

STATE OF NEW YORK

8401--B

2017-2018 Regular Sessions

IN ASSEMBLY

June 13, 2017

Introduced by M. of A. SIMOTAS, OTIS, DINOWITZ, DICKENS, QUART, DE LA ROSA, NIOU, RIVERA, MOSLEY, BARRON, McDONALD, ZEBROWSKI, CROUCH, SIMON, GOTTFRIED, CAHILL, GIGLIO, HEVESI, PELLEGRINO -- Multi-Sponsored by -- M. of A. ABBATE, BRAUNSTEIN, M. L. MILLER -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the executive law, in relation to establishing a sexual assault victim bill of rights; and to amend the executive law, in relation to maintenance of sexual assault evidence, establishing a victim's right to notice prior to destruction

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 7 and a new subdivision 6 is added to read as
3 follows:

4 6. (a) The department, in consultation with the division of criminal
5 justice services, the office of victim services, hospitals, other health
6 care providers and victim advocacy organizations, shall publish a sexual
7 assault victim bill of rights for purposes of informing sexual offense
8 victims of their rights under state law. Such bill of rights shall be
9 prominently published on the department's website, in at least the ten
10 most common languages spoken in this state, and distributed to hospitals
11 as a document which shall be provided to every presenting sexual offense
12 victim. The department may update the bill of rights as necessary to
13 reflect changes in state law and more accurately explain the law. Such
14 bill of rights shall be in plain, easy to understand language, and
15 include the right of the victim to:

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

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1 (1) consult with a local rape crisis or local victim assistance organ-
2 ization, to have a representative of such organization accompany the
3 victim through the sexual offense examination, and to have such an
4 organization be summoned by the medical facility, police agency, prose-
5 cutorial agency or other law enforcement agency before the commencement
6 of the physical examination or interview, pursuant to this section;

7 (2) be offered and have made available at no cost appropriate post-ex-
8 posure treatment therapies, including a seven day starter pack of HIV
9 post-exposure prophylaxis in accordance with paragraph (c) of subdivi-
10 sion one of this section and subdivision thirteen of section six hundred
11 thirty-one of the executive law;

12 (3) a health care forensic examination at no cost and the right to be
13 notified of the option to decline to provide private health insurance
14 information and have the office of victim services reimburse the hospi-
15 tal for the examination under subdivision thirteen of section six
16 hundred thirty-one of the executive law;

17 (4) receive information relating to and the provision of emergency
18 contraception in accordance with section twenty-eight hundred five-p of
19 this article;

20 (5) be offered contact information for the police agency, prosecutori-
21 al agency or other law enforcement agency with jurisdiction over the
22 sexual offense and be informed, upon request of the victim, of the date
23 and location at which such sexual offense evidence kit was assessed for
24 Combined DNA Index System (CODIS) eligibility and analyzed, whether a
25 CODIS eligible profile was developed and whether or not a DNA match was
26 identified, provided, however, that the prosecutorial agency serving the
27 jurisdiction may temporarily delay release of such DNA match information
28 to the victim, prior to the arrest of a suspect alleged to have commit-
29 ted such offense, if such agency documents in writing and notifies the
30 victim that release of such information would compromise the successful
31 investigation of such sexual offense;

32 (6) be notified between thirty and ten days prior to the transfer of a
33 sexual offense evidence kit from the hospital to another storage facili-
34 ty in accordance with paragraph (h) of subdivision two of this section,
35 the right to have a sexual offense evidence kit maintained at an appro-
36 priate storage facility for twenty years from the date of collection,
37 the right, if not previously consented to, to consent to release the
38 evidence to law enforcement at any time during the twenty years from
39 collection, and the right to be notified by such facility at least nine-
40 ty days prior to the expiration of the twenty-year storage period in
41 accordance with paragraph (k) of subdivision two of this section; and

42 (7) be notified by the prosecutorial agency with jurisdiction of judi-
43 cial proceedings relating to their case in accordance with article twen-
44 ty-three of the executive law; and

45 (8) decide whether or not the victim wishes to report the offense for
46 investigation by law enforcement.

47 (b) Before a medical facility commences a physical examination of a
48 sexual offense victim, or a police agency, prosecutorial agency or other
49 law enforcement agency commences an interview of a sexual offense
50 victim, the health care professional conducting the exam, police agency,
51 prosecutorial agency or other law enforcement agency shall inform the
52 victim of the victim's rights and provide a copy of this sexual assault
53 victim bill of rights.

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

1 3 is renumbered subdivision 4 and a new subdivision 3 is added to read
2 as follows:

3 (f) The failure of any such police agency, prosecutorial agency or
4 forensic laboratory to comply with a time limit specified in this
5 section or section eight hundred thirty-eight-b of this article shall
6 not, in and of itself, constitute a basis for a motion to suppress
7 evidence in accordance with section 710.20 of the criminal procedure
8 law.

9 3. Each police agency, prosecutorial agency and other law enforcement
10 agency within this state shall adopt policies and procedures concerning
11 contact with victims of sexual offenses, and the provision of informa-
12 tion to victims upon request, concerning sexual offense evidence
13 collected or received from them. The policies and procedures shall be
14 victim-focused, meaning systematically focused on the needs and concerns
15 of victims to ensure the compassionate and sensitive delivery of
16 services in a nonjudgemental manner, and shall include, at a minimum, a
17 requirement that:

18 (a) the police agency, prosecutorial agency or other law enforcement
19 agency designate at least one person, who is trained in trauma and
20 victim response through a program meeting minimum standards established
21 by the division of criminal justice services, following appropriate
22 guidelines on evidence-based, trauma-informed practices, which may
23 include guidelines from the Substance Abuse and Mental Health Services
24 Administration, within its agency to receive all inquiries concerning
25 sexual offense evidence kits from victims; and

26 (b) at the time that a sexual offense evidence kit is collected, a
27 victim shall be provided with: (i) a copy of the victim bill of rights
28 described in subdivision six of section twenty-eight hundred five-f of
29 the public health law; and (ii) contact information, including a name,
30 phone number and e-mail address, for the individual designated pursuant
31 to paragraph (a) of this subdivision at the police agency, prosecutorial
32 agency or other law enforcement agency with jurisdiction over the sexual
33 offense.

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

36 § 838-b. Victim's right to notice. Each police agency, prosecutorial
37 agency and other law enforcement agency with jurisdiction over a sexual
38 offense shall, upon request of the victim who has consented to report
39 such offense to law enforcement, provide the sexual offense victim with
40 notice of the date and location at which sexual offense evidence
41 collected or received from such victim is assessed for CODIS eligibility
42 and analyzed, whether a CODIS eligible profile was developed and whether
43 or not a DNA match was identified, provided, however, that the prosecu-
44 torial agency serving the jurisdiction may temporarily delay release of
45 such DNA match information to the victim, prior to the arrest of a
46 suspect alleged to have committed such offense, if such agency documents
47 in writing and notifies the victim that release of such information
48 would compromise the successful investigation of such sexual offense.
49 The police or prosecutorial agency or other law enforcement agency in
50 possession of a sexual offense evidence kit shall notify the sexual
51 offense victim at least ninety days prior to the expiration of the twen-
52 ty-year storage period in accordance with paragraph (k) of subdivision
53 two of section twenty-eight hundred five-i of the public health law.

54 § 4. This act shall take effect on the one hundred eightieth day after
55 it shall have become a law. Effective immediately, however, the addi-
56 tion, amendment, and/or repeal of any rules and regulations necessary to

1 implement the provisions of this act on its effective date, including
2 the compiling of the sexual assault victim bill of rights required by
3 section one of this act, are authorized and directed to be completed on
4 or before such effective date.