

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILLS NOS. 775, 751, & 640
AN ACT

To repeal sections 491.015, 566.149, 566.150, 566.155, 595.201, and 595.226, RSMo, and to enact in lieu thereof six new sections relating to sexual offenses, with penalty provisions.

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

Section A. Sections 491.015, 566.149, 566.150, 566.155, 2 595.201, and 595.226, RSMo, are repealed and six new sections 3 enacted in lieu thereof, to be known as sections 491.015, 4 566.149, 566.150, 566.155, 595.201, and 595.226, to read as 5 follows:

491.015. 1. In prosecutions under chapter 566 or 2 prosecutions related to sexual conduct under chapter 568, 3 opinion and reputation evidence of the complaining] a 4 victim's or witness' prior sexual conduct, acts, or 5 practices is inadmissible at any trial, hearing, or court 6 proceeding and not a subject for inquiry during a deposition 7 or discovery; evidence of specific instances of the 8 complaining] a victim's or witness' prior sexual conduct, 9 acts, or practices or the absence of such instances or 10 conduct is inadmissible at any trial, hearing, or any other 11 court proceeding, and not a subject for inquiry during a 12 deposition or discovery, except where such specific 13 instances are:

(1) Evidence of the sexual conduct of the 14 complaining] a victim or witness with the defendant to prove 15 consent where consent is a defense to the alleged crime and 16

17 the evidence is reasonably contemporaneous with the date of
18 the alleged crime; or

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

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

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

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

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

566.149. 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; subsection 2 of section 568.080 as it existed prior to January 1, 2017, or section 573.200, use of a child in a sexual performance; section 568.090 as it existed prior to January 1, 2017, or section 573.205, promoting a sexual performance by a child; section 573.023, sexual exploitation of a minor; section 573.037, possession of child pornography; section 573.025, promoting 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 be present in or loiter within five hundred feet of any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen are present in the building, on the grounds, or in the conveyance, unless the offender is a parent, legal guardian, or custodian of a student present in the building and has met the conditions set forth in subsection 2 of this section.

2. No parent, legal guardian, or custodian who has been found guilty of violating any of the offenses listed in subsection 1 of this section shall be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen are present in the building, on the grounds or in the conveyance unless

34 the parent, legal guardian, or custodian has permission to
35 be present from the superintendent or school board or in the
36 case of a private school from the principal. In the case of
37 a public school, if permission is granted, the
38 superintendent or school board president must inform the
39 principal of the school where the sex offender will be
40 present. Permission may be granted by the superintendent,
41 school board, or in the case of a private school from the
42 principal for more than one event at a time, such as a
43 series of events, however, the parent, legal guardian, or
44 custodian must obtain permission for any other event he or
45 she wishes to attend for which he or she has not yet had
46 permission granted.

47 3. Regardless of the person's knowledge of his or her
48 proximity to school property or a school-related activity,
49 violation of the provisions of this section is a class A
50 misdemeanor.

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

2 (1) Violating any of the provisions of this chapter or
3 the provisions of section 568.020, incest; section 568.045,
4 endangering the welfare of a child in the first degree;
5 section 573.200, use of a child in a sexual performance;
6 section 573.205, promoting a sexual performance by a child;
7 section 573.023, sexual exploitation of a minor; section
8 573.025, promoting child pornography; section 573.037,
9 possession of child pornography; or section 573.040,
10 furnishing pornographic material to minors; or

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

14 shall not knowingly be present in or loiter within five
15 hundred feet of any real property comprising any public park
16 with playground equipment, a public swimming pool, athletic

17 complex or athletic fields if such facilities exist for the
18 primary use of recreation for children, any museum if such
19 museum holds itself out to the public as and exists with the
20 primary purpose of entertaining or educating children under
21 eighteen years of age, or Missouri department of
22 conservation nature or education center properties.

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

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

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

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

2 (1) Violating any of the provisions of this chapter or
3 the provisions of section 568.020, incest; section 568.045,
4 endangering the welfare of a child in the first degree;
5 section 573.200, use of a child in a sexual performance;
6 section 573.205, promoting a sexual performance by a child;
7 section 573.023, sexual exploitation of a minor; section
8 573.037, possession of child pornography; section 573.025,
9 promoting child pornography; or section 573.040, furnishing
10 pornographic material to minors; or

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

14 shall not serve as an athletic coach, manager, or athletic
15 trainer for any sports team in which a child less than
16 seventeen years of age is a member.

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

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

595.201. 1. This section shall be known and may be
2 cited as the "Sexual Assault Survivors' Bill of Rights".
3 These rights shall be in addition to other rights as
4 designated by law and no person shall discourage a person
5 from exercising these rights. For the purposes of this
6 section, "sexual assault survivor" means any person who is
7 fourteen years of age or older and who may be a victim of a
8 sexual offense who presents themselves to an appropriate
9 medical provider, law enforcement officer, prosecuting
10 attorney, or court.

11 2. [The rights provided to survivors in this section
12 attach whenever a survivor is subject to a forensic
13 examination, as provided in section 595.220; and whenever a
14 survivor is subject to an interview by a law enforcement
15 official, prosecuting attorney, or defense attorney.] A
16 sexual assault survivor retains all the rights of this
17 section [at all times] regardless of whether [the survivor
18 agrees to participate in the criminal justice system or in
19 family court; and regardless of whether the survivor
20 consents to a forensic examination to collect sexual assault
21 forensic evidence. The following rights shall be afforded
22 to sexual assault survivors] a criminal investigation or
23 prosecution results or if the survivor has previously waived
24 any of these rights. A sexual assault survivor has the
25 right to:

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

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

47 (3) Before a medical provider commences a forensic
48 examination of a survivor, the medical provider shall
49 provide the survivor with a document to be developed by the
50 department of public safety that explains the rights of
51 survivors, pursuant to this section, in clear language that
52 is comprehensible to a person proficient in English at the
53 fifth-grade level, accessible to persons with visual
54 disabilities, and available in all major languages of the
55 state. This document shall include, but is not limited to:

56 (a) The survivor's rights pursuant to this section and
57 other rules and regulations by the department of public
58 safety and the department of health and senior services,

59 which shall be signed by the survivor of sexual assault to
60 confirm receipt;

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

68 (c) If an employee or volunteer of a rape crisis
69 center or a support person cannot be summoned in a timely
70 manner, the ramifications of delaying the forensic
71 examination; and

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

75 (4) Before commencing an interview of a survivor, a
76 law enforcement officer, prosecuting attorney, or defense
77 attorney shall inform the survivor of the following:

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

83 (b) The survivor's right to consult with an employee
84 or volunteer of a rape crisis center during any interview by
85 a law enforcement official, prosecuting attorney, or defense
86 attorney, to be summoned by the interviewer before the
87 commencement of the interview, unless no employee or
88 volunteer of a rape crisis center can be summoned in a
89 reasonably timely manner;

90 (c) The survivor's right to have a support person of
91 the survivor's choosing present during any interview by a

92 law enforcement officer, prosecuting attorney, or defense
93 attorney, unless the law enforcement officer, prosecuting
94 attorney, or defense attorney determines in his or her good
95 faith professional judgment that the presence of that
96 individual would be detrimental to the purpose of the
97 interview; and

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

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

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

110 (7) A survivor has the right to prompt analysis of
111 sexual assault forensic evidence, as provided under section
112 595.220;

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

122 (9) A defendant or person accused or convicted of a
123 crime against a survivor shall have no standing to object to
124 any failure to comply with this section, and the failure to

125 provide a right or notice to a survivor under this section
126 may not be used by a defendant to seek to have the
127 conviction or sentence set aside;

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

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

152 (12) Upon initial interaction with a survivor, a law
153 enforcement officer shall provide the survivor with a
154 document to be developed by the department of public safety
155 that explains the rights of survivors, pursuant to this
156 section, in clear language that is comprehensible to a
157 person proficient in English at the fifth-grade level,

158 accessible to persons with visual disabilities, and
159 available in all major languages of the state. This
160 document shall include, but is not limited to:

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

165 (b) Telephone and internet means of contacting nearby
166 rape crisis centers and employees or volunteers of a rape
167 crisis center;

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

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

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

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

184 (14) A prosecuting attorney shall, upon written
185 request by a survivor, provide:

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

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

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

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

198 (15) In either a civil or criminal case relating to
199 the sexual assault, a survivor has the right to be
200 reasonably protected from the defendant and persons acting
201 on behalf of the defendant, as provided under section
202 595.209 and Article I, Section 32 of the Missouri
203 Constitution;

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

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

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

218 3. For purposes of this section, the following terms
219 mean:

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

224 National DNA Index System administered and operated by the
225 Federal Bureau of Investigation;

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

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

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

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

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

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

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

268 (9) "Sexual assault survivor", any person who is a
269 victim of an alleged sexual offense under sections 566.010
270 to 566.223 and, if the survivor is incompetent, deceased, or
271 a minor who is unable to consent to counseling services, the
272 parent, guardian, spouse, or any other lawful representative
273 of the survivor, unless such person is the alleged assailant;

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

279 (11) "Survivor", a natural person who suffers direct
280 or threatened physical, emotional, or financial harm as the
281 result of the commission or attempted commission of a
282 crime. The term "victim" also includes the family members
283 of a minor, incompetent or homicide victim.] as defined in
284 section 455.003;

285 (2) A sexual assault forensic examination as provided
286 in section 595.220, or when a telehealth network is
287 established, a forensic examination as provided in section
288 192.2520 and section 197.135;

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

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

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

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

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

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

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

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

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

- 326 (1) Prosecuting attorneys;
327 (2) Chief law enforcement officers or their designees;
328 (3) Appropriate medical providers, as defined in
329 section 595.220;
330 (4) Representatives of the statewide coalition against
331 domestic and sexual violence;
332 (5) Representatives of rape crisis centers;
333 (6) Representatives of the Missouri Hospital
334 Association;
335 (7) The director of the Missouri highway patrol crime
336 lab or their designee; and
337 (8) The director of the department of health and
338 senior services or their designee.

339 5. The document shall include the following:
340 (1) A description of the rights of the sexual assault
341 survivor pursuant to this section; and
342 (2) Telephone and internet means for contacting the
343 local rape crisis center, as defined in 455.003.

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

595.226. 1. After August 28, 2007, any information
2 contained in any court record, whether written or published
3 on the internet, including any visual or aural recordings
4 that could be used to identify or locate any victim of an
5 offense under chapter 566 or a victim of domestic assault or

6 stalking shall be closed and redacted from such record prior
7 to disclosure to the public. Identifying information shall
8 include, but shall not be limited to, the name, home or
9 temporary address, personal email address, telephone number,
10 Social Security number, birth date, place of employment, any
11 health information, including human immunodeficiency virus
12 (HIV) status, any information from a forensic testing
13 report, or physical characteristics, including an
14 unobstructed visual image of the victim's face or body.

15 2. [If the court determines that a person or entity
16 who is requesting identifying information of a victim has a
17 legitimate interest in obtaining such information, the court
18 may allow access to the information, but only if the court
19 determines that disclosure to the person or entity would not
20 compromise the welfare or safety of such victim,] Any person
21 who is requesting identifying information of a victim and
22 who has a legitimate interest in obtaining such information
23 may petition the court for an in camera inspection of the
24 records. If the court determines the person is entitled to
25 all or any part of such records, the court may order
26 production and disclosure of the records, but only if the
27 court determines that the disclosure to the person or entity
28 would not compromise the welfare or safety of the victim,
29 and only after providing reasonable notice to the victim and
30 after allowing the victim the right to respond to such
31 request.

32 3. Notwithstanding the provisions of subsection 1 of
33 this section, the judge presiding over a case under chapter
34 566 or a case of domestic assault or stalking shall have the
35 discretion to publicly disclose identifying information
36 regarding the defendant which could be used to identify or
37 locate the victim of the crime. The victim may provide a
38 statement to the court regarding whether he or she desires

39 such information to remain closed. When making the decision
40 to disclose such information, the judge shall consider the
41 welfare and safety of the victim and any statement to the
42 court received from the victim regarding the disclosure.