

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 569

AN ACT

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

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Section A. Section 595.220, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 595.220, to read as follows: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

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

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

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

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

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

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

5. In reviewing claims submitted under this section, the department shall first determine if the claim was submitted within ninety days of the examination. If the claim is submitted within ninety days, the department shall, at a minimum, use the following criteria in reviewing the claim: examination charges submitted shall be itemized and fall within the definition of forensic examination as defined in subdivision (6) of subsection 8 of this section.

6. All appropriate medical provider charges for eligible forensic examinations shall be billed to and paid by the department of public safety. No appropriate medical provider conducting forensic examinations and providing medical treatment to victims of sexual offenses shall charge the victim for the forensic examination. For appropriate medical provider charges

related to the medical treatment of victims of sexual offenses, if the victim is an eligible claimant under the crime victims' compensation fund, the victim shall seek compensation under sections 595.010 to 595.075.

7. The department of public safety shall establish rules regarding the reimbursement of the costs of forensic examinations for children under fourteen years of age, including establishing conditions and definitions for emergency and nonemergency forensic examinations and may by rule establish additional qualifications for appropriate medical providers performing nonemergency forensic examinations for children under fourteen years of age. The department shall provide reimbursement regardless of whether or not the findings indicate that the child was abused.

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

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

(2) "Appropriate medical provider":

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

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

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

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

(5) "Evidentiary collection kit", a kit used during a forensic examination that includes materials necessary for appropriate medical providers to gather evidence in accordance with the forms and procedures developed by the department of public safety for forensic examinations;

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

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

(8) "Nonemergency forensic examination", an examination of

a person under fourteen years of age that occurs more than five days after the alleged sexual offense. The department of public safety may further define the term nonemergency forensic examination by rule;

(9) "Reported evidentiary collection kit", an evidentiary collection kit collected from a victim, or his or her designee, who has consented to the collection of the evidentiary collection kit and has consented to participate in the criminal justice process;

(10) "Unreported evidentiary collection kit", an evidentiary collection kit collected from a victim, or his or her designee, who has consented to the collection of the evidentiary collection kit but has not consented to participate in the criminal justice process.

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

(1) Identifies, documents, records, and tracks evidentiary collection kits [and their components, including individual specimen containers,] through their existence from forensic examination, to possession by a law enforcement agency, to testing, to use as evidence in criminal proceedings, and until disposition of such proceedings;

(2) Assigns a unique alphanumeric identifier to each respective evidentiary collection kit[, and all its respective components,] and to each respective person, or his or her designees, who may handle an evidentiary test kit;

(3) [Links the identifiers of an evidentiary collection kit

and its components, which shall be machine-readable indicia;

(4)] Allows each person, or his or her designees, who is properly credentialed to handle an evidentiary test kit to check the status of an evidentiary test kit [or its components] and to save a portfolio of identifiers so that the person, or his or her designees, may track, obtain reports, and receive updates [of] on the status of evidentiary collection kits [or their components]; and

[(5)] (4) Allows sexual assault victims, or their designees, [access in order to monitor the current status of their evidentiary test kit] to track and obtain reports on the status and location of their evidentiary collection kits. This shall be a secured web-based or similar electronic-based communications system that shall require sexual assault victims, or their designees, to register to access tracking and reports of their evidentiary collection kits.

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

11. The department of public safety, with the advice of the attorney general and the assistance of the department of health and senior services, shall develop and retain within the state a central repository for unreported evidentiary collection kits, where such kits can be kept in a temperature-controlled environment that preserves the integrity of the evidence and

diminishes degradation. Unreported evidentiary collection kits shall be retained for a period of five years. In the case of a minor under the age of eighteen when the unreported kit was collected, the unreported evidentiary kit shall be retained for a period of five years after the victim attains the age of eighteen.

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

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