STATE OF NEW YORK

375

2017-2018 Regular Sessions

IN ASSEMBLY

January 5, 2017

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Codes

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:

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

§ 838-a. Maintenance of sexual offense evidence kits. 1. The following requirements shall apply to all sexual offense evidence kits surrendered to or collected by, at the request of, or with cooperation of [~~an agency engaged in a law enforcement function in the state~~] **a police agency or prosecutorial agency**:

(a) Each such **police** agency [~~engaged in a law enforcement function in the state~~] **and prosecutorial agency** shall submit any sexual offense evidence kits in its custody or control to an appropriate forensic laboratory within ten days of receipt.

(b) Each forensic laboratory receiving sexual offense evidence kits after the effective date of this section shall **assess case specific information for Combined DNA Index System (CODIS) eligibility and, if eligible, analyze the kits and attempt to** develop [~~Combined DNA Index System (CODIS)~~] **CODIS** eligible profiles of any potential perpetrators from the evidence [~~tested and, within ninety days after receipt of such kit,~~] **submitted. The forensic lab shall** report the results to the

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

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submitting agency and appropriate prosecutorial entity **within ninety days after receipt of a kit**.

(c) **Each police agency and prosecutorial agency that has one or more sexual offense evidence kit in its custody or control shall, within ninety days after the effective date of this paragraph, inventory such kits and report the total number of such kits to the division and to the forensic laboratory where such kits will be submitted pursuant to paragraph (a) of this subdivision. The division shall provide such inventories to the senate and assembly leaders by March first, two thousand seventeen. Every police and prosecutorial agency shall update this report each month thereafter until paragraph (a) of this subdivision has become effective.**

(d) Each [~~agency engaged in a law enforcement function in the state~~] **police agency and prosecutorial agency** that, prior to the effective date of **paragraph (a) of** this [~~section~~] **subdivision**, has one or more sexual offense evidence kits in its custody or control shall, within [~~one hundred eighty~~] **thirty** days after [~~such~~] **the** effective date **of this section**, submit all untested kits in its possession or control to an appropriate forensic laboratory.

[~~(d)~~] **(e)** Each forensic laboratory, within one hundred [~~and~~] twenty days after receiving each sexual offense evidence kit pursuant to paragraph [~~(c)~~] **(d)** of this subdivision shall **assess case specific information for CODIS eligibility and, if eligible, analyze the kits and attempt to** develop [~~from evidence submitted Combined DNA Index System (CODIS)~~] **CODIS** eligible profiles for any potential perpetrators and shall, within ninety days of [~~developing~~] such [~~profiles~~] **assessment**, report the results to the submitting agency and the appropriate prosecutorial entity.

(f) The failure of any such police agency, prosecutorial agency or forensic laboratory to comply with a time limit specified in this section shall not, in and of itself, constitute a basis for a motion to suppress evidence in accordance with section 710.20 of the criminal procedure law.

2. (a) Each forensic laboratory in the state shall report to the division, on a quarterly basis, in writing, on (i) the number of sexual offense evidence kits it received, (ii) the number of such kits processed for the purpose of developing Combined DNA Index System (CODIS) eligible profiles of any potential perpetrators, and (iii) the number of kits not processed for testing**, including, the reason such kits were ineligible for processing**.

(b) Each **police** agency [~~involved in a law enforcement function in the state~~] **and prosecutorial agency** shall report to the division on a quarterly basis, in writing, on (i) the number of all the sexual offense evidence kits it received, (ii) the number of such kits it submitted to a forensic laboratory for processing, (iii) the number of kits in its custody or control that have not been processed for testing, and (iv) the length of time between receipt of any such sexual offense evidence kit and the submission of any such kit to the forensic laboratory.

(c) The division shall provide to the senate and assembly leaders such quarterly reports received from the forensic labs and police and prosecutorial agencies pursuant to paragraphs (a) and (b) of this subdivision by January first, two thousand eighteen and annually thereafter.

3. The division shall undertake actions designed to ensure that all **police** agencies [~~engaged in a law enforcement function~~] **and prosecutorial agencies** in the state and all forensic laboratories are educated and aware of the provisions of this section.

§ 2. Section 2 of 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, is amended to read as follows:

§ 2. This act shall take effect [~~on the ninetieth day~~] **one year** after it shall have become a law; provided, however, that paragraphs [~~(c) and (d)~~] **(a) and (b)** of subdivision 1 of section 838-a of the executive law as added by section one of this act, shall take effect [~~immediately~~] **on the ninetieth day after this act shall have become a law; and provided further, however, that paragraph (c) of subdivision 1 of section 838-a of the executive law as added by section one of this act, shall take effect immediately**.

§ 3. This act shall take effect on the same date and in the same manner as 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, takes effect.