

# STATE OF NEW YORK

8401--C

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, GALEF, GLICK, WEPRIN, L. ROSENTHAL -- 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 -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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

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

LBD11584-20-8

1 victim. The department may update the bill of rights as necessary to  
2 reflect changes in state law and more accurately explain the law. Such  
3 bill of rights shall be in plain, easy to understand language, and  
4 include the right of the victim to:

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

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

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

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

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

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

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

50 (8) decide whether or not the victim wishes to report the offense to  
51 law enforcement.

52 (b) Before a medical facility commences a physical examination of a  
53 sexual offense victim, or a police agency, prosecutorial agency or other  
54 law enforcement agency commences an interview of a sexual offense  
55 victim, the health care professional conducting the exam, police agency,  
56 prosecutorial agency or other law enforcement agency shall inform the

1 victim of the victim's rights by providing a copy of this sexual assault  
2 victim bill of rights and offering to explain such rights.

3 § 2. Paragraph (f) of subdivision 1 of section 838-a of the executive  
4 law, as added by chapter 6 of the laws of 2017, is amended, subdivision  
5 3 is renumbered subdivision 4 and a new subdivision 3 is added to read  
6 as follows:

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

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

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

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

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

40 § 838-b. Victim's right to notice. Each police agency, prosecutorial  
41 agency and other law enforcement agency with jurisdiction over a sexual  
42 offense shall, upon request of the victim who has consented to report  
43 such offense to law enforcement, provide the sexual offense victim with  
44 notice of the date and location at which sexual offense evidence  
45 collected or received from such victim is assessed for CODIS eligibility  
46 and analyzed, whether a CODIS eligible profile was developed and whether  
47 or not a DNA match was identified, provided, however, that the police  
48 agency, prosecutorial agency or other law enforcement agency serving the  
49 jurisdiction may temporarily delay release of such DNA match information  
50 to the victim, prior to the arrest of a suspect alleged to have commit-  
51 ted such offense, if such agency documents in writing and notifies the  
52 victim that release of such information would compromise the successful  
53 investigation of such sexual offense. The police or prosecutorial agen-  
54 cy or other law enforcement agency in possession of a sexual offense  
55 evidence kit shall notify the sexual offense victim at least ninety days  
56 prior to the expiration of the twenty-year storage period in accordance

1 with paragraph (k) of subdivision two of section twenty-eight hundred  
2 five-i of the public health law.

3 § 4. This act shall take effect on the one hundred eightieth day after  
4 it shall have become a law. Effective immediately, however, the addi-  
5 tion, amendment, and/or repeal of any rules and regulations necessary to  
6 implement the provisions of this act on its effective date, including  
7 the compiling of the sexual assault victim bill of rights required by  
8 section one of this act, are authorized and directed to be completed on  
9 or before such effective date.