid due to a lack of funds, then when  
109 funds do become available that award shall be paid in full. All such awards on  
110 which installments remain due shall be paid in full in chronological order before  
111 any other postdated award shall be paid. Any award pursuant to this subsection  
112 is specifically not a claim against the state, if it cannot be paid due to a lack of  
113 funds in the crime victims' compensation fund.

114       13. When judgment is entered against a defendant as provided in this  
115 section and such sum, or any part thereof, remains unpaid, there shall be  
116 withheld from any disbursement, payment, benefit, compensation, salary, or other  
117 transfer of money from the state of Missouri to such defendant an amount equal  
118 to the unpaid amount of such judgment. Such amount shall be paid forthwith to  
119 the crime victims' compensation fund and satisfaction of such judgment shall be  
120 entered on the court record. Under no circumstances shall the general revenue  
121 fund be used to reimburse court costs or pay for such judgment. The director of  
122 the department of corrections shall have the authority to pay into the crime  
123 victims' compensation fund from an offender's compensation or account the  
124 amount owed by the offender to the crime victims' compensation fund, provided  
125 that the offender has failed to pay the amount owed to the fund prior to entering  
126 a correctional facility of the department of corrections.

127       14. All interest earned as a result of investing funds in the crime victims'  
128 compensation fund shall be paid into the crime victims' compensation fund and  
129 not into the general revenue of this state.

130       15. Any person who knowingly makes a fraudulent claim or false

131 statement in connection with any claim hereunder is guilty of a class A  
132 misdemeanor.

133         16. [Any gifts, contributions, grants or federal funds specifically given to  
134 the division for the benefit of victims of crime shall be credited to the crime  
135 victims' compensation fund. Payment or expenditure of moneys in such funds  
136 shall comply with any applicable federal crime victims' compensation laws, rules,  
137 regulations or other applicable federal guidelines] **The department may**  
138 **receive gifts and contributions for the benefit of crime victims. Such**  
139 **gifts and contributions shall be credited to the crime victims'**  
140 **compensation fund as used solely for compensating victims under the**  
141 **provisions of sections 595.010 to 595.075.**

595.060. The director shall promulgate rules and regulations necessary  
2 to implement the provisions of sections 595.010 to [595.070] **595.075** as provided  
3 in this section and chapter 536, RSMo. In the performance of its functions under  
4 sections 595.010 to [595.070] **595.075**, the division **of workers' compensation**  
5 is authorized to promulgate rules pursuant to chapter 536, RSMo, prescribing the  
6 procedures to be followed in the filing of applications and the proceedings under  
7 sections 595.010 to [595.070] **595.075**. [No rule or portion of a rule promulgated  
8 under the authority of this chapter shall become effective unless it has been  
9 promulgated pursuant to the provisions of section 536.024, RSMo.] **Any rule or**  
10 **portion of a rule, as that term is defined in section 536.010, RSMo, that**  
11 **is created under the authority delegated in this section shall become**  
12 **effective only if it complies with and is subject to all of the provisions**  
13 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**  
14 **section and chapter 536, RSMo, are nonseverable and if any of the**  
15 **powers vested with the general assembly pursuant to chapter 536,**  
16 **RSMo, to review, to delay the effective date, or to disapprove and annul**  
17 **a rule are subsequently held unconstitutional, then the grant of**  
18 **rulemaking authority and any rule proposed or adopted after August**  
19 **28, 2009, shall be invalid and void.**

595.220. 1. The department of public safety shall make payments  
2 to appropriate medical providers, out of appropriations made for that  
3 purpose, to cover the charges of the forensic examination of persons  
4 who may be 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  
8 the attorney general with the advice of the department of public safety;  
9 and

10           (3) The report of the examination is filed with the prosecuting  
11 attorney of the county in which the alleged incident occurred.  
12 The appropriate medical provider shall file the report of the  
13 examination within three business days of completion of the forensic  
14 exam.

15           2. A minor may consent to examination under this section. Such  
16 consent is not subject to disaffirmance because of minority, and consent  
17 of parent or guardian of the minor is not required for such  
18 examination. The appropriate medical provider making the  
19 examination shall give written notice to the parent or guardian of a  
20 minor that such an examination has taken place.

21           3. The attorney general, with the advice of the department of  
22 public safety, shall develop the forms and procedures for gathering  
23 evidence during the forensic examination under the provisions of this  
24 section. The department of public safety shall develop a checklist for  
25 appropriate medical providers to refer to while providing medical  
26 treatment to victims of a sexual offense.

27           4. Evidentiary collection kits shall be developed and made  
28 available, subject to appropriation, to appropriate medical providers  
29 by the highway patrol or its designees and eligible crime  
30 laboratories. Such kits shall be distributed with the forms and  
31 procedures for gathering evidence during forensic examinations of  
32 victims of a sexual offense to appropriate medical providers upon  
33 request of the provider, in the amount requested, and at no charge to  
34 the medical provider. All appropriate medical providers shall, with the  
35 written consent of the victim, perform a forensic examination using the  
36 evidentiary collection kit and forms and procedures for gathering  
37 evidence following the checklist for any person presenting as a victim  
38 of a sexual offense.

39           5. All appropriate medical provider charges for eligible forensic  
40 examinations shall be billed to and paid by the department of public  
41 safety. No appropriate medical provider conducting forensic  
42 examinations and providing medical treatment to victims of sexual  
43 offenses shall charge the victim for the forensic examination. For

44 appropriate medical provider charges related to the medical treatment  
45 of victims of sexual offenses, if the victim is an eligible claimant under  
46 the crime victims' compensation fund, the appropriate medical provider  
47 shall seek compensation under sections 595.010 to 595.075.

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

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

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

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

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

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

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

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

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

14 The appropriate medical provider shall file the report of the  
15 examination within three business days of completion of the

16 forensic exam.

17 2. A minor may consent to examination under this  
18 section. Such consent is not subject to disaffirmance because of  
19 minority, and consent of parent or guardian of the minor is not  
20 required for such examination. The appropriate medical provider  
21 making the examination shall give written notice to the parent or  
22 guardian of a minor that such an examination has taken place.

23 3. The attorney general, with the advice of the department  
24 of health and senior services, shall develop the forms and  
25 procedures for gathering evidence during the forensic examination  
26 under the provisions of this section. The department of health and  
27 senior services shall develop a checklist for appropriate medical  
28 providers to refer to while providing medical treatment to victims  
29 of a sexual offense.

30 4. Evidentiary collection kits shall be developed and made  
31 available, subject to appropriation, to appropriate medical  
32 providers by the highway patrol or its designees and eligible crime  
33 laboratories. Such kits shall be distributed with the forms and  
34 procedures for gathering evidence during forensic examinations of  
35 victims of a sexual offense to appropriate medical providers upon  
36 request of the provider, in the amount requested, and at no charge  
37 to the medical provider. All appropriate medical providers shall,  
38 with the written consent of the victim, perform a forensic  
39 examination using the evidentiary collection kit and forms and  
40 procedures for gathering evidence following the checklist for any  
41 person presenting as a victim of a sexual offense.

42 5. All appropriate medical provider charges for eligible  
43 forensic examinations shall be billed to and paid by the department  
44 of health and senior services. No appropriate medical provider  
45 conducting forensic examinations and providing medical treatment  
46 to victims of sexual offenses shall charge the victim for the forensic  
47 examination. For appropriate medical provider charges related to  
48 the medical treatment of victims of sexual offenses, if the victim is  
49 an eligible claimant under the crime victims' compensation fund,  
50 the appropriate medical provider shall seek compensation under  
51 sections 595.010 to 595.075, RSMo.

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

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

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

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

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

Bill ✓

Copy