

PHL 2805-I, as amended by Part HH of the Laws of 2018

Section 1. Subdivision 1 of section 2805-i of the public health law, as amended by chapter 504 of the laws of 1994 and paragraph (c) as amended by chapter 39 of the laws of 2012, is amended to read as follows:

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 daystarter 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

(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. Subdivision 2 of section 2805-i of the public health law is REPEALED and a new subdivision 2 is added to read as follows:

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 twentyone.

(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.

(l) 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.