

FIRST REGULAR SESSION

# SENATE BILL NO. 463

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

2158S.01H

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal section 595.201, RSMo, and to enact in lieu thereof one new section relating to victims of sexual assault.

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

Section A. Section 595.201, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 595.201,  
3 to read as follows:

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

3 2. The rights provided to **sexual assault** survivors in  
4 this section [attach] **are in effect** whenever a survivor is  
5 subject to a forensic examination, as provided in section  
6 595.220; [and] whenever a survivor is subject to an  
7 interview by a law enforcement official, prosecuting  
8 attorney, or defense attorney; **and during all proceedings**  
9 **related to, or which follow from, such examination or**  
10 **interview.** A survivor retains all the rights [of] **provided**  
11 **in** this section at all times regardless of whether the  
12 survivor agrees to participate in the criminal justice  
13 system or in family court; and regardless of whether the  
14 survivor consents to a forensic examination to collect  
15 sexual assault forensic evidence. **If the survivor is**  
16 **incapacitated, disabled, incompetent, deceased, a minor, or**  
17 **is otherwise unable to consent to such examination or**  
18 **interview, the parent, guardian, guardian ad litem, spouse,**

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

19 or any other lawful representative of the survivor, other  
20 than an alleged assailant or perpetrator, retains all the  
21 rights provided in this section. If the survivor is deaf or  
22 hearing-impaired, an interpreter, as defined in section  
23 209.285, shall be provided. If the survivor is a non-  
24 English speaking person, a qualified interpreter, as defined  
25 in section 476.800, shall be provided. The following rights  
26 shall be afforded to sexual assault survivors:

27 (1) A **sexual assault** survivor has the right to consult  
28 with **and have present** an employee or volunteer of a rape  
29 crisis center during any forensic examination that is  
30 subject to confidentiality requirements pursuant to section  
31 455.003, as well as the right to **also** have a support person  
32 of the survivor's choosing present, subject to federal  
33 regulations as provided in 42 CFR 482; and during any  
34 interview by a law enforcement official, prosecuting  
35 attorney, or defense attorney. A survivor retains this  
36 right even if the survivor has waived the right in a  
37 previous examination or interview;

38 (2) Reasonable costs incurred by a medical provider  
39 for the forensic examination portion of the examination of a  
40 **sexual assault** survivor shall be paid by the department of  
41 public safety, out of appropriations made for that purpose,  
42 as provided under section 595.220. Evidentiary collection  
43 kits shall be developed and made available, subject to  
44 appropriations, to appropriate medical providers by the  
45 highway patrol or its designees and eligible crime  
46 laboratories. All appropriate medical provider charges for  
47 eligible forensic examinations shall be billed to and paid  
48 by the department of public safety;

49 (3) Before a medical provider commences a forensic  
50 examination of a **sexual assault** survivor, the medical

51 provider shall provide the survivor with a document to be  
52 developed by the department of public safety that explains  
53 the rights of survivors, pursuant to this section, in clear  
54 language that is comprehensible to a person proficient in  
55 English at the fifth-grade level, accessible to persons with  
56 visual disabilities, and available in all major languages of  
57 the state. **However, this document need not be read to**  
58 **survivors, and may be adapted as long as it explains the**  
59 **rights of survivors, pursuant to this section.** This  
60 document shall include, but [is] **need not be** limited to:

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

66 (b) The survivor's right to consult with **and have**  
67 **present** an employee or volunteer of a rape crisis center, to  
68 be summoned by the medical provider before the commencement  
69 of the forensic examination, unless no employee or volunteer  
70 of a rape crisis center can be summoned in a reasonably  
71 timely manner, and to have present at least one support  
72 person of the victim's choosing;

73 (c) If an employee or volunteer of a rape crisis  
74 center or a support person cannot be summoned in a timely  
75 manner, the ramifications of delaying the forensic  
76 examination; [and]

77 (d) **The survivor's right to a forensic examination, an**  
78 **analysis of the sexual assault forensic evidence, and the**  
79 **results of the analysis, at no cost to the survivor; and**

80 (e) After the forensic examination, the survivor's  
81 right to shower at no cost, unless showering facilities are  
82 not reasonably available;

83           (4) Before commencing an interview of a **sexual assault**  
84 survivor, a law enforcement officer, prosecuting attorney,  
85 or defense attorney shall inform the survivor of the  
86 following:

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

92           (b) The survivor's right to consult with **and have**  
93 **present** an employee or volunteer of a rape crisis center  
94 during any interview by a law enforcement official,  
95 prosecuting attorney, or defense attorney, to be summoned by  
96 the interviewer before the commencement of the interview,  
97 unless no employee or volunteer of a rape crisis center can  
98 be summoned in a reasonably timely manner;

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

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

113           (5) The right to **have legal** counsel during an  
114 interview by a law enforcement officer or during any

115 interaction with the legal or criminal justice systems  
116 within the state;

117 (6) A law enforcement official, prosecuting attorney,  
118 or defense attorney shall not, for any reason, discourage a  
119 **sexual assault** survivor from receiving a forensic  
120 examination, **and a law enforcement official at the scene**  
121 **where the survivor was victimized shall, if requested,**  
122 **provide or arrange transportation for the survivor to a**  
123 **medical provider for a forensic examination. Provided,**  
124 **however, that this subdivision shall not be construed to**  
125 **imply that a survivor who is incarcerated by the department**  
126 **of corrections or any local law enforcement agency has a**  
127 **right to be transported or released to a medical provider**  
128 **for a forensic examination outside of the facility where the**  
129 **survivor is incarcerated;**

130 (7) A **sexual assault** survivor has the right to prompt  
131 analysis of sexual assault forensic evidence, as provided  
132 under section 595.220;

133 (8) A **sexual assault** survivor has the right to be  
134 informed, upon the survivor's request, of the results of the  
135 analysis of the survivor's sexual assault forensic evidence,  
136 whether the analysis yielded a DNA profile, and whether the  
137 analysis yielded a DNA match, either to the named  
138 perpetrator or to a suspect already in CODIS. The survivor  
139 has the right to receive this information, **at no cost to the**  
140 **survivor**, through a secure and confidential message in  
141 writing [from the crime laboratory] so that the survivor can  
142 call regarding the results;

143 (9) A defendant or person accused or convicted of a  
144 crime against a **sexual assault** survivor shall have no  
145 standing to object to any failure to comply with this  
146 section, and the failure to provide a right or notice to a

147 survivor under this section may not be used by a defendant  
148 to seek to have the conviction or sentence set aside;

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

163 (11) No sexual assault forensic evidence shall be used  
164 to prosecute a **sexual assault** survivor for any misdemeanor  
165 crimes or any misdemeanor crime pursuant to sections 579.015  
166 to 579.185; or as a basis to search for further evidence of  
167 any unrelated misdemeanor crimes or any misdemeanor crime  
168 pursuant to sections 579.015 to 579.185, that shall have  
169 been committed by the survivor, except that sexual assault  
170 forensic evidence shall be admissible as evidence in any  
171 criminal, [or] civil, **or administrative** proceeding against  
172 the defendant or person accused;

173 (12) Upon initial interaction with a **sexual assault**  
174 survivor, a law enforcement officer shall provide the  
175 survivor with a document to be developed by the department  
176 of public safety that explains the rights of survivors,  
177 pursuant to this section, in clear language that is  
178 comprehensible to a person proficient in English at the

179 fifth-grade level, accessible to persons with visual  
180 disabilities, and available in all major languages of the  
181 state. **However, this document need not be read to**  
182 **survivors, and may be adapted as long as it explains the**  
183 **rights of survivors, pursuant to this section.** This  
184 document shall include, but [is] **need not be** limited to:

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

189 (b) Telephone and internet means of contacting nearby  
190 rape crisis centers [and employees or volunteers of a rape  
191 crisis center];

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

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

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

202 (13) A law enforcement official shall, upon written  
203 request by a **sexual assault** survivor, furnish within  
204 fourteen days of receiving such request a free[, complete,  
205 and unaltered] copy of all law enforcement reports  
206 concerning the sexual assault, regardless of whether the  
207 report has been closed by the law enforcement agency;

208 (14) A prosecuting attorney shall, upon written  
209 request by a **sexual assault** survivor, provide:

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

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

215 (c) Timely notice of a convicted defendant's location,  
216 including whenever the defendant receives a temporary,  
217 provisional, or final release from custody, escapes from  
218 custody, is moved from a secure facility to a less secure  
219 facility, or reenters custody; [and]

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

222 (e) **Information on the Missouri Victim Automated**  
223 **Notification System (MOVANS), or its successor program,**  
224 **which allows a survivor to register to receive automated**  
225 **notification of, including, but not limited to, an**  
226 **offender's incarceration, court status, or the status of a**  
227 **protection order;**

228 (15) In [either a] **any** civil [or], criminal [case], **or**  
229 **administrative proceeding** relating to the [sexual assault]  
230 **victimization of sexual assault survivor**, a survivor has the  
231 right to be reasonably protected from the defendant **or**  
232 **person accused** and **from** persons acting on behalf of the  
233 defendant **or person accused**, as provided under section  
234 595.209 and Article I, Section 32 of the Missouri  
235 Constitution;

236 (16) A **sexual assault** survivor has the right to be  
237 free from intimidation, harassment, and abuse, as provided  
238 under section 595.209 and Article I, Section 32 of the  
239 Missouri Constitution;

240 (17) A **sexual assault** survivor shall not be required  
241 to submit to a polygraph examination as a prerequisite to



242 filing an accusatory pleading, as provided under 595.223, or  
243 to participating in any part of the criminal justice system;

244 (18) A **sexual assault** survivor has the right to be  
245 heard through a survivor impact statement at any proceeding  
246 involving a post arrest release decision, plea, sentencing,  
247 post conviction release decision, or any other proceeding  
248 where a right of the survivor is at issue, as provided under  
249 section 595.229 and Article I, Section 32 of the Missouri  
250 Constitution.

251 3. For purposes of this section, the following terms  
252 mean:

253 (1) "CODIS", [the Federal Bureau of Investigation's  
254 Combined DNA Index System that allows the storage and  
255 exchange of DNA records submitted by federal, state, and  
256 local DNA crime laboratories. The term "CODIS" includes the  
257 National DNA Index System administered and operated by the  
258 Federal Bureau of Investigation] **the same meaning as defined**  
259 **in section 650.100;**

260 (2) "Crime", [an act committed in this state which,  
261 regardless of whether it is adjudicated, involves the  
262 application of force or violence or the threat of force or  
263 violence by the offender upon the victim and shall include  
264 the crime of driving while intoxicated, vehicular  
265 manslaughter and hit and run; and provided, further, that no  
266 act involving the operation of a motor vehicle, except  
267 driving while intoxicated, vehicular manslaughter and hit  
268 and run, which results in injury to another shall constitute  
269 a crime for the purpose of this section, unless such injury  
270 was intentionally inflicted through the use of a motor  
271 vehicle. A crime shall also include an act of terrorism, as  
272 defined in 18 U.S.C. Section 2331, which has been committed

273 outside of the United States against a resident of Missouri]  
274 **the same meaning as defined in section 595.010;**

275 (3) "Crime laboratory", [a laboratory operated or  
276 supported financially by the state, or any unit of city,  
277 county, or other local Missouri government that employs at  
278 least one scientist who examines physical evidence in  
279 criminal matters and provides expert or opinion testimony  
280 with respect to such physical evidence in a state court of  
281 law] **the same meaning as defined in section 650.100;**

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

287 (5) "Law enforcement official", [a sheriff and his  
288 regular deputies, municipal police officer, or member of the  
289 Missouri state highway patrol and such other persons as may  
290 be designated by law as peace officers] **the same meaning as**  
291 **defined in section 595.010;**

292 (6) "Medical provider", any qualified health care  
293 professional, hospital, other emergency medical facility, or  
294 other facility conducting a forensic examination of the  
295 **sexual assault** survivor;

296 (7) "Rape crisis center", [any public or private  
297 agency that offers assistance to victims of sexual assault,  
298 as the term sexual assault is defined in section 455.010,  
299 who are adults, as defined by section 455.010, or qualified  
300 minors, as defined by section 431.056] **the same meaning as**  
301 **defined in section 455.003;**

302 (8) "Restitution", money or services which a court  
303 orders a defendant to pay or render to a **sexual assault**  
304 survivor as part of the disposition;

305 (9) "Sexual assault survivor" or "**survivor**", any  
306 person who is a victim of [an alleged sexual offense under  
307 sections 566.010 to 566.223 and, if the survivor is  
308 incompetent, deceased, or a minor who is unable to consent  
309 to counseling services, the parent, guardian, spouse, or any  
310 other lawful representative of the survivor, unless such  
311 person is the alleged assailant] **alleged:**

312 (a) **Abuse or neglect, as defined in section 192.2400,**  
313 **which involves the sexual injury of an eligible adult;**

314 (b) **Abuse or neglect, as defined in section 568.060,**  
315 **which involves the sexual injury of a child;**

316 (c) **Genital mutilation, as defined in section 568.065;**

317 (d) **Sexual act, as defined in 573.110, which is in**  
318 **violation of state law;**

319 (e) **Sexual conduct, as defined in section 566.010,**  
320 **which is in violation of state law; or**

321 (f) **Sexual conduct, as defined in section 573.010,**  
322 **which is in violation of state law;**

323 (10) "Sexual assault forensic evidence", [any human  
324 biological specimen] **forensic evidence** collected by a  
325 medical provider during a forensic medical examination [from  
326 an alleged] **of a sexual assault** survivor, as provided for in  
327 section 595.220[, including, but not limited to, a  
328 toxicology kit];

329 (11) ["Survivor", a natural person who suffers direct  
330 or threatened physical, emotional, or financial harm as the  
331 result of the commission or attempted commission of a  
332 crime. The term "victim" also includes the family members  
333 of a minor, incompetent or homicide victim] **"Support**  
334 **person", a family member or friend of the sexual assault**  
335 **survivor, other than an alleged assailant or perpetrator,**

336 and other than an employee or volunteer of a rape crisis  
337 center.

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