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:

Section 1. Subdivision 6 of section 2805-i of the public health law is renumbered subdivision 7 and a new subdivision 6 is added to read as follows:

6. (a) The department, in consultation with the division of criminal justice services, the office of victim services, hospitals, other health care providers and victim advocacy organizations, shall publish a sexual assault victim bill of rights for purposes of informing sexual offense victims of their rights under state law. Such bill of rights shall be prominently published on the department's website, in at least the ten most common languages spoken in this state, and distributed to hospitals 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.

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

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

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

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

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

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

(6) be notified between thirty and ten days prior to the transfer of a sexual offense evidence kit from the hospital to another storage facility in accordance with paragraph (h) of subdivision two of this section, the right to have a sexual offense evidence kit maintained at an appropriate storage facility for twenty years from the date of collection, the right, if not previously consented to, to consent to release the evidence to law enforcement at any time during the twenty years from collection, and the right to be notified by such facility at least ninety days prior to the expiration of the twenty-year storage period in accordance with paragraph (k) of subdivision two of this section; and

(7) be notified by the prosecutorial agency with jurisdiction of judicial proceedings relating to their case in accordance with article twenty-three of the executive law; and

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

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

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

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

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

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

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

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

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

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

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

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