NEW 2020 MISSOURI LAW

Missouri Coalition Against Domestic and Sexual Violence

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*The Missouri Coalition Against Domestic and Sexual Violence (MCADSV) unites Missourians with a shared value that rape and abuse must end, and advances this through education, alliance, research and public policy.*
Multiple sexual assault laws create additional victim rights, enhance rape kit tracking, require development of network for telehealth SAFE exams

Multiple new and expanded sections of law were enacted to address a range of issues and responses to sexual assault. Among these is the Sexual Assault Survivors’ Bill of Rights, which creates new rights in addition to the Crime Victims’ Rights that have been in Missouri law since 1986. Additional provisions enhance the system for tracking and testing sexual assault forensic evidence kits. A statewide telehealth system for access to sexual assault forensic examinations (SAFE) also is established, with provisions specific to its development and eventual implementation in 2022.

Statewide telehealth network to be established for SAFE exams, training for nurse examiners (Section 192.2520 RSMo)

This section of law directs the Department of Health and Senior Services (DHSS) to establish a statewide telehealth network for forensic examinations of victims of sexual offenses by July 1, 2022. The director of DHSS is to hire a statewide coordinator to oversee the network. The network will provide mentoring, training and assistance for medical providers conducting forensic examinations, including training on obtaining a victim’s informed consent to evidence collection. The network also will provide consultation services, guidance and technical assistance through telehealth services by a sexual assault nurse examiner (SANE) or other similarly trained appropriate medical provider. DHSS is required to produce an annual report on the numbers of forensic examinations performed at hospitals, the number of rape kits completed, and the number and reasons for instances when exams were not performed at hospitals upon a victim’s request.

By 2023, all Missouri hospitals required to provide SAFE exams for sexual assault victims (Section 197.315 RSMo)

This section of law requires every licensed hospital in Missouri, by Jan. 1, 2023, to perform a sexual assault forensic examination (SAFE) using a rape kit upon the request and consent of a victim of a sexual offense 14 years of age or older, or the victim’s guardian. Victims younger than 14 are to be referred to a SAFE CARE provider unless the minor or guardian consents to the exam at the hospital by an appropriate medical provider. If the provider is not a sexual assault nurse examiner (SANE) or similarly trained physician or nurse, then the hospital is required to use telehealth services for the forensic exam, such as those provided by the statewide telehealth network. The telehealth service is to provide guidance and support through a SANE, or other similarly trained physician or nurse, who will observe the live examination, communicate with and support the onsite provider.

DHSS may issue a waiver of the telehealth requirement if the hospital demonstrates a technological hardship in accessing telehealth services or has a lack of access to adequate broadband services. Such waivers are to be granted “sparingly” for no more than one year at a time, subject to renewal at DHSS’ discretion. If the statewide telehealth network ceases operations, the mandates for hospitals will be waived until the network resumes or the hospital can provide access to forensic examinations without the network.
Sexual Assault Survivors’ Bill of Rights established in law; no penalties for non-compliance

The legal rights created in Missouri law, Section 595.201 RSMo, are in effect for survivors of sexual assault during a sexual assault forensic examination and/or any interview by a law enforcement officer, prosecuting attorney or defense attorney in both criminal cases and in civil family court cases. The rights are retained at all times regardless of whether or not the survivor consents to a sexual assault forensic examination or agrees to participate in the criminal justice system or family court system.

There are no penalties or sanctions in the law for those who do not comply to provide survivors with the rights that have been created.

Specific rights afforded to sexual assault survivors in the Survivors’ Bill of Rights

The right to consult with a rape crisis center advocate during an exam or interview (Section 595.201.2(1) RSMo).

Sexual assault survivors are granted the right to consult with an advocate (employee) or volunteer from a rape crisis center during a sexual assault forensic evidence (SAFE) exam, during an interview with law enforcement officers, a prosecuting attorney and/or a defense attorney during a criminal case or in a family court case. The exceptions to this right are if an advocate or volunteer cannot be summoned in a reasonable time or if an advocate's presence is determined to be “detrimental” by an officer or attorney in their “good-faith professional judgment.” This section of law cross-references to Section 455.003 RSMo, which contains the definition of a rape crisis center and the confidentiality requirements of advocates and volunteers who work there.

The right to have a support person present during a forensic exam or interview (Section 595.201.2(1) RSMo)

This section of law doesn’t define “support person,” so it could be challenging if the survivor’s chosen support person also is in crisis, is distressed or is distressing the survivor. A survivor’s right to have a support person present is in addition to the right to have an advocate present.

Notice of rights required to be provided to survivors by medical and other professionals (Section 595.201.2(3) RSMo)

Survivors are to be notified about their rights in a document provided to them by medical professionals, law enforcement personnel, prosecutors and defense attorneys. The document is to be developed by the Department of Public Safety in multiple languages and must be accessible to those with visual disabilities. A survivor is to sign to confirm receipt of the rights. The law does not detail what is to happen with the signed receipt.

The rights delineated in this section include:

- **Right to an advocate or support person:** This section restates a survivor’s right to consult with a rape crisis center advocate (employee) or volunteer, who is to be summoned by the medical provider before a forensic examination begins, and to additionally have at least one support person present of the victim’s choosing. There is an exception to this right if an advocate or volunteer cannot be summoned “in a reasonably timely manner.”
• **Right to be told of the impact of delaying a SAFE exam**: If a rape crisis center advocate cannot be summoned in a timely manner, a survivor has the right to be told of the ramifications of delaying the SAFE exam should they wait for an advocate to arrive.

• **Right to shower after a SAFE exam**: After the forensic examination, a survivor has the right to shower at no cost, unless showering facilities are not reasonably available.

**The right to choose the gender of the law enforcement officer conducting the interview**  
(Section 595.201.2(4)(d) RSMo)  
A survivor can decline to exercise this right and consent to the interview even if the preferred officer isn’t “readily available.” The most likely request will be for a female officer.

**The right to counsel during an interview with law enforcement or criminal justice systems**  
(Section 595.201.2(5) RSMo)  
A survivor has the right to have their own legal counsel present during an interview by a law enforcement officer or during any interaction with the legal or criminal justice systems in Missouri.

**The right to a “free, complete and unaltered copy of all law enforcement reports”**  
(Section 595.201.2(13) RSMo)  
Within 14 days of receiving a written request from a survivor, a law enforcement official is required to provide 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.” However, obtaining copies of law enforcement reports typically is not possible until a case is closed.

**The right to “prompt” analysis of forensic evidence and to information from the crime lab**  
(Section 595.201.2(7)-(8) RSMo)  
This section of law gives a survivor the right to prompt analysis of their sexual assault forensic evidence, but it does not define what constitutes “prompt.” It also gives a survivor the right to be informed, upon their request, of the results of the analysis of their forensic evidence. This includes whether the analysis yielded a DNA profile and/or a DNA match, either to the named perpetrator or to a suspect already in the federal CODIS database.

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. However, this section of law is in conflict with established protocols that crime lab staff should not have direct communication with a survivor.

**The right to receive detailed information from law enforcement officers on survivor rights**  
(Section 595.201.2(12) RSMo)  
Upon their initial interaction with a survivor, law enforcement officers are required to provide them with a document that explains the rights of survivors. The document must be in clear language, understandable at a fifth-grade level, accessible to persons with visual disabilities and available in all major languages of the state. The Department of Public Safety is to create the document.
The document for survivors from law enforcement officers is to include the following:

- 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 legal rights from this and other relevant sections of Missouri law.

- Contact information for nearby rape crisis centers “and employees or volunteers of a rape crisis center.”

- How to obtain a protection order and any other forms of law enforcement protection available to the survivor.

- Instructions for requesting the results of the analysis of the survivor’s sexual assault forensic evidence.

- Crime victim compensation program funds for medical/other costs associated with the sexual assault and any restitution for survivors in the event of a criminal trial.

**The right to receive timely notices from the prosecuting attorney’s office regarding a case (Section 595.201.2(14) RSMo).**

A prosecuting attorney’s office is to provide a survivor with notices of pretrial and/or final case disposition, the location and any sex registry information on the convicted offender. The Missouri Victim Notification System (MOVANS) is used to provide survivors with some of the notices outlined in this section of law, but not all of them.

**Rights restated from prior existing law in Chapter 595 RSMo and the Missouri Constitution**

**The right to have the state pay for the costs of a forensic evidence exam (Section 595.201.2(2) RSMo)**

Sexual assault survivors have the right to have state funds pay for the costs of the forensic evidence exam performed by a medical professional, as provided in Section 595.220 RSMo. All medical provider charges for eligible forensic examinations are to be billed to and paid by the Department of Public Safety out of a fund specifically for those purposes.

**The right to be “reasonably protected” from the defendant and free from intimidation (Section 595.201.2(15)-(16) RSMo)**

In both civil and criminal cases related to the sexual assault, a survivor has the right to be “reasonably protected” from the defendant and anyone acting on behalf of the defendant, as well as the right to be free from intimidation, harassment and abuse (cross-referenced to Section 595.209 RSMo and Article I, Section 32 of the Missouri Constitution).

**Prohibition from polygraphing survivors prior to investigating or charging an offense (Section 595.201.2(17) RSMo)**

As provided in Section 595.223 RSMo, a survivor cannot be required to submit to a polygraph examination in order to have a case investigated or prosecuted, or as a requirement prior to participating in any part of the criminal justice system.
Opportunity to make a survivor impact statement at any post-arrest proceeding
(Section 595.201.2(18) RSMo)
A survivor can make a victim 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 (cross-referenced to Section 595.229 RSMo and Article I, Section 32 of the Missouri Constitution).

Additional provisions in Sexual Assault Survivors' Bill of Rights sections of law
All system officials prohibited from discouraging survivors from receiving SAFE exams
(Section 595.201.2(6) RSMo)
This section of law states: "A law enforcement official, prosecuting attorney, or defense attorney shall not, for any reason, discourage a survivor from receiving a forensic examination."

Survivors immune from misdemeanor drug charges based on forensic exam evidence
(Section 595.201.2(11) RSMo)
Evidence obtained during a sexual assault forensic exam is prohibited from being used to prosecute a sexual assault survivor for a misdemeanor drug charge (for offenses defined in Sections 579.015—579.185 RSMo).

Missed deadlines for collection/submission of forensic evidence do not affect its validity
(Section 595.201.2(10) RSMo)
This section of law clarifies that sexual assault forensic evidence remains valid even if a law enforcement officer collects it from a medical provider and then submits it to a crime lab after the 14-day time deadlines for those actions that are established in Section 595.220 RSMo. Also, crime labs retain authority to accept and analyze sexual assault evidence submitted after those time deadlines. Further, labs can enter evidence into the federal CODIS database even if the evidence was submitted after a statutory deadline.

This section also prohibits using the delay in a law enforcement agency’s evidence collection or subsequent submission to a crime lab as grounds in any criminal or civil proceeding to challenge the validity of that DNA database match or of any database information.

Defendant’s conviction can’t be set aside due to failure to comply with victim’s rights
(Section 595.201.2(9) RSMo)
A defendant or person accused or convicted of a crime against a survivor has no standing to seek to have their conviction or sentence set aside based on any failure to provide a survivor with a legal right or notice contained in Section 595.201 RSMo.
Systems enhanced to track, store and maintain confidentiality of rape kits

Updates were made to the sections of law that define and address sexual assault forensic evidence collection, including provisions for: testing, tracking and storing kits and component evidence; confidentiality of evidence; and time limits for storing unreported forensic evidence.

Definitions clarified for anonymous rape kits and “component” evidence not contained in kit (Section 595.220.8(1),(3) RSMo)

The definition of “anonymous evidentiary collection kit” was clarified as: “an evidentiary collection kit collected from a victim 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.” A definition also was added for “component” evidence to define evidence that is not in a rape kit: “any piece of evidence that contains, or may contain, DNA related to the sexual offense for which the forensic examination was performed and that is not stored or maintained within the evidentiary collection kit.”

Survivors to have access to secure, web-based system for rape kit tracking, status reports (Section 595.220.9(5) RSMo)

Sexual assault victims, or a person they designate on their behalf, can register to gain access to a secure, web-based system that will allow them to track and obtain reports on the status and location of their sexual assault forensic evidence kits.

Participation in the rape kit tracking system is mandatory for medical care providers, officials (Section 595.220.10 RSMo)

Participation in the state’s rape kit tracking system is mandatory for appropriate medical providers, law enforcement agencies, laboratories, court personnel, persons or entities involved in the final disposition or destruction of the kits, and all other entities and persons having custody of rape kits.

Statewide central repository created to store unreported rape kits for five years (Section 595.220.11 RSMo)

Missouri is to have a central repository to store unreported evidentiary collection kits that is temperature-controlled to preserve the integrity of the kits and diminish degradation. The unreported kits are required to be retained for five years, except in the case of minor victims. For minor victims, the unreported kits must be retained until five years after the victim reaches age 18. The Department of Public Safety, with the advice of the attorney general and the assistance of the Department of Health and Senior Services, is required to develop the storage repository.

Records in rape kit tracking system must be kept confidential and not subject to disclosure (Section 595.220.12 RSMo)

All records entered into the electronic evidence tracking system shall be confidential and not subject to disclosure under state law.
Sexual Assault Task Force

The Missouri Rights of Victims of Sexual Assault Task Force created for 2020-2021
(Section 595.202 RSMo)
The Missouri Rights of Victims of Sexual Assault Task Force is created in state law to make recommendations to the Missouri General Assembly to address issues of sexual assault based on its collection of data and feedback from a range of people and professionals. The task force is directed to collect data that includes sexual assault reporting, arrest, prosecution rates and access to sexual assault victim services. The task force also is to collect feedback from stakeholders, practitioners and leadership throughout the state and local law enforcement, victim services, forensic science practitioners and health care communities. The task force shall submit a report on its findings to the governor and the General Assembly no later than Dec. 31, 2021. The task force shall expire on Dec. 31, 2021.

Child and Youth Protection

Updates made to laws on qualified minors/homeless youths, child protection, foster care

Many sections of Missouri law were changed on a range of issues involving children and youths.

Qualified minors’ rights expanded to include ability to obtain mental health services
(Section 431.056 RSMo)
Qualified minors, in an expansion of their rights in Missouri law, are able to contract for mental health services without the permission of a parent/guardian. These qualified minors are 16 or 17 years old and are homeless or unaccompanied youths not supported by parents/guardians. These rights are in addition to those that allow qualified minors to seek and receive domestic violence and sexual assault services, to enter contracts for a range of services and to obtain housing, among other rights detailed in Section 431.056 RSMo.

Service providers granted civil/criminal immunity from liability for services to qualified minors (Section 431.056.4 RSMo)
This section of law establishes that those who provide services to qualified minors are immune from civil or criminal liability when providing services, which include mental health, sexual assault, domestic violence shelter and assistance. The provider still can be held liable for their conduct in providing services to a qualified minor if it is determined to involve “gross negligence or willful or wanton acts or omissions.”
Homeless and/or unaccompanied youths can obtain a birth certificate copy without cost (Section 193.265.3 RSMo)
A homeless or unaccompanied youth, or a parent/guardian of a homeless youth, is allowed a one-time waiver of the cost or fees for obtaining a copy of their birth certificate. The youth does not need the signature of a parent or guardian to obtain the birth certificate copy.

Homeless and/or unaccompanied youths eligible for “MO HealthNet” Medicaid coverage (Section 208.151.1(27) RSMo)
The Missouri Department of Social Services is to provide health insurance eligibility to homeless and/or unaccompanied youths through the MO HealthNet (Medicaid) program. This is effective upon federal approval of an amendment to Missouri’s Medicaid state plan.

Children’s Division to conduct a risk assessment within 72 hours for child abuse reports (Section 210.145.2(1)-(2) RSMo)
The Children’s Division, as part of its structured decision-making protocols, is required to conduct a risk assessment on a child within 72 hours of receiving a child abuse/neglect report. The division also must create a new safety assessment tool by the end of 2020 and implement its use before January 2022.

Temporary alternative placements of children with relatives allowed instead of foster care (Section 210.123 RSMo)
With the written agreement of a parent/guardian, the Children’s Division may place a child or children in “temporary alternative placements” with a relative in lieu of traditional foster care. The placements are for no more than 90 days for children who cannot remain safe in the home of their parent or guardian. Background checks of the relative and any adult household member are required before placement as well as a walk-through evaluation of the relative’s home. Children’s Division staff are required to have personal contact with the child at least twice monthly during the placement to ensure the child’s safety, and to schedule team decision-making meetings and open family-centered services. The division can refer the case to the juvenile officer with a recommendation for further action at any time during the alternative placement is in effect.

Foster parents cannot be required to be present for supervised visits for a child in their care (Section 210.566.3(1) RSMo)
This section of law prohibits the Children’s Division from requiring foster parents to conduct or be present for supervised visitation with the biological parents and/or siblings of a child in their care.

Employees at child assessment centers granted civil immunity (Section 210.135.2 RSMo)
An employee of a child assessment center, or a center’s contracted employee, is granted immunity from any civil liability resulting from their participation in investigations and assessment services unless the person acted in bad faith.
Children's Division to determine if a child abuse report involves a person in the military (Sections 210.109 and 210.150 RSMo)
This section of law requires the Children's Division, when it has received a report of child abuse, to determine whether it involves a person serving in the military, specifically the suspected perpetrator or any person responsible for the care, custody and control of the child. If the suspected person is a member of the military, the division must report its findings to the most relevant military program or staff person authorized by the Department of Defense, such as a family advocacy program and its staff.

Limitations placed on requiring children/juveniles to appear in court (Section 211.135 RSMo)
Courts are to limit children's required appearances in juvenile court to instances when it is necessary for decisions. The court is to consider any trauma or hardships for the child that might result from a court appearance.

Controlled Substances

Penalties increased for trafficking of drugs often used in drug-assisted sexual assaults (Sections 579.065, 579.068 RSMo)
The penalties were increased for guilty pleas/convictions of the offense of trafficking in drugs, first degree, which includes any amount of gamma-hydroxybutyric acid (GHB) or 1 gram or more of Rohypnol. GHB and Rohypnol are two drugs often used in drug-facilitated sexual assault. The penalties for the first-degree offense of trafficking drugs are a Class B felony for a first offense and a Class A felony for a second or subsequent offense. The penalties for the second-degree offense involving Rohypnol are a Class B or Class C felony, based on the amounts of drugs involved. The criminal penalty for trafficking in the drug fentanyl is similarly increased.
Laws clarified and expanded on service dogs and service/assistance animals

Missouri law expanded and clarified definitions and descriptions of service dogs and assistance animals. Penalties were created for falsely claiming a dog or animal is a service or assistance animal.

Definition of a service dog expanded to include mental health service dogs
(Section 209.200 RSMo)
The definition of a service dog in Missouri law is updated to be a dog trained to assist an individual with a disability that specifically includes a physical, sensory, psychiatric, intellectual or other mental disability. The definition of a service dog also is expanded to include a mental health service dog. Service dogs are those that are individually trained to perform tasks to mitigate or assist the owner with difficulties directly related to a psychiatric disability, medical condition or developmental disability.

Misdemeanor created for falsely claiming a dog/animal is a service/assistance animal
(Section 209.204.2-3 RSMo.)
Misdemeanor criminal penalties are created for persons who misrepresent a dog as a service or assistance animal in order to gain resulting accommodations under the provisions of the Americans with Disabilities Act (ADA). The same penalties apply for a person who misrepresents any animal as a service animal to gain accommodations under the federal Fair Housing Act or the federal Rehabilitation Act. The penalty increases from a Class C misdemeanor for a first offense to a Class B misdemeanor for a subsequent offense.

Governor’s Council on Disability to create guidance on service animals and housing
(Section 209.204.4-5 RSMo)
As directed by this section of law, the Governor’s Council on Disability, as of August 2020, prepared a brochure for tenants and landlords on guidelines and laws for service dogs/assistance animals related to housing. The council also developed and posted on its website a brochure for business owners that includes ADA-allowable guidelines defining unacceptable behavior for the animals. The brochures are on the council's website at https://disability.mo.gov/serviceanimals.htm.