



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 23, 2019

DHDTC DAL 19-17

RE: New York State Sexual Assault
Victim Bill of Rights
(*Publication #1934*)

Dear Hospital Chief Executive Officer:

Pursuant to Public Health Law §2805-i(6), the New York State Department of Health developed the “New York State Sexual Assault Victim Bill of Rights” (VBORs) in consultation with the New York State Division of Criminal Justice Services, the Office of Victim Services, New York State Police, New York State Office for the Prevention of Domestic Violence, New York State Coalition Against Sexual Assault, New York City Alliance Against Sexual Assault, Healthcare Association of New York State, Greater New York Hospital Association, New York City Mayor’s Office of Criminal Justice, and several hospitals. The VBORs is published on the Department of Health website and can be accessed at the following links:

- www.health.ny.gov/professionals/safe/
- www.health.ny.gov/professionals/patients/patient_rights/
- www.health.ny.gov/prevention/sexual_violence/

The VBORs is a list of information about the legal rights for all victims of sexual assault in general, in a hospital emergency department, and with law enforcement. It includes the victim’s right to:

- Consult with a local rape crisis organization and to have a representative of such organization accompany the victim through the sexual assault examination or police interview.
- Be offered and made available post-exposure treatment therapies, emergency contraception and appropriate follow-up care.
- A health care forensic examination in any hospital emergency department at no cost (for additional information, see the Dear CEO letter issued on July 29, 2015, available at: https://www.health.ny.gov/facilities/diagnostic_and_treatment/letters/2015-07-29_ceo_forensic_rape_examination_direct_reimbursement.htm).
- Be offered contact information for law enforcement and notified of Combined DNA Index System eligibility and analysis.
- Be notified of the transfer of evidence from the hospital to another storage facility and the right to have evidence maintained at an appropriate storage facility for twenty years from the date of collection.
- Be notified of judicial proceedings.
- Decide to report the assault to law enforcement.

As a reminder, every hospital in New York State is required to provide care to sexual assault victims in the emergency department. Hospitals do not need to be designated by the

Department as a Sexual Assault Forensic Examiner (SAFE) Designated Hospital to provide care and collect forensic evidence. Forensic evidence must be collected utilizing the New York State Sexual Offense Evidence Collection Kit (SOECK) and the drug facilitated sexual assault evidence collection kit. Hospitals are required to maintain an adequate supply of both kits, which can be ordered through the Division of Criminal Justice Services at: <https://www.criminaljustice.ny.gov/ofpa/evidencekit.htm>.

Therefore, all hospitals should be equipped with medically trained staff and SOECKs to perform the examination and collect the appropriate evidence, with the exception of specialty hospitals without an emergency department (hospice, orthopedic, chemical dependency centers, etc.). Specialty hospitals must have an established protocol for the transfer of sexual assault victims. The protocol should address all individual patient needs, including consent from the sexual assault victim for the transfer and measures to ensure a minimal delay and loss of evidence, in accordance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA, at 42 USC § 1395dd) and Department of Health regulations (see 10 NYCRR § 405.9[c]). Sexual assault victims must not be pressured or coerced into a transfer and must consent to be transferred. When a sexual assault victim declines a transfer, the hospital must have a protocol for providing care, which may include, for example, having a SAFE-trained examiner come to the hospital.

The VBORs must be provided to every presenting sexual assault victim before a medical facility commences a physical examination of a sexual assault victim, or a police agency, prosecutorial agency or other law enforcement agency commences an interview of a sexual assault 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 the "New York State Sexual Assault Victim Bill of Rights" and offering to explain such rights. The VBORs will soon be available in at least ten of the most common languages spoken in the State.

Thank you for your attention to this important matter. If you have any questions about the requirements of the law, please submit questions to hospinfo@health.ny.gov

Sincerely,

Deirdre Astin, Director
Division of Hospitals &
Diagnostic and Treatment Centers

Lauren J. Tobias, Director
Division of Family Health

Attachments (2)

- New York State Sexual Assault Victims Bill of Rights
- Public Health Law 2805-i(6)

These are Your Rights

The 'New York State Sexual Assault Victim Bill of Rights' is a list of general information about your rights. This copy is for you to keep. If you wish, all the information can be explained to you in more detail before any exam or interview takes place.

YOUR BASIC RIGHTS

- You cannot be treated differently based on certain characteristics, such as race, national origin, religion, sexual orientation, disability, age, source of payment, sex, gender identity, or gender expression.
- Your immigration status or national origin cannot affect your emergency care or services. You can ask for an interpreter if it is hard for you to understand or speak English.
- Minors under the age of 17 have certain rights to make their own decisions without a parent or legal guardian.

YOUR RIGHTS IN THE HOSPITAL

- You can have an advocate from the local rape crisis program stay with you during the exam.
- You can have an exam in any hospital emergency department to collect evidence and provide certain medical care related to the sexual assault at no cost to you. If you do not have health insurance, or you decline to use your health insurance, you can ask the hospital to bill the Office of Victim Services.
- You can have medicine to prevent pregnancy and sexually transmitted infections (STIs, also known as STDs) for free. For HIV prevention, a 7-day pack of medicine can be started at the hospital.
- You will be provided information on appropriate follow-up medical care.

REPORTING WHAT HAPPENED

- You can choose to report to the police or not.
- You can choose to have or not have an advocate from the local rape crisis program stay with you during your interview with the police or prosecutor.
- You will be given contact information for the police or prosecutor handling your case.
- You can contact the police or prosecutor for information on the criminal investigation or legal proceedings. The police or prosecutor will inform you of any legal action related to your case.
- If you choose to report to the police, your evidence will be tested within 100 days. You may contact the police for information on a DNA match.
- If you choose not to report to the police, your evidence will be stored for 20 years, or until you decide to release it. You will be notified if your evidence is moved and before the storage period ends.

How to Get More Help

Police Agency: _____

Contact Name: _____

Phone No.: _____

Email: _____

Prosecuting Agency: _____

Contact Name: _____

Phone No.: _____

Email: _____

If the contact information for the police or prosecutor is unknown, please call:

- If the crime occurred in New York City: New York Police Department Special Victims Division at **646-610-7273**.
- If the crime occurred anywhere else in the State: New York State Police Sexual Assault Hotline at **1-844-845-7269**.

Advocate Agency: _____

Contact Name: _____

Phone No.: _____

Email: _____

If the contact information for the rape crisis or victim assistance agency is unknown, please call:

- New York State Hotline for Sexual Assault and Domestic Violence at **1-800-942-6906**.

For more information, please visit www.ovs.ny.gov or www.health.ny.gov/prevention/sexual_violence/



Department
of Health

Estos son sus derechos

La “New York State Sexual Assault Victim Bill of Rights” (Declaración de Derechos de las Víctimas de Agresión Sexual del Estado de Nueva York) es una lista de información general sobre sus derechos. Guarde esta copia para usted. Si quiere, podemos explicarle en mayor detalle toda la información antes de cualquier examen o entrevista.

SUS DERECHOS BÁSICOS

- No puede recibir un trato diferente por características determinadas, como la raza, el país de origen, la religión, la orientación sexual, la discapacidad, la edad, el tipo de pago, el sexo y la identidad o la expresión de género.
- Su atención o servicios de emergencia no pueden verse afectados por su estado migratorio o su país de origen. Puede pedir un intérprete si le es difícil entender o hablar el inglés.
- Los menores de 17 años tienen algunos derechos para tomar sus propias decisiones sin la intervención de los padres o un tutor.

SUS DERECHOS EN EL HOSPITAL

- Un defensor del programa local de crisis por violación puede hacerle compañía durante el examen.
- Puede hacerse un examen en el departamento de emergencias de cualquier hospital para que se tomen pruebas y le den cierta atención médica relacionada con la agresión sexual sin costo. Si no tiene seguro médico, o si decide no usar su seguro médico, puede pedirle al hospital que le facture a la Office of Victim Services (Oficina de Servicios para Víctimas).
- Puede recibir medicamentos gratis para prevenir embarazos e infecciones de transmisión sexual (ITS, también llamadas ETS). Para prevenir el VIH, se puede comenzar en el hospital con un tratamiento de medicamentos por 7 días.
- Se le dará información sobre la atención médica de seguimiento adecuada.

DENUNCIAR LO QUE OCURRIÓ

- Usted puede decidir si hace la denuncia a la policía o no.
- Si usted quiere, un defensor del programa local de crisis por violación puede hacerle compañía durante la entrevista con la policía o el fiscal.
- Se le dará la información de contacto del policía o del fiscal que lleva su caso.
- Puede comunicarse con ellos para obtener información sobre la investigación policial o el procedimiento judicial. La policía o el fiscal le informarán sobre las medidas jurídicas relacionadas con su caso.
- Si decide hacer la denuncia a la policía, sus pruebas se analizarán en un plazo de 100 días. Puede comunicarse con la policía para saber si hubo una coincidencia de ADN.
- Si decide no hacer la denuncia a la policía, sus pruebas se guardarán durante 20 años o hasta que decida revelarlas. Se le notificará si las pruebas se trasladan a otro lugar y antes de que el período de almacenamiento termine.

Cómo obtener más ayuda

Agencia de policía: _____

Nombre del contacto: _____

N.º de teléfono: _____

Correo electrónico: _____

Agencia que actúa como fiscal: _____

Nombre del contacto: _____

N.º de teléfono: _____

Correo electrónico: _____

Si no conoce la información de contacto de la policía o de la agencia que actúa como fiscal, llame a:

- Si el delito se cometió en la ciudad de Nueva York: New York Police Department Special Victims Division (División de Víctimas Especiales del Departamento de Policía de la Ciudad de Nueva York), al **646-610-7273**.
- Si el delito se cometió en alguna otra parte del estado: New York State Police Sexual Assault Hotline (Línea Directa de Agresión Sexual de la Policía del Estado de Nueva York), al **1-844-845-7269**.

Agencia de defensoría: _____

Nombre del contacto: _____

N.º de teléfono: _____

Correo electrónico: _____

Si no conoce la información de contacto de la agencia de asistencia a víctimas o de la agencia de crisis por violación, llame a:

- New York State Hotline for Sexual Assault and Domestic Violence (Línea Directa de Agresión Sexual y Violencia Doméstica del Estado de Nueva York), al **1-800-942-6906**.

Para obtener más información, visite www.ovs.ny.gov o www.health.ny.gov/prevention/sexual_violence/



Department
of Health

Public Health

§ 2805-i. Treatment of sexual offense victims and maintenance of evidence in a sexual offense. 1. Every hospital providing treatment to alleged victims of a sexual offense shall be responsible for:

(a) maintaining sexual offense evidence and the chain of custody as provided in subdivision two of this section;

(b) contacting a rape crisis or victim assistance organization, if any, providing victim assistance to the geographic area served by that hospital to establish the coordination of non-medical services to sexual offense victims who request such coordination and services;

* (c) offering and making available appropriate HIV post-exposure treatment therapies; including a seven day starter pack of HIV post-exposure prophylaxis, in cases where it has been determined, in accordance with guidelines issued by the commissioner, that a significant exposure to HIV has occurred, and informing the victim that payment assistance for such therapies may be available from the office of victim services pursuant to the provisions of article twenty-two of the executive law. With the consent of the victim of a sexual assault, the hospital emergency room department shall provide or arrange for an appointment for medical follow-up related to HIV post-exposure prophylaxis and other care as appropriate; and

* NB Effective until June 15, 2020

* (c) offering and making available appropriate HIV post-exposure treatment therapies; including a full regimen of HIV post-exposure prophylaxis, in cases where it has been determined, in accordance with guidelines issued by the commissioner, that a significant exposure to HIV has occurred. With the consent of the victim of a sexual assault, the hospital emergency room department shall provide or arrange for an appointment for medical follow-up related to HIV post-exposure prophylaxis and other care as appropriate, and inform the victim that payment assistance for such care may be available from the office of victim services pursuant to the provisions of article twenty-two of the executive law; and

* NB Effective June 15, 2020

(d) ensuring sexual assault survivors are not billed for sexual assault forensic exams and are notified orally and in writing of the option to decline to provide private health insurance information and have the office of victim services reimburse the hospital for the exam pursuant to subdivision thirteen of section six hundred thirty-one of the executive law.

2. Sexual offense evidence shall be collected and maintained as follows:

(a) All sexual offense evidence shall be kept in a locked, separate and secure area for twenty years from the date of collection; provided that such evidence shall be transferred to a new location(s) pursuant to this subdivision.

(b) Sexual offense evidence shall include, but not be limited to, slides, cotton swabs, clothing and other items. Where appropriate, such items shall be refrigerated and the clothes and swabs shall be dried, stored in paper bags, and labeled. Each item of evidence shall be marked and logged with a code number corresponding to the alleged sexual offense victim's medical record.

(c) Upon collection, the hospital shall notify the alleged sexual offense victim that, after twenty years, the sexual offense evidence will be discarded in compliance with state and local health codes and

that the alleged sexual offense victim's clothes or personal effects will be returned to the alleged sexual offense victim at any time upon request. The alleged sexual offense victim shall be given the option of providing contact information for purposes of receiving notice of the planned destruction of such evidence after the expiration of the twenty-year period.

(d) Until April first, two thousand twenty-one, or earlier if determined feasible by the director of budget pursuant to paragraph (g) of this subdivision, hospitals shall be responsible for securing long-term sexual offense evidence pursuant to this section, after which such storage shall be the responsibility of the custodian(s) identified in the plan approved by the director of budget pursuant to paragraph (g) of this subdivision. Hospitals may enter into contracts with other entities that will ensure appropriate and secure long-term storage of sexual offense evidence pursuant to this section until April first, two thousand twenty-one.

(e) Beginning April first, two thousand eighteen, the department, the office of victim services, the division of criminal justice services and the division of state police shall jointly study, evaluate and make recommendations concerning the storage and monitoring of sexual offense evidence for twenty years, including studying options for the use of: state-owned or operated facilities; facilities owned or operated by local government or law enforcement agencies; and facilities owned or operated by private entities.

(f) On or before December first, two thousand nineteen, such agencies shall submit a joint plan to the director of budget, speaker of the assembly, and president pro tempore of the senate, which shall at a minimum include: recommended storage location(s) for sexual offense evidence; a schedule for sexual offense evidence held by hospitals pursuant to this section to be transferred to such storage location(s) by April first, two thousand twenty-one; and tracking, monitoring and notification option(s).

(g) On or before January first, two thousand twenty, the director of budget shall approve a plan that, at a minimum, establishes: storage location(s) for sexual offense evidence by no later than April first, two thousand twenty-one; a reasonable schedule for sexual offense evidence maintained by hospitals pursuant to this section to be transferred to such storage location(s); and tracking, monitoring and notification system(s).

(h) Between thirty and ten days prior to the transfer of sexual offense evidence to the storage location(s) identified in the plan approved by the director of budget pursuant to paragraph (g) of this subdivision, hospitals shall make diligent efforts to notify the alleged sexual offense victim of the transfer of custody for the remainder of the twenty-year storage period.

(i) On April first, two thousand twenty-one, or earlier if determined feasible by the director of budget, responsibility for long-term storage of sexual offense evidence shall transfer to the custodian(s) identified in the plan approved by the director of budget pursuant to paragraph (g) of this subdivision.

(j) After April first, two thousand twenty-one, or earlier if determined feasible by the director of budget, hospitals shall ensure transfer of sexual offense evidence collected pursuant to this section to the custodian(s) identified in the plan approved by the director of budget pursuant to paragraph (g) of this subdivision within ten days of collection of such evidence, while maintaining chain of custody.

(k) At least ninety days prior to the expiration of the twenty-year

storage period for any sexual offense evidence, the custodian(s) of the sexual offense evidence shall make diligent efforts to contact the alleged sexual offense victim to notify the alleged sexual offense victim that the sexual offense evidence will be discarded in compliance with state and local health codes and that the alleged sexual offense victim's clothes and personal effects will be returned to the alleged sexual offense victim upon request.

(1) Notwithstanding any other provision in this section, sexual offense evidence shall not continue to be stored where: (i) such evidence is not privileged and law enforcement requests its release, in which case the custodian(s) shall comply with such request; or (ii) such evidence is privileged and either (A) the alleged sexual offense victim gives permission to release the evidence to law enforcement, or (B) the alleged sexual offense victim signs a statement directing the custodian(s) to dispose of the evidence, in which case the sexual offense evidence will be discarded in compliance with state and local health codes.

3. Upon admittance or commencement of treatment of the alleged sexual offense victim, the hospital shall advise the victim of the availability of the services of a local rape crisis or victim assistance organization, if any, to accompany the victim through the sexual offense examination. If after receiving such advice the sexual offense victim wishes the presence of a rape crisis or victim assistance advocate, the hospital shall contact the appropriate organization and request that one be provided, provided, however, that if in the professional judgment of the treating practitioner a delay in treatment is detrimental to the provision of medical treatment, then examination or treatment need not be delayed pending the arrival of such advocate and further provided that the presence or continued presence of such advocate does not interfere with the provision of necessary medical care to the victim.

4. No hospital or treating practitioner shall be liable in civil damages for failing to comply with the requirements of subdivision one, two or three of this section or acting in good faith to provide treatment as provided in subdivision three of this section.

4-a. On and after April first, two thousand one, a hospital providing treatment to alleged victims of sexual offenses shall be eligible to receive from the division of criminal justice services, at no cost, sexual offense evidence collection kits.

4-b. (a) The commissioner shall, with the consent of the directors of interested hospitals in the state and in consultation with the commissioner of the division of criminal justice services, designate hospitals in the state as the sites of a twenty-four hour sexual assault forensic examiner program. The hospital sites shall be designated in urban, suburban and rural areas to give as many state residents as possible ready access to the sexual assault forensic examiner program. The commissioner, in consultation with the commissioner of the division of criminal justice services, shall consider the following criteria when designating these sexual assault forensic examiner program sites:

(1) the location of the hospital;

(2) the hospital's capacity to provide on-site comprehensive medical services to victims of sexual offenses;

(3) the capacity of the hospital site to coordinate services for victims of sexual offenses including medical treatment, rape crisis counseling, psychological support, law enforcement assistance and forensic evidence collection;

(4) the hospital's capacity to provide access to the sexual assault forensic examiner site for disabled victims;

- (5) the hospital's existing services for victims of sexual offenses;
- (6) the capacity of the hospital site to collect uniform data and insure confidentiality of such data; and
- (7) the hospital's compliance with state and federally mandated standards of medical care.

(b) Each sexual assault forensic examiner program site designated pursuant to this subdivision shall comply with the requirements of subdivisions one, two and three of this section, and shall also provide treatment to the victim as follows:

(1) The victim shall, absent exigent circumstances, be met by a sexual assault forensic examiner within sixty minutes of arriving at the hospital, who shall be a nurse practitioner, physician assistant, registered nurse or physician specially trained in forensic examination of sexual offense victims and the preservation of forensic evidence in such cases and certified as qualified to provide such services pursuant to regulations promulgated by the commissioner. Such program shall assure that such a specially-trained forensic examiner is on-call and available on a twenty-four hour a day basis every day of the year.

(2) An examination of the victim shall be performed promptly by such forensic examiner in a private room designated for such examinations. An obstetrician/gynecologist or other appropriate medical doctor shall be readily available to the forensic examiner if there is a need for more specialized medical evaluation or treatment.

(3) Promptly after the examination is completed, the victim shall be permitted to shower, be provided with a change of clothing, and receive follow-up information, counseling, medical treatment and referrals for same.

(c) Nothing in this subdivision shall affect the existence or continued existence of any program in this state through which a trained nurse practitioner, physician assistant, registered nurse or physician is providing appropriate forensic examinations and related services to survivors of sexual assault.

5. The commissioner shall promulgate such rules and regulations as may be necessary and proper to carry out effectively the provisions of this section. Prior to promulgating such rules and regulations, the commissioner shall consult with relevant police agencies, forensic laboratories, rape crisis centers, hospitals, and other such persons as the commissioner deems necessary. Such rules and regulations shall identify the offenses subject to the provisions of this section, provide a specific definition of sexual offense evidence and require each hospital to contact its local police agency and forensic laboratory to determine their specific needs or requirements.

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 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.

7. On or before November thirtieth, two thousand two, the commissioner shall make a report to the governor, the temporary president of the senate and the speaker of the assembly concerning the sexual assault forensic examiner program established under subdivision four-b of this

section. Such report shall include an evaluation of the efficacy of such program in obtaining useful forensic evidence in sexual offense cases and assuring quality treatment to sex offense victims. Such report shall also recommend whether this program should be expanded and shall estimate the financial cost, if any, of such expansion.