

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:

1 Section 1. Subdivision 2 of section 2805-i of the public health law,
2 as amended by chapter 504 of the laws of 1994, is amended to read as
3 follows:
4 2. The sexual offense evidence shall be collected and kept in a locked
5 separate and secure area for not less than thirty days unless: (a) such
6 evidence is not privileged and the police request its surrender before
7 that time, which request shall be complied with; or (b) such evidence is
8 privileged and (i) the alleged sexual offense victim nevertheless gives
9 permission to turn such privileged evidence over to the police before
10 that time, or (ii) the alleged sexual offense victim signs a statement
11 directing the hospital to not collect and keep such privileged evidence,
12 which direction shall be complied with. The sexual offense evidence
13 shall include, but not be limited to, slides, cotton swabs, clothing and
14 other items. Where appropriate such items must be refrigerated and the
15 clothes and swabs must be dried, stored in paper bags and labeled. Each
16 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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1 sponding to the patient's medical record. The alleged sexual offense
2 [~~victim~~] survivor shall be notified [~~that after thirty days, the refrigerated~~
3 ~~ated~~] ten days prior to the transfer of sexual offense evidence, that
4 the evidence will be [~~discarded in compliance with state and local~~
5 ~~health codes and the alleged sexual offense victim's clothes will be~~
6 ~~returned to the alleged sexual offense victim upon request~~] transferred
7 to a centralized location to be maintained for at least twenty years
8 pursuant to section eight hundred thirty-eight-a of the executive law.
9 The survivor shall be given the option of providing contact information
10 should he or she wish to receive notice of the planned destruction of
11 the evidence after the expiration of the twenty year period.

12 § 2. Subdivision 6 of section 2805-i of the public health law is
13 renumbered subdivision 7 and a new subdivision 6 is added to read as
14 follows:

15 6. (a) The department, in conjunction with the division of criminal
16 justice services, the department of law and the office of victim
17 services, in consultation with hospitals, other health care providers
18 and victim advocacy organizations, shall establish a sexual assault
19 survivor bill of rights for purposes of informing sexual offense victims
20 of their rights under state law. Such bill of rights shall be in plain,
21 easy to understand language, and include, at a minimum:

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

30 (2) the right of the victim to be offered and have made available at
31 no cost appropriate post-exposure treatment therapies, including a seven
32 day starter pack of HIV post-exposure prophylaxis under paragraph (c) of
33 subdivision one of this section and subdivision thirteen of section six
34 hundred thirty-one of the executive law;

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

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

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

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

1 subdivision four of section eight hundred thirty-eight-a of the execu-
2 tive law; and

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

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

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

13 § 838-a. Maintenance of sexual offense evidence kits. 1. The following
14 requirements shall apply to all sexual offense evidence kits reported,
15 surrendered to or collected by, at the request of, or with cooperation
16 of a police agency or prosecutorial agency, with the consent of the
17 victim:

18 (a) Each such police agency and prosecutorial agency shall submit any
19 sexual offense evidence kits in its custody or control to an appropriate
20 forensic laboratory within ten days of receipt.

21 (b) Each forensic laboratory receiving sexual offense evidence kits
22 after the effective date of this section shall assess case specific
23 information for Combined DNA Index System (CODIS) eligibility and, if
24 eligible, analyze the kits and attempt to develop CODIS eligible
25 profiles of any potential perpetrators from the evidence submitted. The
26 forensic lab shall report the results to the submitting agency and
27 appropriate prosecutorial entity within ninety days after receipt of a
28 kit.

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

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

45 (e) Each forensic laboratory, within one hundred twenty days after
46 receiving each sexual offense evidence kit pursuant to paragraph (d) of
47 this subdivision shall assess case specific information for CODIS eligi-
48 bility and, if eligible, analyze the kits and attempt to develop CODIS
49 eligible profiles for any potential perpetrators and shall, within nine-
50 ty days of such assessment, report the results to the submitting agency
51 and the appropriate prosecutorial entity.

52 (f) The failure of any such police agency, prosecutorial agency or
53 forensic laboratory to comply with [~~a time limit specified in~~] this
54 section or section eight hundred thirty-eight-b of this article shall
55 not, in and of itself, constitute a basis for a motion to suppress

1 evidence in accordance with section 710.20 of the criminal procedure
2 law.

3 2. (a) Each forensic laboratory in the state shall report to the divi-
4 sion, on a quarterly basis, in writing, on (i) the number of reported
5 sexual offense evidence kits it received under subdivision one of this
6 section, (ii) the number of such kits processed for the purpose of
7 developing Combined DNA Index System (CODIS) eligible profiles of any
8 potential perpetrators, and (iii) the number of reported kits not proc-
9 essed for testing, including, the reason such kits were ineligible for
10 processing.

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

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

23 3. Each police agency and prosecutorial agency within this state shall
24 adopt policies and procedures concerning contact with the victims and
25 the provision of information to victims, upon request, concerning their
26 sexual offense evidence kits. The policies and procedures shall be
27 survivor-focused, meaning systematically focused on the needs and
28 concerns of a victim to ensure the compassionate and sensitive delivery
29 of services in a nonjudgemental manner, and shall include, at a minimum,
30 a requirement that:

31 (a) the police agency and prosecutorial agency designate at least one
32 person, who is trained in trauma and victim response through a program
33 meeting minimum standards established by the division of criminal
34 justice services following national guidelines from the Substance Abuse
35 and Mental Health Services Administration, within its agency to receive
36 all inquiries concerning sexual offense evidence kits from victims; and

37 (b) at the time that a sexual offense evidence kit is collected, a
38 victim shall be provided with contact information, including a phone
39 number and e-mail address, for the individual designated by subdivision
40 two of this section at the police agency and prosecutorial agency with
41 jurisdiction over the sexual assault offense.

42 4. Unreported sexual offense evidence kits, meaning sexual offense
43 evidence kits collected in instances in which a victim has not consented
44 to report to law enforcement, shall be maintained for at least twenty
45 years in a secure, centralized location designated by the division of
46 criminal justice services, in conjunction with the department of health,
47 the department of law and the office of victim services, in consultation
48 with hospitals, other health care providers and victim advocacy organ-
49 izations, taking into consideration federal guidance pertaining to main-
50 tenance of sexual offense evidence kits. Sexual offense evidence kits
51 maintained for twenty years or more shall only be destructed upon
52 providing at least thirty days notice to the victim, in the form of
53 communication designated by the victim, of such planned destruction.

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

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

3 § 838-b. Victim's right to notice. Each police agency and prosecu-
4 al agency with jurisdiction over the sexual assault offense shall, upon
5 request of the victim who has consented to report to law enforcement,
6 provide the sexual offense victim with notice of the date and location
7 upon which his or her sexual offense evidence kit was assessed for CODIS
8 eligibility and analyzed, and whether a CODIS eligible profile was
9 developed and/or a DNA match was identified. The police or prosecutorial
10 agency in possession of the reported sexual assault offense evidence kit
11 shall notify the sexual assault victim at least thirty days in advance
12 of any planned destruction of their sexual offense evidence kit in a
13 manner of communication designated by the victim, unless such informa-
14 tion would impede an ongoing investigation.

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

17 § 838-c. Study and report on establishing a statewide sexual offense
18 evidence kit tracking system. The division shall conduct a study and
19 develop a plan, in consultation with stakeholders including hospitals,
20 other health care providers, law enforcement agencies, evidence manag-
21 ers, forensic laboratories, prosecutors, and victim advocacy organiza-
22 tions, to establish a statewide sexual offense evidence kit tracking
23 system, to streamline law enforcement tracking, create greater transpar-
24 ency and accountability in ensuring compliance with this article and to
25 provide a way for survivors to check the status of their sexual offense
26 evidence kit throughout the entire process, from collection to
27 conviction. The tracking system shall be secure and accessible only by
28 authorized entities or individuals such as hospitals, law enforcement
29 agencies, evidence managers, prosecutors, and victims and designed to
30 provide secure electronic access through which a victim can anonymously
31 track the status of their sexual assault evidence kit. The commissioner
32 shall submit a report of the division's findings and recommendations to
33 the governor, the temporary president of the senate and the speaker of
34 the assembly on or before May first, two thousand nineteen.

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