

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.

LBD11584-22-8

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-

tion 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.