

STATE OF NEW YORK

375

2017-2018 Regular Sessions

IN ASSEMBLY

January 5, 2017

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and a chapter of the laws of 2016 amending the executive law, relating to the processing and maintenance of sexual offense evidence kits, as proposed in legislative bills numbers A.10067-A and S.8117, in relation to making technical amendments

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

1 Section 1. Subdivision 838-a of the executive law, as added by a chapter of the laws of 2016, amending the executive law relating to processing and maintenance of sexual offense evidence kits, as proposed in legislative bills numbers A.10067-A and S.8117, is amended to read as follows:

2 § 838-a. Maintenance of sexual offense evidence kits. 1. The following requirements shall apply to all sexual offense evidence kits surrendered to or collected by, at the request of, or with cooperation of [~~an agency engaged in a law enforcement function in the state~~] a police agency or prosecutorial agency:

3 (a) Each such police agency [~~engaged in a law enforcement function in the state~~] and prosecutorial agency shall submit any sexual offense evidence kits in its custody or control to an appropriate forensic laboratory within ten days of receipt.

4 (b) Each forensic laboratory receiving sexual offense evidence kits after the effective date of this section shall assess case specific information for Combined DNA Index System (CODIS) eligibility and, if eligible, analyze the kits and attempt to develop [~~Combined DNA Index System (CODIS)~~] CODIS eligible profiles of any potential perpetrators from the evidence [~~tested and, within ninety days after receipt of such kit,~~] submitted. The forensic lab shall report the results to the

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

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1 submitting agency and appropriate prosecutorial entity within ninety
2 days after receipt of a kit.

3 (c) Each police agency and prosecutorial agency that has one or more
4 sexual offense evidence kit in its custody or control shall, within
5 ninety days after the effective date of this paragraph, inventory such
6 kits and report the total number of such kits to the division and to the
7 forensic laboratory where such kits will be submitted pursuant to para-
8 graph (a) of this subdivision. The division shall provide such invento-
9 ries to the senate and assembly leaders by March first, two thousand
10 seventeen. Every police and prosecutorial agency shall update this
11 report each month thereafter until paragraph (a) of this subdivision has
12 become effective.

13 ~~(d) Each [agency engaged in a law enforcement function in the state]~~
14 police agency and prosecutorial agency that, prior to the effective date
15 of paragraph (a) of this [section] subdivision, has one or more sexual
16 offense evidence kits in its custody or control shall, within [~~one~~
17 ~~hundred eighty~~] thirty days after [~~such~~] the effective date of this
18 section, submit all untested kits in its possession or control to an
19 appropriate forensic laboratory.

20 ~~[(d)]~~ (e) Each forensic laboratory, within one hundred [~~and~~] twenty
21 days after receiving each sexual offense evidence kit pursuant to para-
22 graph [~~(e)~~] (d) of this subdivision shall assess case specific informa-
23 tion for CODIS eligibility and, if eligible, analyze the kits and
24 attempt to develop [from evidence submitted Combined DNA Index System
25 ~~(CODIS)]~~ CODIS eligible profiles for any potential perpetrators and
26 shall, within ninety days of [~~developing~~] such [~~profiles~~] assessment,
27 report the results to the submitting agency and the appropriate prosecu-
28 torial entity.

29 (f) The failure of any such police agency, prosecutorial agency or
30 forensic laboratory to comply with a time limit specified in this
31 section shall not, in and of itself, constitute a basis for a motion to
32 suppress evidence in accordance with section 710.20 of the criminal
33 procedure law.

34 2. (a) Each forensic laboratory in the state shall report to the divi-
35 sion, on a quarterly basis, in writing, on (i) the number of sexual
36 offense evidence kits it received, (ii) the number of such kits proc-
37 essed for the purpose of developing Combined DNA Index System (CODIS)
38 eligible profiles of any potential perpetrators, and (iii) the number of
39 kits not processed for testing, including, the reason such kits were
40 ineligible for processing.

41 (b) Each police agency [~~involved in a law enforcement function in the~~
42 ~~state]~~ and prosecutorial agency shall report to the division on a quar-
43 terly basis, in writing, on (i) the number of all the sexual offense
44 evidence kits it received, (ii) the number of such kits it submitted to
45 a forensic laboratory for processing, (iii) the number of kits in its
46 custody or control that have not been processed for testing, and (iv)
47 the length of time between receipt of any such sexual offense evidence
48 kit and the submission of any such kit to the forensic laboratory.

49 (c) The division shall provide to the senate and assembly leaders such
50 quarterly reports received from the forensic labs and police and prose-
51 cutorial agencies pursuant to paragraphs (a) and (b) of this subdivision
52 by January first, two thousand eighteen and annually thereafter.

53 3. The division shall undertake actions designed to ensure that all
54 police agencies [~~engaged in a law enforcement function]~~ and prosecutori-
55 al agencies in the state and all forensic laboratories are educated and
56 aware of the provisions of this section.

1 § 2. Section 2 of a chapter of the laws of 2016, amending the execu-
2 tive law relating to the processing and maintenance of sexual offense
3 evidence kits, as proposed in legislative bills numbers A.10067-A and
4 S.8117, is amended to read as follows:

5 § 2. This act shall take effect [~~on the ninetieth day~~] one year after
6 it shall have become a law; provided, however, that paragraphs [~~(c) and~~
7 ~~(d)~~] (a) and (b) of subdivision 1 of section 838-a of the executive law
8 as added by section one of this act, shall take effect [~~immediately~~] on
9 the ninetieth day after this act shall have become a law; and provided
10 further, however, that paragraph (c) of subdivision 1 of section 838-a
11 of the executive law as added by section one of this act, shall take
12 effect immediately.

13 § 3. This act shall take effect on the same date and in the same
14 manner as a chapter of the laws of 2016, amending the executive law
15 relating to the processing and maintenance of sexual offense evidence
16 kits, as proposed in legislative bills numbers A.10067-A and S.8117,
17 takes effect.