

# STATE OF NEW YORK

8977

## IN SENATE

June 8, 2018

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed 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  
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:

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

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

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

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

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

9 (5) be offered contact information for the police agency, prosecutori-  
10 al agency or other law enforcement agency with jurisdiction over the  
11 sexual offense and be informed, upon request of the victim, of the date  
12 and location at which such sexual offense evidence kit was assessed for  
13 Combined DNA Index System (CODIS) eligibility and analyzed, whether a  
14 CODIS eligible profile was developed and whether or not a DNA match was  
15 identified, provided, however, that the police agency, prosecutorial  
16 agency or other law enforcement agency serving the jurisdiction may  
17 temporarily delay release of such DNA match information to the victim,  
18 prior to the arrest of a suspect alleged to have committed such offense,  
19 if such agency documents in writing and notifies the victim that release  
20 of such information would compromise the successful investigation of  
21 such sexual offense;

22 (6) be notified between thirty and ten days prior to the transfer of a  
23 sexual offense evidence kit from the hospital to another storage facili-  
24 ty in accordance with paragraph (h) of subdivision two of this section,  
25 the right to have a sexual offense evidence kit maintained at an appro-  
26 priate storage facility for twenty years from the date of collection,  
27 the right, if not previously consented to, to consent to release the  
28 evidence to law enforcement at any time during the twenty years from  
29 collection, and the right to be notified by such facility at least nine-  
30 ty days prior to the expiration of the twenty-year storage period in  
31 accordance with paragraph (k) of subdivision two of this section; and

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

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

37 (b) Before a medical facility commences a physical examination of a  
38 sexual offense victim, or a police agency, prosecutorial agency or other  
39 law enforcement agency commences an interview of a sexual offense  
40 victim, the health care professional conducting the exam, police agency,  
41 prosecutorial agency or other law enforcement agency shall inform the  
42 victim of the victim's rights by providing a copy of this sexual assault  
43 victim bill of rights and offering to explain such rights.

44 § 2. Paragraph (f) of subdivision 1 of section 838-a of the executive  
45 law, as added by chapter 6 of the laws of 2017, is amended, subdivision  
46 3 is renumbered subdivision 4 and a new subdivision 3 is added to read  
47 as follows:

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

54 3. Each police agency, prosecutorial agency and other law enforcement  
55 agency within this state shall adopt policies and procedures concerning  
56 contact with victims of sexual offenses, and the provision of informa-

1 tion to victims upon request, concerning sexual offense evidence  
2 collected or received from them. The policies and procedures shall be  
3 victim-focused, meaning systematically focused on the needs and concerns  
4 of victims to ensure the compassionate and sensitive delivery of  
5 services in a nonjudgemental manner, and shall include, at a minimum, a  
6 requirement that:

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

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

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

25 § 838-b. Victim's right to notice. Each police agency, prosecutorial  
26 agency and other law enforcement agency with jurisdiction over a sexual  
27 offense shall, upon request of the victim who has consented to report  
28 such offense to law enforcement, provide the sexual offense victim with  
29 notice of the date and location at which sexual offense evidence  
30 collected or received from such victim is assessed for CODIS eligibility  
31 and analyzed, whether a CODIS eligible profile was developed and whether  
32 or not a DNA match was identified, provided, however, that the police  
33 agency, prosecutorial agency or other law enforcement agency serving the  
34 jurisdiction may temporarily delay release of such DNA match information  
35 to the victim, prior to the arrest of a suspect alleged to have commit-  
36 ted such offense, if such agency documents in writing and notifies the  
37 victim that release of such information would compromise the successful  
38 investigation of such sexual offense. The police or prosecutorial agen-  
39 cy or other law enforcement agency in possession of a sexual offense  
40 evidence kit shall notify the sexual offense victim at least ninety days  
41 prior to the expiration of the twenty-year storage period in accordance  
42 with paragraph (k) of subdivision two of section twenty-eight hundred  
43 five-i of the public health law.

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