

8236

I N S E N A T E

December 23, 2016

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law and a chapter of the laws of 2016 amending the executive law, relating to the processing and maintenance of sexual offense evidence kits, as proposed in legislative bills numbers A.10067-A and S.8117, in relation to making technical amendments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 838-a of the executive law, as added by a chap-
2 ter of the laws of 2016, amending the executive law relating to process-
3 ing and maintenance of sexual offense evidence kits, as proposed in
4 legislative bills numbers A.10067-A and S.8117, is amended to read as
5 follows:

6 S 838-a. Maintenance of sexual offense evidence kits. 1. The following
7 requirements shall apply to all sexual offense evidence kits surrendered
8 to or collected by, at the request of, or with cooperation of [an agency
9 engaged in a law enforcement function in the state] A POLICE AGENCY OR
10 PROSECUTORIAL AGENCY:

11 (a) Each such POLICE agency [engaged in a law enforcement function in
12 the state] AND PROSECUTORIAL AGENCY shall submit any sexual offense
13 evidence kits in its custody or control to an appropriate forensic labo-
14 ratory within ten days of receipt.

15 (b) Each forensic laboratory receiving sexual offense evidence kits
16 after the effective date of this section shall ASSESS CASE SPECIFIC
17 INFORMATION FOR COMBINED DNA INDEX SYSTEM (CODIS) ELIGIBILITY AND, IF
18 ELIGIBLE, ANALYZE THE KITS AND ATTEMPT TO develop [Combined DNA Index
19 System (CODIS)] CODIS eligible profiles of any potential perpetrators
20 from the evidence [tested and, within ninety days after receipt of such
21 kit,] SUBMITTED. THE FORENSIC LAB SHALL report the results to the
22 submitting agency and appropriate prosecutorial entity WITHIN NINETY
23 DAYS AFTER RECEIPT OF A KIT.

24 (c) EACH POLICE AGENCY AND PROSECUTORIAL AGENCY THAT HAS ONE OR MORE
25 SEXUAL OFFENSE EVIDENCE KIT IN ITS CUSTODY OR CONTROL SHALL, WITHIN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH, INVENTORY SUCH
2 KITS AND REPORT THE TOTAL NUMBER OF SUCH KITS TO THE DIVISION AND TO THE
3 FORENSIC LABORATORY WHERE SUCH KITS WILL BE SUBMITTED PURSUANT TO PARA-
4 GRAPH (A) OF THIS SUBDIVISION. THE DIVISION SHALL PROVIDE SUCH INVENTO-
5 RIES TO THE SENATE AND ASSEMBLY LEADERS BY MARCH FIRST, TWO THOUSAND
6 SEVENTEEN. EVERY POLICE AND PROSECUTORIAL AGENCY SHALL UPDATE THIS
7 REPORT EACH MONTH THEREAFTER UNTIL PARAGRAPH (A) OF THIS SUBDIVISION HAS
8 BECOME EFFECTIVE.

9 (D) Each [agency engaged in a law enforcement function in the state]
10 POLICE AGENCY AND PROSECUTORIAL AGENCY that, prior to the effective date
11 of PARAGRAPH (A) OF this [section] SUBDIVISION, has one or more sexual
12 offense evidence kits in its custody or control shall, within [one
13 hundred eighty] THIRTY days after [such] THE effective date OF THIS
14 SECTION, submit all untested kits in its possession or control to an
15 appropriate forensic laboratory.

16 [(d)] (E) Each forensic laboratory, within one hundred [and] twenty
17 days after receiving each sexual offense evidence kit pursuant to para-
18 graph [(c)] (D) of this subdivision shall ASSESS CASE SPECIFIC INFORMA-
19 TION FOR CODIS ELIGIBILITY AND, IF ELIGIBLE, ANALYZE THE KITS AND
20 ATTEMPT TO develop [from evidence submitted Combined DNA Index System
21 (CODIS)] CODIS eligible profiles for any potential perpetrators and
22 shall, within ninety days of [developing] such [profiles] ASSESSMENT,
23 report the results to the submitting agency and the appropriate prosecu-
24 torial entity.

25 (F) THE FAILURE OF ANY SUCH POLICE AGENCY, PROSECUTORIAL AGENCY OR
26 FORENSIC LABORATORY TO COMPLY WITH A TIME LIMIT SPECIFIED IN THIS
27 SECTION SHALL NOT, IN AND OF ITSELF, CONSTITUTE A BASIS FOR A MOTION TO
28 SUPPRESS EVIDENCE IN ACCORDANCE WITH SECTION 710.20 OF THE CRIMINAL
29 PROCEDURE LAW.

30 2. (a) Each forensic laboratory in the state shall report to the divi-
31 sion, on a quarterly basis, in writing, on (i) the number of sexual
32 offense evidence kits it received, (ii) the number of such kits proc-
33 essed for the purpose of developing Combined DNA Index System (CODIS)
34 eligible profiles of any potential perpetrators, and (iii) the number of
35 kits not processed for testing, INCLUDING, THE REASON SUCH KITS WERE
36 INELIGIBLE FOR PROCESSING.

37 (b) Each POLICE agency [involved in a law enforcement function in the
38 state] AND PROSECUTORIAL AGENCY shall report to the division on a quar-
39 terly basis, in writing, on (i) the number of all the sexual offense
40 evidence kits it received, (ii) the number of such kits it submitted to
41 a forensic laboratory for processing, (iii) the number of kits in its
42 custody or control that have not been processed for testing, and (iv)
43 the length of time between receipt of any such sexual offense evidence
44 kit and the submission of any such kit to the forensic laboratory.

45 (C) THE DIVISION SHALL PROVIDE TO THE SENATE AND ASSEMBLY LEADERS SUCH
46 QUARTERLY REPORTS RECEIVED FROM THE FORENSIC LABS AND POLICE AND PROSE-
47 CUTORIAL AGENCIES PURSUANT TO PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION
48 BY JANUARY FIRST, TWO THOUSAND EIGHTEEN AND ANNUALLY THEREAFTER.

49 3. The division shall undertake actions designed to ensure that all
50 POLICE agencies [engaged in a law enforcement function] AND PROSECUTORI-
51 AL AGENCIES in the state and all forensic laboratories are educated and
52 aware of the provisions of this section.

53 S 2. Section 2 of a chapter of the laws of 2016, amending the execu-
54 tive law relating to the processing and maintenance of sexual offense
55 evidence kits, as proposed in legislative bills numbers A.10067-A and
56 S.8117, is amended to read as follows:

1 S 2. This act shall take effect [on the ninetieth day] ONE YEAR after
2 it shall have become a law; provided, however, that paragraphs [(c) and
3 (d)] (A) AND (B) of subdivision 1 of section 838-a of the executive law
4 as added by section one of this act, shall take effect [immediately] ON
5 THE NINETIETH DAY AFTER THIS ACT SHALL HAVE BECOME A LAW; AND PROVIDED
6 FURTHER, HOWEVER, THAT PARAGRAPH (C) OF SUBDIVISION 1 OF SECTION 838-A
7 OF THE EXECUTIVE LAW AS ADDED BY SECTION ONE OF THIS ACT, SHALL TAKE
8 EFFECT IMMEDIATELY.

9 S 3. This act shall take effect on the same date and in the same
10 manner as a chapter of the laws of 2016, amending the executive law
11 relating to the processing and maintenance of sexual offense evidence
12 kits, as proposed in legislative bills numbers A.10067-A and S.8117,
13 takes effect.