STATE OF NEW YORK

6428--A

Cal. No. 156

2017-2018 Regular Sessions

IN SENATE

May 18, 2017

Introduced by Sens. HANNON, KRUEGER, LARKIN, MURPHY, RITCHIE, TEDISCO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public health law and the executive law, in relation to establishing a sexual assault survivor 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 and requiring a study relating to the feasibility of establishing a statewide tracking system for sexual offense evidence kits

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

Section 1. Subdivision 2 of section 2805-i of the public health law, as amended by chapter 504 of the laws of 1994, is amended to read as follows:

2. The sexual offense evidence shall be collected and kept in a locked separate and secure area for not less than thirty days unless: (a) such evidence is not privileged and the police request its surrender before that time, which request shall be complied with; or (b) such evidence is privileged and (i) the alleged sexual offense victim nevertheless gives permission to turn such privileged evidence over to the police before that time, or (ii) the alleged sexual offense victim signs a statement directing the hospital to not collect and keep such privileged evidence, which direction shall be complied with. The sexual offense evidence shall include, but not be limited to, slides, cotton swabs, clothing and other items. Where appropriate such items must be refrigerated and the clothes and swabs must be dried, stored in paper bags and labeled. Each item of evidence shall be marked and logged with a code number corre-

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

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sponding to the patient's medical record. The alleged sexual offense [~~victim~~] survivor shall be notified [~~that after thirty days, the refrigerated~~] ten days prior to the transfer of sexual offense evidence, that the evidence will be [~~discarded in compliance with state and local health codes and the alleged sexual offense victim's clothes will be returned to the alleged sexual offense victim upon request~~] transferred to a centralized location to be maintained for at least twenty years pursuant to section eight hundred thirty-eight-a of the executive law. The survivor shall be given the option of providing contact information should he or she wish to receive notice of the planned destruction of the evidence after the expiration of the twenty year period.

§ 2. 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 conjunction with the division of criminal justice services, the department of law and the office of victim services, in consultation with hospitals, other health care providers and victim advocacy organizations, shall establish a sexual assault survivor bill of rights for purposes of informing sexual offense victims of their rights under state law. Such bill of rights shall be in plain, easy to understand language, and include, at a minimum:

(1) the right of the victim to consult with a local rape crisis or victim assistance organization, to have a representative of such organization accompany the victim through the sexual offense examination under paragraph (b) of subdivision one and subdivision three of this section, and to have such an organization be summoned by the medical facility, police agency or prosecutorial agency before the commencement of the physical examination or interview, unless no rape crisis or victim assistance organization can be summoned;

(2) the right of the victim to 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 under paragraph (c) of subdivision one of this section and subdivision thirteen of section six hundred thirty-one of the executive law;

(3) the right to 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) the right to receive information relating to and the provision of emergency contraception under section twenty-eight hundred five-p of this article;

(5) the right to be offered contact information for the police agency or prosecutorial agency with jurisdiction over the sexual offense and be informed, upon request of the victim, with notice of the date and location upon which their sexual offense evidence kit was assessed for combined DNA Index System (CODIS) eligibility and analyzed, whether a CODIS eligible profile was developed and/or a DNA match was identified;

(6) the right to be notified prior to the transfer of an unreported sexual offense evidence kit from the hospital to a centralized storage facility, the right to have an unreported sexual offense evidence kit maintained at a centralized storage facility for at least twenty years and the right to be notified by such facility in a manner of communication designated by the victim at least thirty days in advance of planned destruction of the sexual offense evidence kit pursuant to

subdivision four of section eight hundred thirty-eight-a of the executive law; and

(7) the right to be informed when there is any change in the status of his or her case or reopening of the case.

(b) Before a medical facility commences a physical examination of a sexual offense victim, or a police agency or prosecutorial agency commences an interview of a sexual offense victim, the health care professional conducting the exam, police agency or prosecutorial agency shall inform the victim of his or her rights and provide a copy of the sexual assault survivor bill of rights.

§ 3. Section 838-a of the executive law, as amended by chapter 6 of the laws of 2017, is amended to read as follows:

§ 838-a. Maintenance of sexual offense evidence kits. 1. The following requirements shall apply to all sexual offense evidence kits reported, surrendered to or collected by, at the request of, or with cooperation of a police agency or prosecutorial agency, with the consent of the victim:

(a) Each such police agency 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.

(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 CODIS eligible profiles of any potential perpetrators from the evidence submitted. The forensic lab shall report the results to the submitting agency and appropriate prosecutorial entity within ninety days after receipt of a kit.

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

(d) Each police agency and prosecutorial agency that, prior to the effective date of paragraph (a) of this subdivision, has one or more sexual offense evidence kits in its custody or control shall, within thirty days after the effective date of this section, submit all untested kits in its possession or control to an appropriate forensic laboratory.

(e) Each forensic laboratory, within one hundred twenty days after receiving each sexual offense evidence kit pursuant to paragraph (d) of this subdivision shall assess case specific information for CODIS eligibility and, if eligible, analyze the kits and attempt to develop CODIS eligible profiles for any potential perpetrators and shall, within ninety days of such assessment, report the results to the submitting agency and the appropriate prosecutorial entity.

(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.

2. (a) Each forensic laboratory in the state shall report to the division, on a quarterly basis, in writing, on (i) the number of **reported** sexual offense evidence kits it received **under subdivision one of this section**, (ii) the number of such kits processed for the purpose of developing Combined DNA Index System (CODIS) eligible profiles of any potential perpetrators, and (iii) the number of **reported** kits not processed for testing, including, the reason such kits were ineligible for processing.

(b) Each police agency and prosecutorial agency shall report to the division on a quarterly basis, in writing, on (i) the number of all the sexual offense evidence kits it received, (ii) the number of such kits it submitted to a forensic laboratory for processing, (iii) the number of kits in its custody or control that have not been processed for testing, and (iv) the length of time between receipt of any such sexual offense evidence kit and the submission of any such kit to the forensic laboratory.

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

3. **Each police agency and prosecutorial agency within this state shall adopt policies and procedures concerning contact with the victims and the provision of information to victims, upon request, concerning their sexual offense evidence kits. The policies and procedures shall be survivor-focused, meaning systematically focused on the needs and concerns of a victim 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 and prosecutorial 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 national 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 contact information, including a phone number and e-mail address, for the individual designated by subdivision two of this section at the police agency and prosecutorial agency with jurisdiction over the sexual assault offense.

4. Unreported sexual offense evidence kits, meaning sexual offense evidence kits collected in instances in which a victim has not consented to report to law enforcement, shall be maintained for at least twenty years in a secure, centralized location designated by the division of criminal justice services, in conjunction with the department of health, the department of law and the office of victim services, in consultation with hospitals, other health care providers and victim advocacy organizations, taking into consideration federal guidance pertaining to maintenance of sexual offense evidence kits. Sexual offense evidence kits maintained for twenty years or more shall only be destructed upon providing at least thirty days notice to the victim, in the form of communication designated by the victim, of such planned destruction.

5. The division shall undertake actions designed to ensure that all police agencies and prosecutorial agencies in the state and all forensic laboratories are educated and aware of the provisions of this section.

§ 4. 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 and prosecutorial agency with jurisdiction over the sexual assault offense shall, upon request of the victim who has consented to report to law enforcement, provide the sexual offense victim with notice of the date and location upon which his or her sexual offense evidence kit was assessed for CODIS eligibility and analyzed, and whether a CODIS eligible profile was developed and/or a DNA match was identified. The police or prosecutorial agency in possession of the reported sexual assault offense evidence kit shall notify the sexual assault victim at least thirty days in advance of any planned destruction of their sexual offense evidence kit in a manner of communication designated by the victim, unless such information would impede an ongoing investigation.

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

§ 838-c. Study and report on establishing a statewide sexual offense evidence kit tracking system. The division shall conduct a study and develop a plan, in consultation with stakeholders including hospitals, other health care providers, law enforcement agencies, evidence managers, forensic laboratories, prosecutors, and victim advocacy organizations, to establish a statewide sexual offense evidence kit tracking system, to streamline law enforcement tracking, create greater transparency and accountability in ensuring compliance with this article and to provide a way for survivors to check the status of their sexual offense evidence kit throughout the entire process, from collection to conviction. The tracking system shall be secure and accessible only by authorized entities or individuals such as hospitals, law enforcement agencies, evidence mangers, prosecutors, and victims and designed to provide secure electronic access through which a victim can anonymously track the status of their sexual assault evidence kit. The commissioner shall submit a report of the division's findings and recommendations to the governor, the temporary president of the senate and the speaker of the assembly on or before May first, two thousand nineteen.

§ 6. This act shall take effect immediately; provided that the division of criminal justice services shall designate and establish the secure centralized location required by subdivision 4 of section 838-a of the executive law, as added by section three of this act, within 180 days of the effective date of this act; and provided, further, that notwithstanding the provisions of section 2805-i of the public health law to the contrary, every hospital shall retain custody of unreported sexual offense evidence kits until such time as the centralized storage facility is established and designated pursuant to subdivision 4 of section 838-a of the executive law.