AN ACT

To amend chapter 595, RSMo, by adding thereto two new sections relating to victims of sexual assault.

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

Section A. Chapter 595, RSMo, is amended by adding thereto two new sections, to be known as sections 595.201 and 595.202, to read as follows:

595.201. 1. This section shall be known and will be cited as the "Sexual Assault Survivors' Bill of Rights".

2. The rights provided to survivors in this section attach whenever a survivor is subject to a medical evidentiary or physical examination, as provided in section 595.220; and whenever a survivor is subject to an interview by a law enforcement official, prosecuting attorney, or defense attorney. A survivor retains all the rights of this section at all times regardless of whether the survivor agrees to participate in the criminal justice system or in family court; and regardless of whether the survivor consents to a medical evidentiary or physical examination to collect sexual assault forensic evidence. The following rights shall be afforded to survivors of sexual assault and witnesses of sexual assault crimes:

(1) A survivor has the right to consult with a sexual assault counselor during any medical evidentiary or physical examination, as well as the right to have a support person of the survivor's choosing present; and during any interview by a law enforcement official, prosecuting attorney, or defense attorney. A survivor retains this right even if the survivor has waived the right in a previous examination or interview;

(2) Communications between a survivor and a sexual assault
(22) counselor are confidential and privileged, including information disclosed in the presence of any third persons during a medical evidentiary or physical examination or during any interview by a law enforcement official, prosecuting attorney, or defense attorney. The presence of a sexual assault counselor does not operate to defeat any existing privilege otherwise guaranteed by law;

(3) A survivor's waiver of the right to a sexual assault counselor is privileged;

(4) Notwithstanding any waiver of privilege, a survivor's communications with a sexual assault counselor, or waiver of the right to a sexual assault counselor, shall not be admissible into evidence for any purpose except with the consent of the survivor;

(5) No costs incurred by a medical provider for the medical evidentiary examination portion of the examination of a survivor shall be charged directly or indirectly to the survivor, as provided under section 595.220. Evidentiary collection kits shall be developed and made available, subject to appropriation, to appropriate medical providers by the highway patrol or its designees and eligible crime laboratories. All appropriate medical provider charges for eligible forensic examinations shall be billed to and paid by the department of public safety;

(6) Before a medical provider commences a medical evidentiary or physical examination of a survivor, the medical provider shall inform the survivor of the following:

(a) The survivor's rights pursuant to this section and other rules and regulations by the department of public safety and the department of health and senior services, which shall be signed by the survivor of sexual assault to confirm receipt;

(b) The survivor's right to consult with a sexual assault counselor, to be summoned by the medical provider before the commencement of the medical evidentiary or physical examination, unless no sexual assault counselor can be summoned in a reasonably timely manner, and to have present at least one support person of the victim's choosing;

(c) If a sexual assault counselor or support person cannot be summoned in a timely manner, the ramifications of delaying the medical evidentiary or physical examination; and
(d) After the medical evidentiary or physical examination, the survivor's right to shower at no cost, unless showering facilities are not available;

(7) Before commencing an interview of a survivor, a law enforcement official, prosecuting attorney, or defense attorney shall inform the survivor of the following:

(a) The survivor's rights pursuant to this section and other rules and regulations by the department of public safety and the department of health and senior services, which shall be signed by the survivor of sexual assault to confirm receipt;

(b) The survivor's right to consult with a sexual assault counselor during any interview by a law enforcement official, prosecuting attorney, or defense attorney, to be summoned by the interviewer before the commencement of the interview, unless no sexual assault counselor can be summoned in a reasonably timely manner;

(c) The survivor's right to have a support person of the survivor's choosing present during any interview by a law enforcement official, prosecuting attorney, or defense attorney, unless the law enforcement official, prosecuting attorney, or defense attorney determines in his or her good faith professional judgment that the presence of that individual would be detrimental to the purpose of the interview; and

(d) For interviews by a law enforcement official, the survivor's right to be interviewed by a law enforcement official of the gender of the survivor's choosing. If no law enforcement official of that gender is reasonably available, the survivor shall be interviewed by an available law enforcement official only upon the survivor's consent;

(8) A law enforcement official, prosecuting attorney, or defense attorney shall not, for any reason, discourage a survivor from receiving a medical evidentiary or physical examination;

(9) A survivor retains the right to have counsel present during all stages of any medical examination, interview, investigation, or other interaction with representatives from the legal or criminal justice systems within the state. Treatment of the survivor should not be affected or altered in any way as a result of the survivor's decision to exercise this right to have counsel present during any interaction with the legal or criminal justice systems within the state;
(10) A survivor has the right to prompt analysis of sexual assault forensic evidence, as provided under section 595.220;

(11) A survivor has the right to be informed, upon the survivor's request, of the results of the analysis of the survivor's sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in CODIS. The survivor has the right to receive this information through a secure and confidential message in writing from the crime laboratory so that the survivor can call regarding the results;

(12) A defendant or person accused or convicted of a crime against a survivor shall have no standing to object to any failure to comply with this section, and the failure to provide a right or notice to a survivor under this section may not be used by a defendant to seek to have the conviction or sentence set aside;

(13) The failure of a law enforcement agency to take possession of any sexual assault forensic evidence or to submit that evidence for analysis within the time prescribed under section 595.220 does not alter the authority of a law enforcement agency to take possession of that evidence or to submit that evidence to the crime laboratory, and does not alter the authority of the crime laboratory to accept and analyze the evidence or to upload the DNA profile obtained from that evidence into CODIS. The failure to comply with the requirements of this section does not constitute grounds in any criminal or civil proceeding for challenging the validity of a database match or of any database information, and any evidence of that DNA record shall not be excluded by a court on those grounds;

(14) No sexual assault forensic evidence shall be used to prosecute a survivor for any misdemeanor crimes or any misdemeanor crime pursuant to sections 579.015 to 579.185; or as a basis to search for further evidence of any unrelated misdemeanor crimes or any misdemeanor crime pursuant to sections 579.015 to 579.185, that shall have been committed by the survivor, except that sexual assault forensic evidence shall be admissible as evidence in any criminal or civil proceeding against the defendant or person accused;

(15) Upon initial interaction with a survivor, a law enforcement officer or medical provider shall provide the survivor with a document
to be developed by the department of public safety that explains the
rights of survivors, pursuant to this section, in clear language that is
comprehensible to a person proficient in English at the fifth grade
level, accessible to persons with visual disabilities, and available in all
major languages of the state. This document shall include, but is not
limited to:

(a) A clear statement that a survivor is not required to
participate in the criminal justice system or receive a medical
evidentiary or physical examination in order to retain the rights
provided by this section and other relevant law;

(b) Telephone and internet means of contacting nearby rape
crisis centers and sexual assault counselors;

(c) Forms of law enforcement protection available to the
survivor, including temporary protection orders, and the process to
obtain such protection;

(d) Instructions for requesting the results of the analysis of the
survivor's sexual assault forensic evidence; and

(e) State and federal compensation funds for medical and other
costs associated with the sexual assault and any municipal, state, or
federal right to restitution for survivors in the event of a criminal trial;

(16) A law enforcement official shall, upon written request by a
survivor, furnish within fourteen days of receiving such request a free,
complete, and unaltered copy of all law enforcement reports concerning
the sexual assault, regardless of whether the report has been closed by
the law enforcement agency;

(17) A prosecuting attorney shall, upon written request by a
survivor, provide:

(a) Timely notice of any pretrial disposition of the case;

(b) Timely notice of the final disposition of the case, including
the conviction, sentence, and place and time of incarceration;

(c) Timely notice of a convicted defendant's location, including
whenever the defendant receives a temporary, provisional, or final
release from custody, escapes from custody, is moved from a secure
facility to a less secure facility, or re-enters custody; and

(d) A convicted defendant's information on a sex offender
registry, if any;

(18) In either a civil or criminal case relating to the sexual
assault, a survivor has the right to be reasonably protected from the
defendant and persons acting on behalf of the defendant, as provided
under section 595.209 and Article I, Section 32 of the Missouri
Constitution;

(19) A survivor has the right to be free from intimidation,
harassment, and abuse, as provided under section 595.209 and Article
I, Section 32 of the Missouri Constitution;

(20) A survivor shall not be required to submit to a polygraph
examination as a prerequisite to filing an accusatory pleading, as
provided under 595.223, or to participating in any part of the criminal
justice system;

(21) A survivor has the right to be heard through a survivor
impact statement at any proceeding involving a post-arrest release
decision, plea, sentencing, post-conviction release decision, or any
other proceeding where a right of the survivor is at issue, as provided
under section 595.229 and Article I, Section 32 of the Missouri
Constitution.

3. (1) Each person, corporation, agency, officer, or employee who
has a responsibility or responsibilities to survivors under this section
shall make reasonable efforts to become informed about these
responsibilities and to ensure that survivors and witnesses receive such
information and services to which they may be entitled under law.

(2) Any failure to make such efforts, or any intentional violation
of the enumerated rights or provisions described in this section, shall
be considered a tortious act causing injury to person or property
within the state.

(3) Whenever the attorney general shall determine the evidence
to be satisfactory that, any person, corporation, agency, officer, or
employee has failed to make such efforts, or has intentionally violated
any of the enumerated rights and provisions pursuant to this section,
the attorney general shall bring an action in the name and on behalf of
the people of this state to enjoin such acts or practices, including
through mandatory injunction, and to obtain restitution for any
survivors affected directly or indirectly from any such act or omission.

(4) Before any violation of this section is sought to be enjoined,
the attorney general shall be required to give the person against whom
such proceeding is contemplated notice by certified mail and an
opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him or her, unless the attorney general shall find, in any case in which he or she seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

(5) A person, agency, or organization providing services to a survivor under the provisions of this section shall not be liable for civil damages if the person, agency, or organization, in good faith, cannot comply with provisions of this section because of lack of resources or funding. This limitation of civil liability shall not apply if the person, agency, or organization acted with gross negligence or in bad faith.

(6) In connection with any proposed proceeding under this section, the attorney general is authorized to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the Missouri rules of civil procedure.

(7) Notwithstanding any other provision of law to the contrary, the right of action authorized under this section shall not supersede, alter, or repeal any other law of this state under which the attorney general is authorized to take any action or conduct any inquiry.

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

(1) "CODIS", the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local DNA crime laboratories. The term "CODIS" includes the National DNA Index System administered and operated by the Federal Bureau of Investigation;

(2) "Crime", an act committed in this state which, regardless of whether it is adjudicated, involves the application of force or violence or the threat of force or violence by the offender upon the victim but shall include the crime of driving while intoxicated, vehicular manslaughter and hit and run; and provided, further, that no act involving the operation of a motor vehicle except driving while intoxicated, vehicular manslaughter and hit and run which results in injury to another shall constitute a crime for the purpose of this section, unless such injury was intentionally inflicted through the use of a motor vehicle. A crime shall also include an act of terrorism, as defined in 18 U.S.C. Section 2331, which has been committed outside of the United States against a resident of Missouri;
(3) "Crime laboratory", a laboratory operated or supported financially by the state, or any unit of city, county, or other local Missouri government that employs at least one scientist, who examines physical evidence in criminal matters and provides expert or opinion testimony with respect to such physical evidence in a state court of law;

(4) "Disposition", the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against who a finding of sufficient facts for conviction or finding of delinquency is made;

(5) "Law enforcement official", a sheriff and his regular deputies, municipal police officer, or member of the Missouri state highway patrol and such other persons as may be designated by law as peace officers;

(6) "Medical provider", any qualified health care professional, hospital, other emergency medical facility, or other facility conducting a medical evidentiary or physical examination of the survivor;

(7) "Restitution", money or services which a court orders a defendant to pay or render to a survivor as part of the disposition;

(8) "Sexual assault survivor", any person who is a victim of a crime under sections 566.010 to 566.223 and, if the survivor is incompetent, deceased, or a minor who is unable to consent to counseling services, the parent, guardian, spouse, or any other lawful representative of the survivor, unless such person is the alleged assailant;

(9) "Sexual assault forensic evidence", any human biological specimen collected by a medical provider during a forensic medical examination from an alleged survivor, as provided for in section 595.220, including, but not limited to, a toxicology kit;

(10) "Survivor", a natural person who suffers direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of a crime. The term "victim" also includes the family members of a minor, incompetent or homicide victim;

(11) "Witness", any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced. The term "witness" shall include persons employed in the administration of criminal justice who are
testifying in the course of their employment, except that such persons shall not be entitled to any witness fees.

595.202. 1. There is hereby created the "Missouri Rights of Victims of Sexual Assault Task Force" to consist of the following members:

(1) The following four members of the general assembly:
   (a) Two members of the senate, with no more than one member from the same political party and each member to be appointed by the president pro tempore of the senate; and
   (b) Two members of the house of representatives, with no more than one member from the same political party and each member to be appointed by the speaker of the house of representatives;

(2) The director of the department of health and senior services or his or her designee;

(3) A private citizen appointed by the governor;

(4) A representative of a victim's rights group or a group representing victims of sexual assault appointed by the governor;

(5) A representative of rape crisis centers appointed by the governor;

(6) The superintendent of the Missouri highway patrol or his or her designee;

(7) A law enforcement officer appointed by the governor;

(8) The director of the Missouri highway patrol crime lab or his or her designee; and

(9) An attorney appointed by the governor.

2. The task force shall study nationally recognized best practices and make recommendations regarding:

(1) The development and implementation of an effective mechanism for submitting, tracking, and investigating complaints regarding the handling of, or response to, a sexual assault report or investigation by any agency or organization involved in the response;

(2) Whether a need exists for additional sexual assault counselors for victims of sexual assault, and if such a need does exist, the task force shall:
   (a) Develop criteria to certify sexual assault counselors;
   (b) Create a plan for how the state can provide, in conjunction with rape crisis centers, victims' advocates organizations, and the
department of health and senior services, additional sexual assault
counselors to meet the needs identified; and

(c) Determine the cost of funding such a plan;

(3) Whether a need exists to expand the right to a sexual assault
counselor beyond the medical examination and law enforcement
interview settings, and if such a need does exist, the task force shall:

(a) Identify the scope and nature of the need; and

(b) Make recommendations on how best to fill that need, whether
legislatively or otherwise;

(4) Whether a need exists to provide for ongoing evaluation of
the implementation of these rights, and if such a need does exist, the
task force shall:

(a) Identify the scope and nature of the need; and

(b) Make recommendations on how best to fill that need, whether
legislatively or otherwise.

3. The task force shall:

(1) Collect data regarding sexual assault reporting, arrest,
prosecution rates, access to sexual assault victims services, and any
other data important for its deliberations and recommendations; and

(2) Collect feedback from stakeholders, practitioners, and
leadership throughout the state and local law enforcement, victim
services, forensic science practitioners, and health care communities
to inform development of future best practices or clinical guidelines
regarding the care and treatment of survivors.

4. The department of public safety shall provided administrative
support to the task force.

5. On or before December 31, 2021, the task force shall submit a
report on its findings to the governor and general assembly. The report
shall include any dissenting opinions in addition to any majority
opinions.

6. The task force shall expire on December 31, 2021.