

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 775, 751, &amp; 640

AN ACT

To repeal sections 491.015, 566.150, and 595.201, RSMo, and to enact in lieu thereof three new sections relating to sexual offenses, with penalty provisions.

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

Section A. Sections 491.015, 566.150, and 595.201, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 491.015, 566.150, and 595.201, to read as follows:

491.015. 1. In prosecutions under chapter 566 or prosecutions related to sexual conduct under chapter 568, opinion and reputation evidence of the complaining witness' prior sexual conduct, acts, or practices is inadmissible at any trial, hearing, or court proceeding and not a subject for inquiry during a deposition or discovery; evidence of specific instances of the complaining witness' prior sexual conduct, acts, or practices or the absence of such instances or conduct is inadmissible at any trial, hearing, or any other court proceeding, and not a subject for inquiry during a deposition or discovery, except where such specific instances are:

(1) Evidence of the sexual conduct of the complaining witness with the defendant to prove consent where consent is a defense to the alleged crime and the evidence is reasonably contemporaneous with the date of the alleged crime; or

(2) Evidence of specific instances of sexual activity showing alternative source or origin of semen, pregnancy or disease;

(3) Evidence of immediate surrounding circumstances of the alleged crime; or

(4) Evidence relating to the previous chastity of the complaining witness in cases, where, by statute, previously chaste character is required to be proved by the prosecution.

2. Evidence of the sexual conduct, acts, or practices of the complaining witness offered under this section is admissible to the extent that the court finds the evidence relevant to a material fact or issue.

3. If the defendant proposes to offer evidence of the sexual conduct, acts, or practices of the complaining witness under this section, he or she shall file with the court a written motion accompanied by an offer of proof or make an offer of proof on the record outside the hearing of the jury. The court shall hold an in camera hearing to determine the sufficiency of the offer of proof and may at that hearing hear evidence if the court deems it necessary to determine the sufficiency of the offer of proof. If the court finds any of the evidence offered admissible under this section the court shall make an order stating the scope of the evidence which may be introduced. Objections to any decision of the court under this section may be made by either the prosecution or the defendant in the manner provided by law. The in camera hearing shall be recorded and the court shall set forth its reasons for its ruling. The record of the in camera hearing shall be sealed for delivery to the parties and to the appellate court in the event of an appeal or other post trial proceeding.

566.150. 1. Any person who has been found guilty of:

(1) Violating any of the provisions of this chapter or the provisions of section 568.020, incest; section 568.045, endangering the welfare of a child in the first degree; section 573.200, use of a child in a sexual performance;

section 573.205, promoting a sexual performance by a child; section 573.023, sexual exploitation of a minor; section 573.025, promoting child pornography; section 573.037, possession of child pornography; or section 573.040, furnishing pornographic material to minors; or

(2) Any offense in any other jurisdiction which, if committed in this state, would be a violation listed in this section;

shall not knowingly be present in or loiter within five hundred feet of any real property comprising any public park with playground equipment, a public swimming pool, athletic complex or athletic fields if such facilities exist for the primary use of recreation for children, any museum if such museum holds itself out to the public as and exists with the primary purpose of entertaining or educating children under eighteen years of age, or Missouri department of conservation nature or education center properties.

2. The first violation of the provisions of this section is a class E felony.

3. A second or subsequent violation of this section is a class D felony.

4. Any person who has been found guilty of an offense under subdivision (1) or (2) of subsection 1 of this section who is the parent, legal guardian, or custodian of a child under the age of eighteen attending a program on the property of a nature or education center of the Missouri department of conservation may receive permission from the nature or education center manager to be present on the property with the child during the program.

595.201. 1. This section shall be known and may be cited as the "Sexual Assault Survivors' Bill of Rights". These rights shall be in addition to other rights as designated by law and no person shall discourage a person

from exercising these rights. For the purposes of this section, "sexual assault survivor" means any person who is fourteen years of age or older and who may be a victim of a sexual offense who presents themselves to an appropriate medical provider, law enforcement officer, prosecuting attorney, or court.

2. [The rights provided to survivors in this section attach whenever a survivor is subject to a forensic 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 sexual assault 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 forensic examination to collect sexual assault forensic evidence. The following rights shall be afforded to sexual assault survivors] a criminal investigation or prosecution results or if the survivor has previously waived any of these rights. A sexual assault survivor has the right to:

(1) [A survivor has the right to] Consult with an employee or volunteer of a rape crisis center [during any forensic examination that is subject to confidentiality requirements pursuant to section 455.003, as well as the right to have a support person of the survivor's choosing present, subject to federal regulations as provided in 42 CFR 482; 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) Reasonable costs incurred by a medical provider for the forensic examination portion of the examination of a

survivor shall be paid by the department of public safety, out of appropriations made for that purpose, as provided under section 595.220. Evidentiary collection kits shall be developed and made available, subject to appropriations, 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;

(3) Before a medical provider commences a forensic examination of a survivor, the 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) 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 an employee or volunteer of a rape crisis center, to be summoned by the medical provider before the commencement of the forensic examination, unless no employee or volunteer of a rape crisis center can be summoned in a reasonably timely manner, and to have present at least one support person of the victim's choosing;

(c) If an employee or volunteer of a rape crisis center or a support person cannot be summoned in a timely

manner, the ramifications of delaying the forensic examination; and

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

(4) Before commencing an interview of a survivor, a law enforcement officer, 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 an employee or volunteer of a rape crisis center 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 employee or volunteer of a rape crisis center 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 officer, prosecuting attorney, or defense attorney, unless the law enforcement officer, 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 officer, 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;

(5) The right to counsel during an interview by a law enforcement officer or during any interaction with the legal or criminal justice systems within the state;

(6) A law enforcement official, prosecuting attorney, or defense attorney shall not, for any reason, discourage a survivor from receiving a forensic examination;

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

(8) 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;

(9) 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;

(10) 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;

(11) 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;

(12) Upon initial interaction with a survivor, a law enforcement officer 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 to receive a forensic 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 employees or volunteers of a rape crisis center;



(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;

(13) 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;

(14) 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 reenters custody; and

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

(15) 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;

(16) 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;

(17) 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;

(18) 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. 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 and 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 a 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 forensic examination of the survivor;

(7) "Rape crisis center", any public or private agency that offers assistance to victims of sexual assault, as the term sexual assault is defined in section 455.010, who are adults, as defined by section 455.010, or qualified minors, as defined by section 431.056;

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

(9) "Sexual assault survivor", any person who is a victim of an alleged sexual offense 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;

(10) "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;

(11) "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.] as defined in section 455.003;

(2) A sexual assault forensic examination as provided in section 595.220, or when a telehealth network is established, a forensic examination as provided in section 192.2520 and section 197.135;

(3) A shower and a change of clothing, as reasonably available, at no cost to the sexual assault survivor;

(4) Request to be examined by an appropriate medical provider or interviewed by a law enforcement officer of the gender of the sexual assault survivor's choosing, when there is an available appropriate medical provider or law enforcement official of the gender of the sexual assault survivor's choosing;

(5) An interpreter who can communicate in the language of the sexual assault survivor's choice, as is reasonably available, in a timely manner;

(6) Notification and basic overview of the options of choosing a reported evidentiary collection kit, unreported evidentiary collection kit, or anonymous evidentiary collection kit as defined in section 595.220;

(7) Notification about the evidence tracking system as defined in subsection 9 of section 595.220;

(8) Notification about the right to information pursuant to subsection 4 of section 610.100;

(9) Be free from intimidation, harassment, and abuse in any related criminal or civil proceeding and the right to reasonable protection from the offender or any person acting on behalf of the offender from harm and threats of harm arising out of the survivor's disclosure of the sexual assault.

3. An appropriate medical provider, law enforcement officer, and prosecuting attorney shall provide the sexual assault survivor with notification of the rights of survivors pursuant to subsection 2 of this section in a timely manner. Each appropriate medical provider, law enforcement officer, and prosecuting attorney shall ensure that the sexual assault survivor has been notified of these rights.

4. The department of public safety shall develop a document in collaboration with Missouri-based stakeholders. Missouri-based stakeholders shall include, but not be limited to, the following:

(1) Prosecuting attorneys;

(2) Chief law enforcement officers or their designees;

(3) Appropriate medical providers, as defined in section 595.220;

(4) Representatives of the statewide coalition against domestic and sexual violence;

(5) Representatives of rape crisis centers;

(6) Representatives of the Missouri Hospital Association;

(7) The director of the Missouri highway patrol crime lab or their designee; and

(8) The director of the department of health and senior services or their designee.

5. The document shall include the following:

(1) A description of the rights of the sexual assault survivor pursuant to this section; and

(2) Telephone and internet means for contacting the local rape crisis center, as defined in 455.003.

The department of public safety shall provide this document in clear language that is comprehensible to a person proficient in English and shall provide this document in any other foreign language spoken by at least five percent of the population in any county or city not within a county in Missouri.