

SECOND REGULAR SESSION

SENATE BILL NO. 812

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Pre-filed December 31, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4343S.02I

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
23 disclosed in the presence of any third persons during a medical
24 evidentiary or physical examination or during any interview by a law
25 enforcement official, prosecuting attorney, or defense attorney. The
26 presence of a sexual assault counselor does not operate to defeat any
27 existing privilege otherwise guaranteed by law;

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

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

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

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

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

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

56 (c) If a sexual assault counselor or support person cannot be
57 summoned in a timely manner, the ramifications of delaying the
58 medical evidentiary or physical examination; and

59 (d) After the medical evidentiary or physical examination, the
60 survivor's right to shower at no cost, unless showering facilities are not
61 available;

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

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

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

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

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

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

89 (9) A survivor retains the right to have counsel present during
90 all stages of any medical examination, interview, investigation, or other
91 interaction with representatives from the legal or criminal justice
92 systems within the state. Treatment of the survivor should not be
93 affected or altered in any way as a result of the survivor's decision to
94 exercise this right to have counsel present during any interaction with
95 the legal or criminal justice systems within the state;

96 **(10) A survivor has the right to prompt analysis of sexual assault**
97 **forensic evidence, as provided under section 595.220;**

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

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

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

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

131 **(15) Upon initial interaction with a survivor, a law enforcement**
132 **officer or medical provider shall provide the survivor with a document**

133 to be developed by the department of public safety that explains the
134 rights of survivors, pursuant to this section, in clear language that is
135 comprehensible to a person proficient in English at the fifth grade
136 level, accessible to persons with visual disabilities, and available in all
137 major languages of the state. This document shall include, but is not
138 limited to:

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

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

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

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

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

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

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

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

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

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

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

169 (18) In either a civil or criminal case relating to the sexual

170 assault, a survivor has the right to be reasonably protected from the
171 defendant and persons acting on behalf of the defendant, as provided
172 under section 595.209 and Article I, Section 32 of the Missouri
173 Constitution;

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

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

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

187 3. (1) Each person, corporation, agency, officer, or employee who
188 has a responsibility or responsibilities to survivors under this section
189 shall make reasonable efforts to become informed about these
190 responsibilities and to ensure that survivors and witnesses receive such
191 information and services to which they may be entitled under law.

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

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

204 (4) Before any violation of this section is sought to be enjoined,
205 the attorney general shall be required to give the person against whom
206 such proceeding is contemplated notice by certified mail and an

207 opportunity to show in writing within five business days after receipt
208 of notice why proceedings should not be instituted against him or her,
209 unless the attorney general shall find, in any case in which he or she
210 seeks preliminary relief, that to give such notice and opportunity is not
211 in the public interest.

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

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

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

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

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

232 (2) "Crime", an act committed in this state which, regardless of
233 whether it is adjudicated, involves the application of force or violence
234 or the threat of force or violence by the offender upon the victim but
235 shall include the crime of driving while intoxicated, vehicular
236 manslaughter and hit and run; and provided, further, that no act
237 involving the operation of a motor vehicle except driving while
238 intoxicated, vehicular manslaughter and hit and run which results in
239 injury to another shall constitute a crime for the purpose of this
240 section, unless such injury was intentionally inflicted through the use
241 of a motor vehicle. A crime shall also include an act of terrorism, as
242 defined in 18 U.S.C. Section 2331, which has been committed outside of
243 the United States against a resident of Missouri;

244 (3) "Crime laboratory", a laboratory operated or supported
245 financially by the state, or any unit of city, county, or other local
246 Missouri government that employs at least one scientist, who examines
247 physical evidence in criminal matters and provides expert or opinion
248 testimony with respect to such physical evidence in a state court of
249 law;

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

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

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

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

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

269 (9) "Sexual assault forensic evidence", any human biological
270 specimen collected by a medical provider during a forensic medical
271 examination from an alleged survivor, as provided for in section
272 595.220, including, but not limited to, a toxicology kit;

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

277 (11) "Witness", any person who has been or is expected to be
278 summoned to testify for the prosecution whether or not any action or
279 proceeding has yet been commenced. The term "witness" shall include
280 persons employed in the administration of criminal justice who are

281 **testifying in the course of their employment, except that such persons**
282 **shall not be entitled to any witness fees.**

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

4 **(1) The following four members of the general assembly:**

5 **(a) Two members of the senate, with no more than one member**
6 **from the same political party and each member to be appointed by the**
7 **president pro tempore of the senate; and**

8 **(b) Two members of the house of representatives, with no more**
9 **than one member from the same political party and each member to be**
10 **appointed by the speaker of the house of representatives;**

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

13 **(3) A private citizen appointed by the governor;**

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

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

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

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

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

23 **(9) An attorney appointed by the governor.**

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

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

30 **(2) Whether a need exists for additional sexual assault**
31 **counselors for victims of sexual assault, and if such a need does exist,**
32 **the task force shall:**

33 **(a) Develop criteria to certify sexual assault counselors;**

34 **(b) Create a plan for how the state can provide, in conjunction**
35 **with rape crisis centers, victims' advocates organizations, and the**

36 department of health and senior services, additional sexual assault
37 counselors to meet the needs identified; and

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

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

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

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

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

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

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

51 3. The task force shall:

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

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

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

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

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

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