

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1317

93RD GENERAL ASSEMBLY

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Reported from the Committee on Crime Prevention and Public Safety February 23, 2006 with recommendation that House Committee Substitute for House Bill No. 1317 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules February 28, 2006 with recommendation that House Committee Substitute for House Bill No. 1317 Do Pass.

Taken up for Perfection March 29, 2006. House Committee Substitute for House Bill No. 1317 ordered Perfected and printed , as amended.

STEPHEN S. DAVIS, Chief Clerk

3678L.04P

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## AN ACT

To repeal sections 191.225, 595.030, 595.209 and 610.105, RSMo, and to enact in lieu thereof five new sections relating to crime victim's rights.

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

Section A. Sections 191.225, 595.030, 595.209 and 610.105, RSMo, are repealed and  
2 five new sections enacted in lieu thereof, to be known as sections 191.225, 217.439, 595.030,  
3 595.209, and 610.105, to read as follows:

191.225. 1. The department of health and senior services shall make payments to  
2 [hospitals and physicians] **appropriate medical providers**, out of appropriations made for that  
3 purpose, to cover the [cost] **charges** of the [medical] **forensic** examination [not covered by  
4 insurance, Medicare or Medicaid] of persons who may be a victim of [the crime of rape as  
5 defined in section 566.030, RSMo, or a victim of a crime as defined in chapter 566, RSMo, or  
6 sections 568.020, 568.050, 568.060, 568.080, 568.090, 568.110, and 568.175, RSMo,] **a sexual  
7 offense or crime** if:

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

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.

9 (2) The report of the examination is made on a form approved by the attorney general  
10 with the advice of the department of health and senior services; and

11 (3) The report of the examination is filed [by the victim] with the prosecuting attorney  
12 of the county in which the alleged incident occurred.

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14 **The appropriate medical provider shall file the report of the examination within seventy-**  
15 **two hours of completion of the forensic exam.**

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

21 3. The attorney general, with the advice of the department of health and senior services,  
22 shall develop the forms and procedures for gathering evidence **during the forensic examination**  
23 under the provisions of this section.[ and shall furnish every hospital and physician in this state  
24 with copies of such forms and procedures.

25 4. Reasonable hospital and physician] **The department of health and senior services**  
26 **shall develop a checklist for appropriate medical providers to refer to while providing**  
27 **medical treatment to victims of a sexual offense or crime.**

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

37 **5. All appropriate medical provider charges for eligible forensic examinations shall**  
38 **be billed to and paid by the department of health and senior services. No appropriate medical**  
39 **provider conducting forensic examinations and providing medical treatment to victims of**  
40 **sexual offenses shall charge the victim for the forensic examination. For appropriate**  
41 **medical provider charges related to the medical treatment of victims of sexual offenses:**

42 (1) **If the victim is an eligible claimant under the crime victims' compensation fund,**  
43 **the appropriate medical provider shall seek compensation under sections 595.010 to**  
44 **595.075, RSMo.**

45           **6. For purposes of this section, the following terms mean:**

46           **(1) "Appropriate medical provider", any licensed nurse, physician, or physician**  
47 **assistant, and any institution employing licensed nurses, physicians, and/or physician**  
48 **assistants; provided that such licensed professionals are the only persons at such institution**  
49 **to perform tasks under the provisions of this section;**

50           **(2) "Evidentiary collection kit", a kit used during a forensic examination that**  
51 **includes materials necessary for appropriate medical providers to gather evidence in**  
52 **accordance with the forms and procedures developed by the attorney general for forensic**  
53 **examinations;**

54           **(3) "Forensic examination", an examination performed by an appropriate medical**  
55 **provider on a victim of an alleged sexual offense or crime to gather evidence for the**  
56 **evidentiary collection kit;**

57           **(4) "Medical treatment", the treatment of all injuries and health concerns resulting**  
58 **directly from a patient's sexual assault or victimization.**

**217.439. Upon the victim's request, a photograph shall be taken of the incarcerated**  
2 **individual prior to release from incarceration and a copy of the photograph shall be**  
3 **provided to the crime victim.**

          595.030. 1. No compensation shall be paid unless the claimant has incurred an  
2 out-of-pocket loss of at least fifty dollars or has lost two continuous weeks of earnings or support  
3 from gainful employment. "Out-of-pocket loss" shall mean unreimbursed or unreimbursable  
4 expenses or indebtedness reasonably incurred for medical care or other services, including  
5 psychiatric, psychological or counseling expenses, necessary as a result of the crime upon which  
6 the claim is based, except that the amount paid for psychiatric, psychological or counseling  
7 expenses per eligible claim shall not exceed two thousand five hundred dollars.

8           2. No compensation shall be paid unless the division of workers' compensation finds that  
9 a crime was committed, that such crime directly resulted in personal physical injury to, or the  
10 death of, the victim, and that police records show that such crime was promptly reported to the  
11 proper authorities. In no case may compensation be paid if the police records show that such  
12 report was made more than [forty-eight] **seventy-two** hours after the occurrence of such crime,  
13 unless the division of workers' compensation finds that the report to the police was delayed for  
14 good cause. If the victim is under eighteen years of age such report may be made by the victim's  
15 parent, guardian or custodian; by a physician, a nurse, or hospital emergency room personnel;  
16 by the division of family services personnel; or by any other member of the victim's family. **In**  
17 **the case of a sexual offense or crime, filing a report of the offense or crime to the proper**  
18 **authorities shall include, but not be limited to, the filing of the report of the forensic**

19 **examination by the appropriate medical provider, as defined in section 191.225, RSMo,**  
20 **with the prosecuting attorney of the county in which the alleged incident occurred.**

21 3. No compensation shall be paid for medical care if the service provider is not a medical  
22 provider as that term is defined in section 595.027, and the individual providing the medical care  
23 is not licensed by the state of Missouri or the state in which the medical care is provided.

24 4. No compensation shall be paid for psychiatric treatment or other counseling services,  
25 including psychotherapy, unless the service provider is a:

26 (1) Physician licensed pursuant to chapter 334, RSMo, or licensed to practice medicine  
27 in the state in which the service is provided;

28 (2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to practice  
29 psychology in the state in which the service is provided;

30 (3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

31 (4) Professional counselor licensed pursuant to chapter 337, RSMo.

32 5. Any compensation paid pursuant to sections 595.010 to 595.075 for death or personal  
33 injury shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or  
34 support from gainful employment, not to exceed two hundred dollars per week, resulting from  
35 such injury or death. In the event of death of the victim, an award may be made for reasonable  
36 and necessary expenses actually incurred for preparation and burial not to exceed five thousand  
37 dollars.

38 6. Any compensation for loss of earnings or support from gainful employment shall be  
39 in an amount equal to the actual loss sustained not to exceed two hundred dollars per week;  
40 provided, however, that no award pursuant to sections 595.010 to 595.075 shall exceed  
41 twenty-five thousand dollars. If two or more persons are entitled to compensation as a result of  
42 the death of a person which is the direct result of a crime or in the case of a sexual assault, the  
43 compensation shall be apportioned by the division of workers' compensation among the  
44 claimants in proportion to their loss.

45 7. The method and timing of the payment of any compensation pursuant to sections  
46 595.010 to 595.075 shall be determined by the division.

595.209. 1. The following rights shall automatically be afforded to victims of dangerous  
2 felonies, as defined in section 556.061, RSMo, victims of murder in the first degree, as defined  
3 in section 565.020, RSMo, victims of voluntary manslaughter, as defined in section 565.023,  
4 RSMo, and victims of an attempt to commit one of the preceding crimes, as defined in section  
5 564.011, RSMo; and, upon written request, the following rights shall be afforded to victims of  
6 all other crimes and witnesses of crimes:

7 (1) For victims, the right to be present at all criminal justice proceedings at which the  
8 defendant has such right, including juvenile proceedings where the offense would have been a

9 felony if committed by an adult, even if the victim is called to testify or may be called to testify  
10 as a witness in the case;

11 (2) For victims, the right to information about the crime, as provided for in subdivision  
12 (5) of this subsection;

13 (3) For victims and witnesses, to be informed, in a timely manner, by the prosecutor's  
14 office of the filing of charges, preliminary hearing dates, trial dates, continuances and the final  
15 disposition of the case. Final disposition information shall be provided within five days;

16 (4) For victims, the right to confer with and to be informed by the prosecutor regarding  
17 bail hearings, guilty pleas, pleas under chapter 552, RSMo, or its successors, hearings, sentencing  
18 and probation revocation hearings and the right to be heard at such hearings, including juvenile  
19 proceedings, unless in the determination of the court the interests of justice require otherwise;

20 (5) The right to be informed by local law enforcement agencies, the appropriate juvenile  
21 authorities or the custodial authority of the following:

22 (a) The status of any case concerning a crime against the victim, including juvenile  
23 offenses;

24 (b) The right to be informed by local law enforcement agencies or the appropriate  
25 juvenile authorities of the availability of victim compensation assistance, assistance in obtaining  
26 documentation of the victim's losses, including, but not limited to and subject to existing law  
27 concerning protected information or closed records, access to copies of complete, unaltered,  
28 unedited investigation reports of motor vehicle, pedestrian, and other similar accidents upon  
29 request to the appropriate law enforcement agency by the victim or the victim's representative,  
30 and emergency crisis intervention services available in the community;

31 (c) Any release of such person on bond or for any other reason;

32 (d) Within twenty-four hours, any escape by such person from a municipal detention  
33 facility, county jail, a correctional facility operated by the department of corrections, mental  
34 health facility, or the division of youth services or any agency thereof, and any subsequent  
35 recapture of such person;

36 (6) For victims, the right to be informed by appropriate juvenile authorities of probation  
37 revocation hearings initiated by the juvenile authority and the right to be heard at such hearings  
38 or to offer a written statement, video or audio tape, **counsel or a representative designated by**  
39 **the victim** in lieu of a personal appearance, the right to be informed by the board of probation  
40 and parole of probation revocation hearings initiated by the board and of parole hearings, the  
41 right to be present at each and every phase of parole hearings [and], the right to be heard at  
42 probation revocation and parole hearings or to offer a written statement, video or audio tape,  
43 **counsel or a representative designated by the victim** in lieu of a personal appearance, **and the**  
44 **right to have, upon written request of the victim, a partition set up in the probation or**

45 **parole hearing room, set up in such a way that the victim is shielded from the view of the**  
46 **probationer or parolee**, and the right to be informed by the custodial mental health facility or  
47 agency thereof of any hearings for the release of a person committed pursuant to the provisions  
48 of chapter 552, RSMo, the right to be present at such hearings, the right to be heard at such  
49 hearings or to offer a written statement, video or audio tape, **counsel or a representative**  
50 **designated by the victim** in lieu of personal appearance;

51 (7) For victims and witnesses, upon their written request, the right to be informed by the  
52 appropriate custodial authority, including any municipal detention facility, juvenile detention  
53 facility, county jail, correctional facility operated by the department of corrections, mental health  
54 facility, division of youth services or agency thereof if the offense would have been a felony if  
55 committed by an adult, postconviction or commitment pursuant to the provisions of chapter 552,  
56 RSMo, of the following:

57 (a) The projected date of such person's release from confinement;

58 (b) Any release of such person on bond;

59 (c) Any release of such person on furlough, work release, trial release, electronic  
60 monitoring program, or to a community correctional facility or program or release for any other  
61 reason, in advance of such release;

62 (d) Any scheduled parole or release hearings, including hearings under section 217.362,  
63 RSMo, regarding such person and any changes in the scheduling of such hearings. No such  
64 hearing shall be conducted without thirty days' advance notice;

65 (e) Within twenty-four hours, any escape by such person from a municipal detention  
66 facility, county jail, a correctional facility operated by the department of corrections, mental  
67 health facility, or the division of youth services or any agency thereof, and any subsequent  
68 recapture of such person;

69 (f) Any decision by a parole board, by a juvenile releasing authority or by a circuit court  
70 presiding over releases pursuant to the provisions of chapter 552, RSMo, or by a circuit court  
71 presiding over releases under section 217.362, RSMo, to release such person or any decision by  
72 the governor to commute the sentence of such person or pardon such person;

73 (g) Notification within thirty days of the death of such person;

74 (8) For witnesses who have been summoned by the prosecuting attorney and for victims,  
75 to be notified by the prosecuting attorney in a timely manner when a court proceeding will not  
76 go on as scheduled;

77 (9) For victims and witnesses, the right to reasonable protection from the defendant or  
78 any person acting on behalf of the defendant from harm and threats of harm arising out of their  
79 cooperation with law enforcement and prosecution efforts;

80 (10) For victims and witnesses, on charged cases or submitted cases where no charge  
81 decision has yet been made, to be informed by the prosecuting attorney of the status of the case  
82 and of the availability of victim compensation assistance and of financial assistance and  
83 emergency and crisis intervention services available within the community and information  
84 relative to applying for such assistance or services, and of any final decision by the prosecuting  
85 attorney not to file charges;

86 (11) For victims, to be informed by the prosecuting attorney of the right to restitution  
87 which shall be enforceable in the same manner as any other cause of action as otherwise  
88 provided by law;

89 (12) For victims and witnesses, to be informed by the court and the prosecuting attorney  
90 of procedures to be followed in order to apply for and receive any witness fee to which they are  
91 entitled;

92 (13) When a victim's property is no longer needed for evidentiary reasons or needs to be  
93 retained pending an appeal, the prosecuting attorney or any law enforcement agency having  
94 possession of the property shall, upon request of the victim, return such property to the victim  
95 within five working days unless the property is contraband or subject to forfeiture proceedings,  
96 or provide written explanation of the reason why such property shall not be returned;

97 (14) An employer may not discharge or discipline any witness, victim or member of a  
98 victim's immediate family for honoring a subpoena to testify in a criminal proceeding, **attending**  
99 **a criminal proceeding**, or for participating in the preparation of a criminal proceeding, **or**  
100 **require any witness, victim, or member of a victim's immediate family to use vacation time,**  
101 **personal time, or sick leave for honoring a subpoena to testify in a criminal proceeding,**  
102 **attending a criminal proceeding, or participating in the preparation of a criminal**  
103 **proceeding;**

104 (15) For victims, to be provided with creditor intercession services by the prosecuting  
105 attorney if the victim is unable, as a result of the crime, temporarily to meet financial obligations;

106 (16) For victims and witnesses, the right to speedy disposition of their cases, and for  
107 victims, the right to speedy appellate review of their cases, provided that nothing in this  
108 subdivision shall prevent the defendant from having sufficient time to prepare such defendant's  
109 defense. The attorney general shall provide victims, upon their written request, case status  
110 information throughout the appellate process of their cases. The provisions of this subdivision  
111 shall apply only to proceedings involving the particular case to which the person is a victim or  
112 witness;

113 (17) For victims and witnesses, to be provided by the court, a secure waiting area during  
114 court proceedings and to receive notification of the date, time and location of any hearing

115 conducted by the court for reconsideration of any sentence imposed, modification of such  
116 sentence or recall and release of any defendant from incarceration;

117 **(18) For victims, the right to receive upon request a photograph taken of the**  
118 **defendant prior to release from incarceration.**

119 2. The provisions of subsection 1 of this section shall not be construed to imply any  
120 victim who is incarcerated by the department of corrections or any local law enforcement agency  
121 has a right to be released to attend any hearing or that the department of corrections or the local  
122 law enforcement agency has any duty to transport such incarcerated victim to any hearing.

123 3. Those persons entitled to notice of events pursuant to the provisions of subsection 1  
124 of this section shall provide the appropriate person or agency with their current addresses and  
125 telephone numbers or the addresses or telephone numbers at which they wish notification to be  
126 given.

127 4. Notification by the appropriate person or agency utilizing the statewide automated  
128 crime victim notification system as established in section 650.310, RSMo, shall constitute  
129 compliance with the victim notification requirement of this section. If notification utilizing the  
130 statewide automated crime victim notification system cannot be used, then written notification  
131 shall be sent by certified mail to the most current address provided by the victim.

132 5. Victims' rights as established in section 32 of article I of the Missouri Constitution or  
133 the laws of this state pertaining to the rights of victims of crime shall be granted and enforced  
134 regardless of the desires of a defendant and no privileges of confidentiality shall exist in favor  
135 of the defendant to exclude victims or prevent their full participation in each and every phase of  
136 parole hearings or probation revocation hearings. The rights of the victims granted in this section  
137 are absolute and the policy of this state is that the victim's rights are paramount to the defendant's  
138 rights. The victim has an absolute right to be present at any hearing in which the defendant is  
139 present before a probation and parole hearing officer.

610.105. 1. If the person arrested is charged but the case is subsequently nolle prossed,  
2 dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court  
3 in which the action is prosecuted, official records pertaining to the case shall thereafter be closed  
4 records when such case is finally terminated except as provided in **subsection 2 of this section**  
5 **and** section 610.120 and except that the court's judgment or order or the final action taken by the  
6 prosecutor in such matters may be accessed. If the accused is found not guilty due to mental  
7 disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall  
8 thereafter be closed records upon such findings, except that the disposition may be accessed only  
9 by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo,  
10 and in-home services provider agencies as defined in section 660.250, RSMo, in the manner  
11 established by section 610.120.



12           **2. If the person arrested is charged with an offense found in chapter 566, RSMo,**  
13 **section 568.045, 568.050, 568.060, 568.065, 568.080, 568.090, or 568.175, RSMo, and an**  
14 **imposition of sentence is suspended in the court in which the action is prosecuted, the**  
15 **official records pertaining to the case shall be made available to the victim, for the purpose**  
16 **of using the records in his or her own judicial proceedings, or if the victim is a minor to the**  
17 **victim's parents or guardian, upon request.**

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