

# New York Public Health Law § 2805-i. Treatment of sexual offense victims and maintenance of evidence in a sexual offense

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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

(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.

(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.

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. 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.