

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:

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

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

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

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

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

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

LBD11584-03-7

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

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

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

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

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

32 (f) The failure of any such police agency, prosecutorial agency or
33 forensic laboratory to comply with [~~a time limit specified in~~] this
34 section or section eight hundred thirty-eight-b of this article shall
35 not, in and of itself, constitute a basis for a motion to suppress
36 evidence in accordance with section 710.20 of the criminal procedure
37 law.

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

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

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

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

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

1 § 838-b. Victim's right to notice: Each police agency and prosecu-
2 torial agency with jurisdiction over the sexual assault offense shall, upon
3 request of the victim, provide the sexual offense victim with notice of
4 the date and location upon which his or her sexual offense evidence kit
5 was assessed for CODIS eligibility and analyzed, whether a CODIS eligi-
6 ble profile was developed and/or a DNA match was identified, and the
7 estimated destruction date, if any, for the kit in a manner of communi-
8 cation designated by the victim, unless such information would impede an
9 ongoing investigation, as outlined in the sexual assault survivors bill
10 of rights established pursuant to subdivision six of section twenty-
11 eight hundred five-i of the public health law.

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

14 § 838-c. Study and report on establishing a statewide sexual offense
15 evidence kit tracking system. The division shall conduct a study relat-
16 ing to the feasibility of establishing a statewide sexual offense
17 evidence kit tracking system to streamline law enforcement tracking,
18 create greater transparency and accountability in ensuring compliance
19 with this article and to provide a way for survivors to check the status
20 of his or her sexual offense evidence kit throughout the entire process,
21 from collection to conviction. The commissioner shall submit a report of
22 the division's findings and recommendations to the governor, the tempo-
23 rary president of the senate and the speaker of the assembly on or
24 before May first, two thousand eighteen.

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

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

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