

SECOND REGULAR SESSION

HOUSE BILL NO. 1766

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

3322H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 595.220, RSMo, and to enact in lieu thereof one new section relating to evidentiary collection kits.

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

Section A. Section 595.220, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 595.220, to read as follows:

595.220. 1. The department of public safety shall make payments to appropriate medical providers, out of appropriations made for that purpose, to cover the reasonable charges of the forensic examination of persons who may be a victim of a sexual offense if:

(1) The victim or the victim's guardian consents in writing to the examination; and

(2) The report of the examination is made on a form approved by the attorney general with the advice of the department of public safety.

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The department shall establish maximum reimbursement rates for charges submitted under this section, which shall reflect the reasonable cost of providing the forensic exam.

2. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The appropriate medical provider making the examination shall give written notice to the parent or guardian of a minor that such an examination has taken place.

3. The department of public safety, with the advice of the attorney general, shall develop the forms and procedures for gathering, transmitting, and storing evidence during and after the forensic examination under the provisions of this section. The department of health

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 and senior services shall develop a checklist, protocols, and procedures for appropriate
19 medical providers to refer to while providing medical treatment to victims of a sexual offense,
20 including those specific to victims who are minors. The procedures for transmitting and
21 storing examination evidence shall include the following requirements:

22 (1) An appropriate medical provider shall provide electronic notification to the
23 appropriate law enforcement agency when the provider has a reported or anonymous
24 evidentiary collection kit;

25 (2) Within fourteen days of notification from the appropriate medical provider, the
26 law enforcement agency shall take possession of the evidentiary collection kit;

27 (3) Within fourteen days of taking possession, the law enforcement agency shall
28 provide the evidentiary collection kit to a laboratory;

29 (4) A law enforcement agency shall secure an evidentiary collection kit for a period
30 of thirty years if the offense has not been adjudicated.

31 4. Evidentiary collection kits shall be developed and made available, subject to
32 appropriation, to appropriate medical providers by the highway patrol or its designees and
33 eligible crime laboratories. Such kits shall be distributed with the forms and procedures for
34 gathering evidence during forensic examinations of victims of a sexual offense to appropriate
35 medical providers upon request of the provider, in the amount requested, and at no charge to
36 the medical provider. All appropriate medical providers shall, with the written consent of the
37 victim, perform a forensic examination using the evidentiary collection kit, or other collection
38 procedures developed for victims who are minors, and forms and procedures for gathering
39 evidence following the checklist for any person presenting as a victim of a sexual offense.

40 5. In reviewing claims submitted under this section, the department shall first
41 determine if the claim was submitted within ninety days of the examination. If the claim is
42 submitted within ninety days, the department shall, at a minimum, use the following criteria
43 in reviewing the claim: examination charges submitted shall be itemized and fall within the
44 definition of forensic examination as defined in subdivision (7) of subsection 8 of this section.

45 6. All appropriate medical provider charges for eligible forensic examinations shall
46 be billed to and paid by the department of public safety. No appropriate medical provider
47 conducting forensic examinations and providing medical treatment to victims of sexual
48 offenses shall charge the victim for the forensic examination. For appropriate medical
49 provider charges related to the medical treatment of victims of sexual offenses, if the victim is
50 an eligible claimant under the crime victims' compensation fund, the victim shall seek
51 compensation under sections 595.010 to 595.075.

52 7. The department of public safety shall establish rules regarding the reimbursement
53 of the costs of forensic examinations for children under fourteen years of age, including
54 establishing conditions and definitions for emergency and nonemergency forensic

55 examinations and may by rule establish additional qualifications for appropriate medical
56 providers performing nonemergency forensic examinations for children under fourteen years
57 of age. The department shall provide reimbursement regardless of whether or not the findings
58 indicate that the child was abused.

59 8. For purposes of this section, the following terms mean:

60 (1) "Anonymous evidentiary collection kit", an evidentiary collection kit collected
61 from a victim who wishes to remain anonymous, but who has consented, or his or her
62 designee has consented on his or her behalf, to the collection of the evidentiary collection kit
63 and to participate in the criminal justice process;

64 (2) "Appropriate medical provider":

65 (a) Any licensed nurse, physician, or physician assistant, and any institution
66 employing licensed nurses, physicians, or physician assistants, provided that such licensed
67 professionals are the only persons at such institution to perform tasks under the provisions of
68 this section; or

69 (b) For the purposes of any nonemergency forensic examination of a child under
70 fourteen years of age, the department of public safety may establish additional qualifications
71 for any provider listed in paragraph (a) of this subdivision under rules authorized under
72 subsection 7 of this section;

73 (3) "Component", any piece of evidence **including, but not limited to, an individual**
74 **specimen container**, that contains, or may contain, DNA related to the sexual offense for
75 which the forensic examination was performed and that ~~is not~~ **may be** stored or maintained
76 within the evidentiary collection kit;

77 (4) "Consent", the electronically documented authorization by the victim, or his or
78 her designee, to allow the evidentiary collection kit to be analyzed;

79 (5) "Emergency forensic examination", an examination of a person under fourteen
80 years of age that occurs within five days of the alleged sexual offense. The department of
81 public safety may further define the term emergency forensic examination by rule;

82 (6) "Evidentiary collection kit", a kit used during a forensic examination that includes
83 **some or all of the components including, but not limited to, individual specimen**
84 **containers or other** materials necessary for appropriate medical providers to gather evidence
85 in accordance with the forms and procedures developed by the department of public safety for
86 forensic examinations;

87 (7) "Forensic examination", an examination performed by an appropriate medical
88 provider on a victim of an alleged sexual offense to gather evidence for the evidentiary
89 collection kit or using other collection procedures developed for victims who are minors;

90 (8) "Medical treatment", the treatment of all injuries and health concerns resulting
91 directly from a patient's sexual assault or victimization;

92 (9) "Nonemergency forensic examination", an examination of a person under fourteen
93 years of age that occurs more than five days after the alleged sexual offense. The department
94 of public safety may further define the term nonemergency forensic examination by rule;

95 (10) "Reported evidentiary collection kit", an evidentiary collection kit **including,**
96 **but not limited to, all the respective components or individual specimen containers**
97 collected from a victim, or his or her designee, who has consented to the collection of the
98 evidentiary collection kit **or individual specimen containers** and has consented to
99 participate in the criminal justice process;

100 (11) "Unreported evidentiary collection kit", an evidentiary collection kit **including,**
101 **but not limited to, all the respective components or individual specimen containers**
102 collected from a victim, or his or her designee, who has consented to the collection of the
103 evidentiary collection kit **or individual specimen containers** but has not consented to
104 participate in the criminal justice process.

105 9. The attorney general shall establish protocols and an electronic platform to
106 implement an electronic evidence tracking system that:

107 (1) Identifies, documents, records, and tracks **all respective** evidentiary collection
108 kits ~~and~~ **including, but not limited to, all their respective** components, including, **but not**
109 **limited to, the respective** individual specimen containers, through their existence from
110 forensic examination, to possession by a law enforcement agency **or a duly authorized**
111 **agent, to possession by a crime lab,** to testing, to use as evidence in criminal proceedings,
112 and until disposition of such proceedings;

113 (2) Assigns a unique, **nonrepeating** alphanumeric identifier, **which shall contain at**
114 **least machine- and human-readable indicia,** to each respective evidentiary collection kit,
115 and all its respective components, **including, but not limited to, individual specimen**
116 **containers,** and **assigns a unique, nonrepeating alphanumeric identifier, which shall**
117 **contain at least machine- and human-readable indicia,** to each respective person, or his or
118 her designees, who may handle an evidentiary test kit, **individual specimen containers, or**
119 **all of the kit's other respective components;**

120 (3) Links the identifiers of ~~an~~ **a respective** evidentiary collection kit **including, but**
121 **not limited to, individual specimen containers** and its components~~, which~~ **to establish a**
122 **familial hierarchical relationship between the identifiers. The identifiers** shall ~~be~~
123 ~~machine-readable~~ **consist of both machine- and human-readable** indicia;

124 (4) Allows each person, or his or her designees, who is properly credentialed to
125 handle an evidentiary test kit to check the status of an evidentiary test kit or its components
126 and to save a portfolio of identifiers so that the person, or his or her designees, may track,
127 obtain reports, and receive updates on the status of evidentiary collection kits or ~~their~~ **all the**
128 **kits' respective** components; and

129 (5) Allows sexual assault victims, or their designees, to track and obtain reports on
130 the status and location of their evidentiary collection kits **or all the kits' respective**
131 **components**. This shall be a secured web-based or similar electronic-based communications
132 system that shall require sexual assault victims, or their designees, to register to access
133 tracking and reports of their evidentiary collection kits **or all the kits' respective**
134 **components**.

135 10. Appropriate medical providers, law enforcement agencies, laboratories, court
136 personnel, persons or entities involved in the final disposition or destruction of evidentiary
137 collection kits, and all other entities which and persons who have custody of evidentiary
138 collection kits **or all the kits' respective components** shall participate in the electronic
139 evidence tracking system.

140 11. The department of public safety, with the advice of the attorney general and the
141 assistance of the department of health and senior services, shall develop and retain within the
142 state a central repository for **each respective** unreported evidentiary collection ~~[kits]~~ **kit**
143 **including, but not limited to, all of the kit's respective components**, where such ~~[kits]~~ **kit**
144 **including, but not limited to, all of the kit's respective components** can be kept in a
145 temperature-controlled environment that preserves the integrity of the evidence and
146 diminishes degradation. Unreported evidentiary collection kits **including, but not limited**
147 **to, all of the kits' respective components** shall be retained for a period of five years. In the
148 case of a minor under the age of eighteen when the unreported kit **including, but not limited**
149 **to, all of the kit's respective components** was collected, the unreported evidentiary kit
150 **including, but not limited to, all of the kit's respective components** shall be retained for a
151 period of five years after the victim attains the age of eighteen. **By rule, the department of**
152 **public safety may further define the term temperature-controlled environment**.

153 12. Records entered into the electronic evidence tracking system shall be confidential
154 and shall not be subject to disclosure under chapter 610.

155 13. The department shall have authority to promulgate rules and regulations
156 necessary to implement the provisions of this section. Any rule or portion of a rule, as that
157 term is defined in section 536.010, that is created under the authority delegated in this section
158 shall become effective only if it complies with and is subject to all of the provisions of
159 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
160 nonseverable and if any of the powers vested with the general assembly pursuant to chapter
161 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
162 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
163 adopted after August 28, 2009, shall be invalid and void.

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