# STATE OF NEW YORK

8401

2017-2018 Regular Sessions

# IN ASSEMBLY

June 13, 2017

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

AN ACT to amend the public health law and the executive law, in relation to establishing a sexual assault survivor bill of rights; and to amend the executive law, in relation to establishing a victim's right to notice and requiring a study relating to the feasibility of establishing a statewide tracking system for sexual offense evidence kits

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subdivision 6 of section 2805-i of the public health law is renumbered subdivision 8, and two new subdivisions 6 and 7 are added to read as follows:

**6. (a) The department, in conjunction with the division of criminal justice services, the department of law and the office of victim services, shall establish a sexual assault survivor bill of rights for purposes of informing sexual offense victims of their rights under state law. Such bill of rights shall include, at a minimum:**

**(1) the right of the victim to consult with a local rape crisis or victim assistance organization, to have a representative of such organization accompany the victim through the sexual offense examination, and to have such an organization be summoned by the medical facility, police agency or prosecutorial agency before the commencement of the physical examination or interview, unless no rape crisis or victim assistance organization can be summoned in a reasonably timely manner;**

**(2) the right of the victim to be offered and have made available appropriate post-exposure treatment therapies, including a seven day starter pack of HIV post-exposure prophylaxis, in cases where it has been determined that a significant exposure to HIV has occurred;**

**(3) the right to receive information relating to and the provision of emergency contraception in accordance with section twenty-eight hundred five-p of this article;**

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

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(4) the right to be offered contact information for the police agency or prosecutorial agency with jurisdiction over the sexual offense and be informed, upon request of the victim, with notice of the date and location upon which their sexual offense evidence kit was assessed for combined DNA Index System (CODIS) eligibility and analyzed, whether a CODIS eligible profile was developed and/or a DNA match was identified, and the estimated destruction date, if any, for the sexual offense evidence kit in a manner of communication designated by the victim, unless such information would impede an ongoing investigation; and

(5) the right to be informed when there is any change in the status of their case or reopening of the case.

(b) Before a medical facility commences a physical examination of a sexual offense victim, or a police agency or prosecutorial agency commences an interview of a sexual offense victim, the healthcare professional conducting the exam, police agency or prosecutorial agency shall inform the victim of his or her rights and provide a copy of the sexual assault survivor bill of rights.

7. The department, in conjunction with the office of victim services and the division of criminal justice services, shall conduct a study on the maintenance of sexual offense evidence kits, such that it shall determine the feasibility and the benefits of increasing the time and manner in which hospitals must maintain sexual offense evidence kits. The commissioner shall submit a report of the department's findings and recommendations on what, if any, changes should be made to the laws relating thereto to increase the time and manner hospitals are required to maintain sexual offense evidence, to the governor, the temporary president of the senate and the speaker of the assembly on or before May first, two thousand eighteen.

§ 2. Paragraph (f) of subdivision 1 of section 838-a of the executive law, as added by chapter 6 of the laws of 2017, is amended to read as follows:

(f) The failure of any such police agency, prosecutorial agency or forensic laboratory to comply with [~~a time limit specified in~~] this section or section eight hundred thirty-eight-b of this article 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.

§ 3. Subdivision 3 of section 838-a of the executive law is renumbered subdivision 4 and a new subdivision 3 is added to read as follows:

3. Each police agency and prosecutorial agency within this state shall adopt policies and procedures concerning contact with the victims and the provision of information to victims, upon request, concerning their sexual offense evidence kits. The policies and procedures shall be evidence-based and survivor-focused and shall include, at a minimum, a requirement that:

(a) the police agency and prosecutorial agency designate at least one person, who is trained in trauma and victim response, within its agency to receive all inquiries concerning sexual offense evidence kits from victims; and

(b) at the time that a sexual offense evidence kit is collected, a victim be provided with general contact information for the police agency and prosecutorial agency with jurisdiction over the sexual assault offense.

§ 4. The executive law is amended by adding a new section 838-b to read as follows:

§ 838-b. Victim's right to notice: Each police agency and prosecutorial agency with jurisdiction over the sexual assault offense shall, upon request of the victim, provide the sexual offense victim with notice of the date and location upon which his or her sexual offense evidence kit was assessed for CODIS eligibility and analyzed, whether a CODIS eligible profile was developed and/or a DNA match was identified, and the estimated destruction date, if any, for the kit in a manner of communication designated by the victim, unless such information would impede an ongoing investigation, as outlined in the sexual assault survivors bill of rights established pursuant to subdivision six of section twenty-eight hundred five-i of the public health law.

§ 5. The executive law is amended by adding a new section 838-c to read as follows:

§ 838-c. Study and report on establishing a statewide sexual offense evidence kit tracking system. The division shall conduct a study relating to the feasibility of establishing a statewide sexual offense evidence kit tracking system to streamline law enforcement tracking, create greater transparency and accountability in ensuring compliance with this article and to provide a way for survivors to check the status of his or her sexual offense evidence kit throughout the entire process, from collection to conviction. The commissioner shall submit a report of the division's findings and recommendations to the governor, the temporary president of the senate and the speaker of the assembly on or before May first, two thousand eighteen.

§ 6. This act shall take effect immediately, except that:

(a) Subdivision 6 of section 2805-i of the public health law, as added by section one of this act, shall take effect on the ninetieth day after this act shall have become a law; provided that, effective immediately the department of health is authorized to establish and make available the sexual assault survivor bill of rights, required to be established pursuant to such subdivision, on or before the effective date thereof; and

(b) sections two, three and four of this act shall take effect on the ninetieth day after this act shall have become a law, provided that if section 838-a of the executive law shall not have taken effect on or before such date, then sections two and three of this act shall take effect on the same date and manner as section 2 of chapter 500 of the laws of 2016, as amended.