

## Rape and Sexual Offenses State Statutes 2006

### Rape and Sexual Offenses

#### **Postings of Crime Victims Rights Information – [Executive Law §625-a](#)**

Requires every general hospital providing emergency medical care and police stations to prominently display in its emergency or waiting rooms posters on crime victims' rights and provide printed cards with contact information for victim services and the Crime Victims Compensation Board (CVB), including CVB applications.

#### **Information on the Availability of a Rape Crisis Center and Advocate – [Public Health Law §2805-i](#); [Executive Law §641](#)**

Requires health care facilities, upon a victim's request, to contact a rape crisis center to arrange for an advocate to accompany the survivor through the sexual offense examination. The facility must also coordinate non-medical services for victims who request these services. Victims should also be notified of relevant criminal justice and law enforcement proceedings related to their case and of ways in which law enforcement and district attorney offices can protect them from intimidation.

### Financial Assistance

#### **Extension to Reporting Requirements – [Executive Law §631\(1\)](#)**

Allows victims of sexual offenses to report the crime to the proper authorities within a reasonable time of the offense in order to be eligible for an award from the CVB. To satisfy the reporting requirement and receive financial assistance for out-of-pocket expenses, a report may be made to an acceptable criminal justice agency which includes family court, a governmental agency responsible for child and/or adult protective services, or a medical facility that provides a forensic physical examination for victims of rape and sexual assault, in addition to a police department or a district attorney's office. The victim's emotional, mental, physical and family circumstances will be considered in deciding what is a "reasonable" amount of time to report.

### Access to Justice

**Secure Interview Area – [Executive Law §642\(2-a\)](#)**

Requires police departments, district attorney offices and other agencies to provide a private setting for interviewing victims of sex offenses.

**Rape Crisis Counselor Confidentiality – [Civil Practice Law §4510\(b\)](#)**

Recognizes confidential communication between a rape crisis counselor and a client, except when the client has authorized disclosure, reveals intent to commit a crime or a harmful act or files charges against the counselor or the rape crisis program. Disclosing information to an insurance representative or an employee of CVB for compensation does not waive this privilege.

**Sex Offenses – [Penal Law Article 130](#)**

Defines various criminal sex offenses including sexual misconduct, rape, sexual abuse, forcible touching, female genital mutilation and facilitating a sex offense with a controlled substance. Lack of consent is an element in every criminal sexual act. It results from force or threatened use of force or incapacity. Generally, a person is considered incapable of consent when she or he is less than seventeen years of age; mentally disabled or incapacitated; physically helpless or committed to the care and custody of a correctional institution, hospital or facility of the Office of Children and Family Services.

**Drug Facilitated Sexual Offense – [Penal Law §130.90](#)**

Provides that committing a sex offense by using illegal drugs (including GHB and other contraband, also known as "date rape drugs") is a D level felony. It is illegal for an individual to knowingly and unlawfully possess a controlled substance or prescription drug; administer that substance to another without the person's consent and with the intent to commit a felonious sexual offense; and commit or attempt to commit such a felony.

**DNA State Databank – [Executive Law §§995\(7\), 995-c\(3\)](#)**

Requires a person convicted of a sexual offense to submit a DNA sample to the State databank. Samples are also required from those convicted of other felonies and some misdemeanors.

**Polygraph Test and Stress Evaluation – [Criminal Procedure Law §160.45](#)**

Forbids a district attorney, police officer or law enforcement agency employee, to require a victim of a sexual assault to undergo a polygraph test or psychological stress evaluator examination.

**Rape Shield Law – Past Sexual Conduct – [Criminal Procedure Law §§60.42, 60.43](#)**

Bars the introduction of reputation evidence about the sexual history and conduct of the victim unless what may be at issue in the case is direct evidence of the source of semen, pregnancy or disease; relates to specific sexual conduct with the defendant; proves that the victim has been convicted of a prostitution offense ([Penal Law §230.00](#)) within three years of the case; or rebuts the district attorney's claim that the victim was not sexually active during a given time. The court may determine whether the

evidence in question is relevant and, if so, whether or not the potential prejudicial impact of the evidence outweighs its relevance (or admissible in the interest of justice).

### **Manner of Dress – [Criminal Procedure Law §60.48](#)**

Bars the introduction of evidence relating to the manner in which a victim was dressed at the time of the offense in the prosecution for any sex offense or attempt to commit such an offense, unless the court finds it to be relevant and admissible in the interest of justice.

### **NYS Sex Offender Act and Registry – Megan's Law – [Correction Law Article 6-C \(§168 et seq.\)](#)**

Requires certain offenders on parole or probation or imprisoned for a sex offense to register with the Division of Criminal Justice Services (DCJS). Duration and manner of registration varies depending on risk level designation of offender. Level one designation requires offenders to register for 20 years while level two and three offenders must register for life. After 30 years, certain level two offenders may petition for relief from registering. Registry enables survivors as well as the public to obtain information regarding the status of registered sex offenders through a free hotline (800-262-3257), an online subdirectory of level two and three predators ([http://criminaljustice.ny.gov/nsor/search\\_index.htm](http://criminaljustice.ny.gov/nsor/search_index.htm)) or through police authorities. Degree of available information is dependent upon risk level designation of offenders.

### **Statue of Limitations for Filing a Civil Claim Against Perpetrator of a Serious Offense – [Civil Practice Law and Rules §§213-c, 215\(8\)](#)**

Enables victims to file a civil lawsuit against their attacker for physical, psychological or other injury or conditions suffered as a result of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree and course of sexual conduct against a child in the first degree (class B felony sex crimes) within five years of the commission of the offense. There is no requirement that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action. However, where an criminal action is brought, the victim has five years from the termination of the criminal action, whether it ended in conviction or acquittal, to commence the civil proceeding.

## **Medical and Health Services**

### **Treatment of Sexual Assault Survivors and Forensic Examination – [Executive Law §631\(13\)](#); [Public Health Law §2805-i \(4-b\)](#)**

Authorizes any licensed health care provider, accredited hospital or accredited sexual assault examiner program to provide services to a victim of sexual assault free of charge and to directly bill CVB. Thus,

practitioners provide victims of rape and/or a sexual offense with a free forensic rape examination which includes any laboratory tests and pharmaceuticals directly associated with the examination as well as a limited supply of HIV prophylaxis at no charge to the victim. A sexual assault survivor must be advised orally and in writing that she or he may decline to provide or assign any private health insurance benefits if they believe that disclosure of this information would put their privacy or safety at risk. Selected hospitals in the forensic examiner program must establish certain protocols to serve victims of sexual assault, such as providing a registered nurse, nurse practitioner or physician specially trained in forensic evidence within 60 minutes of a victim arriving at the hospital. These hospitals are required to provide a private room designated for such examinations, a shower after the exam, change of clothing, follow-up information and counseling and medical treatment referrals.

### **Health Services for Victims of Sexual Assault – [Executive Law §631\(2\), \(13\)](#)**

Authorizes CVB to provide compensation to survivors of sexual assault for other medical services not covered by the forensic examination, such as counseling, laboratory tests, pharmaceuticals and/or follow-up HIV post-exposure prophylaxis.

### **Emergency Contraception – [Public Health Law §2805-p](#)**

Requires hospitals treating rape victims to provide written information on emergency contraception and orally inform such patients about the efficacy of it. If requested, the hospital must also provide emergency contraception to a survivor unless medically contraindicated.

### **Collection of Forensic Evidence – [Public Health Law §2805-i \(1\), \(2\)](#)**

Provides that hospitals treating alleged victims of a sexual offense must collect forensic evidence for victims who consent to having such evidence collected, including slides, cotton swabs and clothing and maintain the chain of custody in the event the evidence is needed for prosecution. Unless the survivor asks the hospital not to store it, the hospital must keep the evidence safe for 30 days and cannot turn privileged evidence over to police without survivor's consent.

## **HIV Testing**

### **HIV Testing of Sexual Assault Perpetrator – [Criminal Procedure Law §390.15](#); [Public Health Law §2785](#)**

Allows a victim to submit a written request to the court for HIV testing of certain convicted felons. The court must order the test, unless it holds a hearing and determines the applicant is not the victim of the offense. Test results shall be communicated to the victim and defendant only. Redisclosure is restricted to certain parties enumerated under the law (e.g., victim's physician). In some instances, a court may order disclosure of confidential HIV related information where there is compelling need for the adjudication of a criminal or civil proceeding; clear and imminent danger to an individual or public health; or other factors. The court must provide written findings of fact, and shall assess the need for disclosure

against privacy interests. The court order authorizing disclosure will limit such disclosure to information necessary, to specific people, and prohibit redisclosure.

### **Disclosure of Victim Identity – [Civil Rights Law §50-b](#)**

Provides that no report, paper, photo or court document, or portion thereof, in the custody of a public officer or employee, which identifies a victim of a sexual offense shall be made available for public inspection. Generally, requires that the identity of such victim or HIV transmission-related offense be kept confidential, except for official purposes, for any person charged with the commission of the offense and to any person who notifies the victim and demonstrates to the satisfaction of the court to have good cause for access. A court may order restrictions upon any authorized disclosure to preserve the identity and confidentiality of the victim.

### **Violation of Victim Identity Confidentiality – [Civil Rights Law §50-c](#)**

Creates a right to sue for a survivor of a sexual offense or alleged transmission of HIV whose identity was improperly revealed.

### **Confidentiality of Reports and Information on Sexually Transmitted Diseases – [Public Health Law §2306](#)**

Requires the Department of Health and health care facilities to keep all records and information pertaining to sexually transmitted diseases confidential, unless evidence, which is otherwise admissible, is ordered by the court to be disclosed in a criminal proceeding, in a child protective proceeding to the prosecution and defense, or in a child protective proceeding where the subject consents to disclosure to the petitioner, respondent and law guardian.

## **Safety Provisions**

### **Safe Schools Against Violence in Education Act (SAVE) – [Education Law §§2801, 2801-a, 2802](#)**

Requires the State Department of Education in conjunction with DCJS to develop a violent incident reporting system to receive annual reports on violent and disruptive incidents at schools and in school districts. In addition, every school in the State must develop student codes of conduct on school property, school safety and emergency response plans, standards and procedures to assure the protection of school employees and comply with the statewide uniform violent incident reporting procedure. Each local education agency must establish procedures for notifying parents of students attending dangerous schools and parents of students who were victims of violent criminal offenses on school grounds of their right to transfer to a safer public school within the district.

**Sexual Assault Prevention Information – Education Law §§ 6432, 6434 \***

Requires every college in the State to inform incoming students about sexual assault and encourage students to report these incidents. Students should be provided with information regarding supportive services, school procedures for dealing with sex offenses and the applicable laws.

( \* See note below. )

**Student Access to Campus Crime Statistics – Education Law §6433 (See also 20 U.S.C. 1092(f)) \***

Requires NYS colleges and universities receiving State funds to provide students and incoming students information on how to access campus crime statistics, including sexual assaults.

( \* See note below. )

**\* Note: As of the date of this document's publication, Find Law has not updated its online posting of NYS law to reflect this new reference. Consult a hardcopy of the law.**

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