

# STATE OF NEW YORK

8867

## IN SENATE

May 30, 2018

Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the executive law, in relation to treatment of domestic violence victims and documentation of injury and evidence

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

1 Section 1. The public health law is amended by adding a new section  
2 2805-z to read as follows:

3 § 2805-z. Treatment of domestic violence victims and documentation of  
4 injury and evidence. 1. Upon the request and consent of the patient,  
5 every hospital providing treatment to alleged victims of domestic  
6 violence shall be responsible for:

7 (a) providing documentation of domestic violence evidence, including  
8 but not limited to the maintenance of domestic violence evidence and the  
9 chain of custody as provided in subdivision two of this section;

10 (b) contacting a domestic violence assistance organization or shelter,  
11 if any, providing domestic violence services and assistance to the  
12 geographic area served by the hospital to establish the coordination of  
13 non-medical services to domestic violence victims who request such coor-  
14 ordination and services; and

15 (c) ensuring that domestic violence victims are not billed for domes-  
16 tic violence forensic exams and are notified orally and in writing of  
17 the option to decline to provide private health insurance information  
18 and have the office of victim services reimburse the hospital for the  
19 exam pursuant to subdivision thirteen of section six hundred thirty-one  
20 of the executive law.

21 2. Domestic violence evidence shall be collected and maintained as  
22 follows:

23 (a) All domestic violence evidence, including but not limited to  
24 photographic evidence, shall be provided to the alleged victim upon  
25 their request. Upon the consent of the victim, all domestic violence  
26 evidence, including photographic evidence, shall be kept in a locked,  
27 separate and secure area for five years from the date of collection;

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

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1 provided that such evidence shall be transferred to a new location or  
2 locations pursuant to this subdivision.

3 (b) Domestic violence evidence shall include, but not be limited to,  
4 slides, cotton swabs, photographs, clothing and other items. Where  
5 appropriate, such items shall be refrigerated and the cloths and swabs  
6 shall be dried, stored in paper bags, and labeled. Each item of evidence  
7 shall be marked and logged with a code number corresponding to the  
8 alleged domestic violence victim's medical record.

9 (c) Upon collection, the hospital shall notify the alleged domestic  
10 violence victim that, after five years, the domestic violence evidence  
11 will be discarded in compliance with state and local health codes and  
12 that the alleged domestic violence victim's clothes or personal effects  
13 will be returned to the alleged domestic violence victim at any time  
14 upon request. The alleged domestic violence victim shall be given the  
15 option of providing contact information for purposes of receiving notice  
16 of the planned destruction of such evidence after the expiration of the  
17 five-year period.

18 3. Nothing within this section shall preclude the reporting hospital  
19 from using the resources, procedures, or means of notification previous-  
20 ly established under any other law with respect to the collection of  
21 evidence that does not mitigate or abrogate any responsibilities herein.

22 4. Notwithstanding any provision of this section, where the person is  
23 an alleged victim of a sexual assault or offense the hospital shall  
24 treat and maintain evidence in accordance with section twenty-eight  
25 hundred five-i of this article.

26 § 2. Subdivision 1 of section 631 of the executive law, as amended by  
27 section 22 of part A-1 of chapter 56 of the laws of 2010, is amended to  
28 read as follows:

29 1. No award shall be made unless the office finds that (a) a crime was  
30 committed, (b) such crime directly resulted in personal physical injury  
31 to or the exacerbation of a preexisting disability, or condition, or  
32 death of, the victim, and (c) criminal justice agency records show that  
33 such crime was promptly reported to the proper authorities; and in no  
34 case may an award be made where the criminal justice agency records show  
35 that such report was made more than one week after the occurrence of  
36 such crime unless the office, for good cause shown, finds the delay to  
37 have been justified; provided, however, in cases involving an alleged  
38 sex offense as contained in article one hundred thirty of the penal law  
39 or incest as defined in section 255.25, 255.26 or 255.27 of the penal  
40 law or labor trafficking as defined in section 135.35 of the penal law  
41 or sex trafficking as defined in section 230.34 of the penal law or an  
42 offense chargeable as a family offense as described in section eight  
43 hundred twelve of the family court act or section 530.11 of the criminal  
44 procedure law, the criminal justice agency report need only be made  
45 within a reasonable time considering all the circumstances, including  
46 the victim's physical, emotional and mental condition and family situ-  
47 ation. For the purposes of this subdivision, "criminal justice agency"  
48 shall include, but not be limited to, a police department, a district  
49 attorney's office, and any other governmental agency having responsibil-  
50 ity for the enforcement of the criminal laws of the state provided,  
51 however, that in cases involving such sex offense a criminal justice  
52 agency shall also mean a family court, a governmental agency responsible  
53 for child and/or adult protective services pursuant to title six of  
54 article six of the social services law and/or title one of article  
55 nine-B of the social services law, and any medical facility established  
56 under the laws of the state that provides a forensic physical examina-

1 tion for victims of rape and sexual assault or a forensic examination of  
2 domestic violence victims pursuant to section twenty-eight hundred  
3 five-z of the public health law.

4 § 3. Section 631 of the executive law is amended by adding a new  
5 subdivision 19 to read as follows:

6 19. Notwithstanding any other provision of law, rule, or regulation to  
7 the contrary, when any New York state accredited hospital, accredited  
8 sexual assault examiner program, or licensed health care provider  
9 furnishes services to any alleged domestic violence victim, including  
10 but not limited to a forensic examination of domestic violence victims  
11 pursuant to section twenty-eight hundred five-z of the public health law  
12 in accordance with the domestic violence offense evidence collection  
13 protocol and standards established by the department of health, such  
14 hospital, sexual assault examiner program, or licensed health care  
15 provider shall provide such services to the person without charge and  
16 shall bill the office directly. The office, in consultation with the  
17 department of health, shall define the specific services to be covered  
18 by the domestic violence forensic exam reimbursement fee, which must  
19 include at a minimum forensic examiner services, hospital or health care  
20 facility services related to the exam, and related laboratory tests. The  
21 office, in consultation with the department of health, shall also gener-  
22 ate the necessary regulations and forms for the direct reimbursement  
23 procedure. The rate for reimbursement shall be the amount of itemized  
24 charges not exceeding eight hundred dollars, to be reviewed and adjusted  
25 annually by the office in consultation with the department of health.  
26 The hospital, sexual assault examiner program, or licensed health care  
27 provider must accept this fee as payment in full for these specified  
28 services. No additional billing of the victim for said services is  
29 permissible. A domestic violence victim may voluntarily assign any  
30 private insurance benefits to which he or she is entitled for the health  
31 care forensic examination, in which case the hospital or health care  
32 provider may not charge the office; provided, however, in the event the  
33 domestic violence victim assigns any private health insurance benefit,  
34 such coverage shall not be subject to annual deductibles or coinsurance  
35 or balance billing by the hospital, sexual assault examiner program or  
36 licensed health care provider. A hospital, sexual assault examiner  
37 program or licensed health care provider shall, at the time of the  
38 initial visit, request assignment of any private health insurance bene-  
39 fits to which the domestic violence victim is entitled on a form  
40 prescribed by the office; provided, however, such domestic violence  
41 victim shall be advised orally and in writing that he or she may decline  
42 to provide such information regarding private health insurance benefits  
43 if he or she believes that the provision of such information would  
44 substantially interfere with his or her personal privacy or safety and  
45 in such event, the domestic violence forensic exam fee shall be paid by  
46 the office. Such domestic violence victim shall also be advised that  
47 providing such information may provide additional resources to pay for  
48 services to other victims. If he or she declines to provide such health  
49 insurance information, he or she shall indicate such decision on the  
50 form provided by the hospital, sexual assault examiner program or  
51 licensed health care provider, which form shall be prescribed by the  
52 office.

53 § 4. This act shall take effect immediately.