

HOUSE BILL NO. 2595

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (97).

5592H.011

DANA RADEMAN MILLER, Chief Clerk

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 may be cited as the "Sexual Assault Survivors' Bill of Rights".

2. The rights provided to survivors in this section shall attach when a survivor is subject to a medical evidentiary or physical examination, as provided in section 595.220, and when a survivor is subject to an interview by a law enforcement official, prosecuting attorney, or defense attorney. A survivor shall retain 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 counselor are confidential and privileged, including information disclosed in the presence of any third

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 persons during a medical evidentiary or physical examination or during any interview by
19 a law enforcement official, prosecuting attorney, or defense attorney. The presence of a
20 sexual assault counselor does not operate to defeat any existing privilege otherwise
21 guaranteed by law;

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

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

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

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

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

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

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

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

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

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

51 (b) The survivor's right to consult with a sexual assault counselor during any
52 interview by a law enforcement official, prosecuting attorney, or defense attorney, to be

53 summoned by the interviewer before the commencement of the interview, unless no sexual
54 assault counselor can be summoned in a reasonably timely manner;

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

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

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

67 (9) A survivor retains the right to have counsel present during all stages of any
68 medical examination, interview, investigation, or other interaction with representatives
69 from the legal or criminal justice systems within the state. Treatment of the survivor shall
70 not be affected or altered in any way as a result of the survivor's decision to exercise this
71 right to have counsel present during any interaction with the legal or criminal justice
72 systems within the state;

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

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

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

85 (13) The failure of a law enforcement agency to take possession of any sexual
86 assault forensic evidence or to submit such evidence for analysis within the time prescribed
87 under section 595.220 does not alter the authority of a law enforcement agency to take
88 possession of that evidence or to submit that evidence to the crime laboratory, and does not

89 alter the authority of the crime laboratory to accept and analyze the evidence or to upload
90 the DNA profile obtained from that evidence into CODIS. The failure to comply with the
91 requirements of this section does not constitute grounds in any criminal or civil proceeding
92 for challenging the validity of a database match or of any database information, and any
93 evidence of that DNA record shall not be excluded by a court on those grounds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

143 3. (1) Each person, corporation, agency, officer, or employee who has a
144 responsibility or responsibilities to survivors under this section shall make reasonable
145 efforts to become informed about these responsibilities and to ensure that survivors and
146 witnesses receive such information and services to which they may be entitled under law.

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

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

157 (4) Before any violation of this section is sought to be enjoined, the attorney general
158 shall give the person against whom such proceeding is contemplated notice by certified
159 mail and an opportunity to show in writing within five business days after receipt of notice

160 why proceedings should not be instituted against him or her, unless the attorney general
161 finds, in any case in which he or she seeks preliminary relief, that to give such notice and
162 opportunity is not in the public interest.

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

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

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

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

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

179 (2) "Crime", an act committed in this state that, regardless of whether it is
180 adjudicated, involves the application of force or violence or the threat of force or violence
181 by the offender upon the victim but shall include the crime of driving while intoxicated,
182 vehicular manslaughter and hit and run; and provided, further, that no act involving the
183 operation of a motor vehicle except driving while intoxicated, vehicular manslaughter and
184 hit and run which results in injury to another shall constitute a crime for the purpose of
185 this section, unless such injury was intentionally inflicted through the use of a motor
186 vehicle. A "crime" shall also include an act of terrorism, as defined in 18 U.S.C. Section
187 2331, that has been committed outside of the United States against a resident of Missouri;

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

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

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

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

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

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

206 (9) "Sexual assault survivor", any person who is a victim of a crime under sections
207 566.010 to 566.223 and, if the person is incompetent, deceased, or a minor who is unable
208 to consent to counseling services, the parent, guardian, spouse, or any other lawful
209 representative of the survivor, unless such person is the alleged assailant;

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

214 (11) "Witness", any person who has been or is expected to be summoned to testify
215 for the prosecution, whether any action or proceeding has commenced. "Witness" includes
216 persons employed in the administration of criminal justice who are testifying in the course
217 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
2 Assault Task Force" to consist of the following members:

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

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

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

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

12 (3) A private citizen appointed by the governor;

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

15 **(5) A representative of a rape crisis center appointed by the governor;**

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

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

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

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

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

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

26 **(2) Whether a need exists for additional sexual assault counselors for victims of**
27 **sexual assault. If such a need exists, the task force shall:**

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

29 **(b) Create a plan for how the state can provide, in conjunction with rape crisis**
30 **centers, victims' advocates organizations, and the department of health and senior services,**
31 **additional sexual assault counselors to meet the needs identified; and**

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

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

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

37 **(b) Make recommendations on how best to address such need, whether legislatively**
38 **or otherwise; and**

39 **(4) Whether a need exists to provide for ongoing evaluation of the implementation**
40 **of these rights. If such a need exists, the task force shall:**

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

42 **(b) Make recommendations on how best to address such need, whether legislatively**
43 **or otherwise.**

44 **3. The task force shall:**

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

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

52 **4. The department of public safety shall provide administrative support to the task**
53 **force.**

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

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

✓