



## Select Victims' Rights – New York

### USING THIS RESOURCE

This resource is intended to provide a base of knowledge regarding crime victims' rights in New York and promising practices to ensure compliance with and enforcement of those rights. To keep this *Guide* as user-friendly as possible in light of the breadth, complexity and evolving nature of law, the *Guide* does not include all laws. The *Guide* is intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. For more in-depth information about the laws governing privacy, confidentiality and privilege in New York see the companion resource: *Law Enforcement-Based Victim Services in New York: Privacy, Privilege and Confidentiality*.

The following icons are used throughout this resource to highlight key moments for the user.



= Promising Practices: As used in this *Guide*, the “promising practices” indicator highlights procedures, methods or techniques, grounded in victim-centered and trauma-informed research and experience, that afford victims meaningful rights in the justice system.



= Take Note: As used in this *Guide*, the “take note” indicator provides context for the law cited or discussed. For example, if a law has a particularly narrow application or does not explicitly prohibit an action the “take note” indicator is used to highlight or provide clarity around the law.

This draft publication was developed by the National Crime Victim Law Institute (NCVLI) under 2018-V3-GX-K049, awarded to the International Association of Chiefs of Police (IACP) by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this draft publication are those of the contributors and do not necessarily represent the official position of the U.S. Department of Justice.

## TABLE OF CONTENTS AND INDEX OF RIGHTS<sup>1</sup>

<b>Using This Resource .....</b>	<b>1</b>
<b>Select Definitions .....</b>	<b>4</b>
<b>Select Crime Victims' Rights .....</b>	<b>11</b>
Right to Alternative Means of Testifying .....	17–18
Right to Copies of Reports	
Domestic Violence Incident Report.....	18–19, 41–44
Police Report.....	18–19
Right to Confer .....	13
Right to Compensation .....	11–12, 19–21, 22–23
Right to Creditor Intercession Services .....	16
Right to Fair Treatment.....	11–13, 17–18
Right to Employer Intercession Services .....	16
Right to be Heard .....	19–21, 21–22, 35–36, 38–39, 39–40
Right to Information About Victims' Rights .....	11–12, 19–21, 22–23, 24–26, 41–44, 48–55
Right to Notice.....	11–12, 19–21, 27, 33–34, 36–37, 37–38, 39–40, 41–44, 48–55, 55–56

<sup>1</sup> This table of contents and index of rights provides specific page references for many of the victims' rights laws contained within this *Guide*. The referenced laws are often narrower in scope than the broader rights identified in the index and may contain components of multiple core rights. Not all of the laws contained within this *Guide* are referenced in the table of contents and index; therefore, it is recommended that this document be reviewed in full.

Right to be Present .....	19–21, 21–22, 35–36, 39–40
Right to Privacy .....	14, 33, 46–47, 56–57, 57–61
Right to Protection .....	11–12, 14, 19–21, 21–22, 22–23, 33–34, 36–37
Right to Restitution .....	11–12, 19–21, 27–32, 38–39
Right to Return of Property .....	15, 21–22
Right to Speedy Trial .....	17–18

SELECT DEFINITIONS <sup>2</sup>	New York Statutes and Rules
<p><b>Crime Victim Compensation Definitions.</b></p> <p>...</p> <p>3. "Crime" shall mean (a) an act committed in New York state which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by law; or</p> <p>(b) an act committed outside the state of New York against a resident of the state of New York which would be compensable had it occurred within the state of New York and which occurred in a state which does not have an eligible crime victim compensation program as such term is defined in the federal victims of crime act of 1984;<sup>1</sup> or</p> <p>(c) an act of terrorism, as defined in section 2331 of title 18, United States Code, committed outside of the United States against a resident of New York state.</p> <p>4. "Family", when used with reference to a person, shall mean (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (c) any person residing in the same household with such person.</p> <p>5. "Victim" shall mean (a) a person who suffers personal physical injury as a direct result of a crime; (b) a person who is the victim of either the crime of (1) unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, (2) kidnapping in the second degree as defined in section 135.20 of the penal law, (3) kidnapping in the first degree as defined in section 135.25 of the penal law, (4) menacing in the first degree as defined in section 120.13 of the penal law, (5) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, (6) harassment in the second degree as defined in section 240.26 of the penal law, (7) harassment in</p>	<p>N.Y. Exec. Law § 621.</p>

<sup>2</sup> The Fair Treatment Standards for Crime Victims, N.Y. Exec. Law §§ 640–49, which contains a number of rights for crime victims, does not contain a separate section for definitions. Instead, this body of law often relies on definitions from other New York statutes. These cross-references appear in the statutory language included in the section "Select Crime Victims' Rights."

the first degree as defined in section 240.25 of the penal law, (8) aggravated harassment in the second degree as defined in subdivision three or five of section 240.30 of the penal law, (9) aggravated harassment in the first degree as defined in subdivision two of section 240.31 of the penal law, (10) criminal contempt in the first degree as defined in subdivision (b) or subdivision (c) of section 215.51 of the penal law, (11) stalking in the fourth, third, second or first degree as defined in sections 120.45, 120.50, 120.55 and 120.60 of the penal law, (12) labor trafficking as defined in section 135.35 of the penal law, (13) sex trafficking as defined in section 230.34 of the penal law; or (14) sex trafficking of a child as defined in section 230.34-a of the penal law; a vulnerable elderly person or an incompetent or physically disabled person as defined in section 260.31 of the penal law who incurs a loss of savings as defined in subdivision twenty-four of this section; or a person who has had a frivolous lawsuit filed against them.


6. "Representative" shall mean one who represents or stands in the place of another person, including but not limited to an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor or an heir of another person, or a parent of a minor.

...

9. "Elderly victim" shall mean a person sixty years of age or older who suffers loss, or damage as a direct result of a crime.

10. "Disabled victim" shall mean a person who has (a) physical, mental or medical impairment from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment.

11. For purposes of this article "child victim" shall mean a person less than eighteen years of age who suffers physical, mental or emotional injury, or loss or damage, as a direct result of a crime or any violation listed in subdivision twelve of section six hundred thirty-one of this article, or as a result of witnessing a crime or any violation listed in subdivision twelve of section six hundred thirty-one of this article.

<p>...</p> <p><sup>1</sup> 42 USCA § 10601 et seq.</p> <p> These definitions explicitly apply to the article of New York Executive Law that governs the Office of Victims Services, N.Y. Exec. Law §§ 620–35. Some of these statutes are included below in the section “Select Crime Victims’ Rights.” Other statutory provisions that grant victims rights also rely on these definitions. <i>See, e.g.</i>, N.Y. Penal Law § 60.27(4)(b) (victims’ right to restitution or reparation).</p>	
<p><b>Domestic Violence Protection Act Definitions.</b></p> <p>As used in this article:</p> <p>1. “Victim of domestic violence” means any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person’s child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, strangulation, identity theft, grand larceny or coercion; and</p> <p>(i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person’s child; and</p> <p>(ii) such act or acts are or are alleged to have been committed by a family or household member.</p> <p>2. “Family or household members” mean the following individuals:</p> <p>(a) persons related by consanguinity or affinity;</p> <p>(b) persons legally married to one another;</p> <p>(c) persons formerly married to one another regardless of whether they still reside in the same household;</p> <p>(d) persons who have a child in common regardless of whether such persons are married or have</p>	<p>N.Y. Soc. Serv. Law § 459-a.</p>

lived together at any time;

(e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household;

(f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; or

(g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

3. "Parent" means a natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.



4. "Residential program for victims of domestic violence" means any residential care program certified by the department and operated by a not-for-profit organization in accordance with the regulations of the department for the purpose of providing emergency shelter, services and care to victims of domestic violence. Residential programs for victims of domestic violence shall include, but shall not be limited to:

(a) "Domestic violence shelters", which shall include any residential care facility organized for the exclusive purpose of providing emergency shelter, services and care to victims of domestic violence and their minor children, if any;


(b) "Domestic violence programs" which shall include any facility which otherwise meets or would meet the requirements of paragraph (a) of this subdivision, except that victims of domestic violence and their minor children, if any, constitute at least seventy percent of the clientele of such program; and

(c) "Safe home networks" which shall include any organized network of private homes offering emergency shelter and services to victims of domestic violence and their minor children, if any. Such network shall be coordinated by a not-for-profit organization.

5. "Non-residential program for victims of domestic violence" means any program operated by a not-for-profit organization, for the purpose of providing non-residential services to victims of

<p>domestic violence, including, but not limited to, information and referral services, advocacy, counseling, and community education and outreach activities and providing or arranging for hotline services. Victims of domestic violence and their children, if any, shall constitute at least seventy percent of the clientele of such programs.</p> <p>6. Repealed.</p> <p> These definitions apply to the Domestic Violence Protection Act, N.Y. Soc. Serv. Law §§ 459-a through 459-h. Some sections of this Act are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Rape Crisis Counselor-Victim Privilege Definitions.</b></p> <p>When used in this section, the following terms shall have the following meanings:</p> <ol style="list-style-type: none"> <li>1. “Rape crisis program” means any office, institution or center which has been approved pursuant to subdivision fifteen of section two hundred six of the public health law, offering counseling and assistance to clients concerning sexual offenses, sexual abuses or incest.</li> <li>2. “Rape crisis counselor” means any person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision fifteen of section two hundred six of the public health law, and who, regardless of compensation, is acting under the direction and supervision of an approved rape crisis program.</li> <li>3. “Client” means any person who is seeking or receiving the services of a rape crisis counselor for the purpose of securing counseling or assistance concerning any sexual offenses, sexual abuse, incest or attempts to commit sexual offenses, sexual abuse, or incest, as defined in the penal law.</li> </ol> <p> These definitions apply to the rape crisis counselor-victim privilege, N.Y. C.P.L.R. 4510. The text of this privilege is included below in the section “Select Crime Victims’ Rights.”</p>	<p>N.Y. C.P.L.R. 4510(a).</p>



 Although this privilege is contained within New York's Civil Practice Law and Rules, it is applicable to criminal proceedings. N.Y. C.P.L.R. 60.10.	
<p><b>Address Confidentiality Program Definitions.</b></p> <p>For the purposes of this section the following words shall, unless the context requires otherwise, have the following meanings:</p> <p>(a) "Victim of domestic violence" shall have the same meaning as is ascribed to such term by section four hundred fifty-nine-a of the social services law.</p> <p>(b) "Actual address" means the residential street address, school address or work address of an individual, as specified on his or her application to be a program participant under this section.</p> <p>(c) "Program participant" means a person certified as a program participant under this section.</p> <p>(d) "Mail" means first class letters delivered via the United States Postal Service, including priority, express and certified mail, and excluding packages, parcels, periodicals and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate that they are sent by a government agency.</p> <p>(e) "Substitute address" means the secretary's designated address for the address confidentiality program.</p> <p>(f) "Secretary" means the secretary of state.</p> <p>(g) "Public record" means any information kept, held, filed, produced or reproduced by, with or for an agency, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.</p>	<p>N.Y. Exec. Law § 108(1).</p>

(h) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be served on a program participant.

(i) "Victim of a sexual offense" means a victim of any act constituting an offense as defined under article one hundred thirty, and/or sections 255.25, 255.26, and 255.27 of the penal law, including threats or attempts to commit such offenses.

(j) "Victim of stalking" means a victim of any act constituting an offense as defined under sections 120.45, 120.50, 120.55 and 120.60 of the penal law.

(k) "Victim of human trafficking" means a victim of any act constituting an offense as defined under section 135.35, 135.37, 230.34, or 230.34-a of the penal law.\



These definitions apply to New York's Address Confidentiality Program, N.Y. Exec. Law § 108. The rest of this statutory provision is included below in the section "Select Crime Victims' Rights."

<b>SELECT CRIME VICTIMS' RIGHTS</b>	<b>New York Statutes and Rules</b>
<p><b>Fair Treatment Standards for Crime Victims.</b></p> <p>1. The commissioner of the division of criminal justice services, in consultation with the director of the office of victim services and other appropriate officials, shall promulgate standards for the treatment of the innocent victims of crime by the agencies which comprise the criminal justice system of the state.</p> <p>2. For the purposes of this article the term “criminal justice” shall include juvenile justice and the objectives and criteria set forth in sections six hundred forty-one and six hundred forty-two of this article shall apply to presentment agencies as defined in subdivision twelve of section 301.2 of the family court act.</p>	N.Y. Exec. Law § 640.
<p><b>Fair Treatment Standards for Crime Victims: Purpose; Victims' Rights to Information and Notification.</b></p> <p>The object of such fair treatment standards shall be to:</p> <p>1. Ensure that crime victims routinely receive emergency social and medical services as soon as possible and are given information pursuant to section six hundred twenty-five-a of this chapter on the following:</p> <ul style="list-style-type: none"> <li>(a) availability of crime victim compensation;</li> <li>(b) availability of appropriate public or private programs that provide counseling, treatment or support for crime victims, including but not limited to the following: rape crisis centers, victim/witness assistance programs, elderly victim services, victim assistance hotlines and domestic violence shelters;</li> <li>(c) the role of the victims in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and</li> </ul>	N.Y. Exec. Law § 641.

(d) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

2. Ensure routine notification of a victim or witness as to steps that law enforcement officers or district attorneys can take to protect victims and witnesses from intimidation.

3. Ensure notification of victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims, if such persons provide the appropriate official with a current address and telephone number, either by phone or by mail, if possible, of judicial proceedings relating to their case, including:

(a) the arrest of an accused;



(b) the initial appearance of an accused before a judicial officer;



(c) the release of an accused pending judicial proceedings; and





(d) proceedings in the prosecution of the accused including entry of a plea of guilty, trial, sentencing, but prior to sentencing specific information shall be provided regarding the right to seek restitution and reparation, and where a term of imprisonment is imposed, specific information shall be provided regarding maximum and minimum terms of such imprisonment.



Other statutory provisions outline the procedure for ensuring that such notification and information rights are meaningful; they also more narrowly define the obligations of law enforcement, prosecutors and other government officials. *See, e.g.*, N.Y. Exec. Law § 625-a (requiring police stations and other locations where a crime might be reported to have available informative booklets, pamphlets and other written materials regarding crime victim compensation, victims' rights and available programs); *id.* at § 625-b (requiring development and implementation of a standardized procedure to be used by police officers and others for victim notification of rights and available programs); *id.* at § 642(3) (requiring all police departments to provide victims of sex offenses with written contact information for the nearest rape crisis center); *id.* at § 646-a (requiring the district attorney to provide victims with an informational pamphlet detailing their rights); N.Y. Crim. Proc. Law § 330.20(7-a) (requiring the state commissioner of mental health or state commissioner of the office for people with developmental disabilities to notify victims of imposition of a special order of conditions on an offender following a verdict or plea of not responsible by reason of mental disease or defect); *id.* at 440.50 (requiring the district attorney to inform victims of the disposition of a case).

 A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully document a victim’s request to exercise rights. Victims who wish to receive the type of notice identified here should be reminded, throughout their participation in the justice system, that their contact information must be kept current with relevant agencies.	
<p><b>Fair Treatment Standards for Crime Victims: Victims’ Right to Confer with the Prosecution.</b></p> <p>The victim of a violent felony offense, a felony involving physical injury to the victim, a felony involving property loss or damage in excess of two hundred fifty dollars, a felony involving attempted or threatened physical injury or property loss or damage in excess of two hundred fifty dollars or a felony involving larceny against the person shall, unless he or she refuses or is unable to cooperate or his or her whereabouts are unknown, be consulted by the district attorney in order to obtain the views of the victim regarding disposition of the criminal case by dismissal, plea of guilty or trial. In such a case in which the victim is a minor child, or in the case of a homicide, the district attorney shall, unless the family refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult for such purpose with the family of the victim. In addition, the district attorney shall, unless he or she (or, in the case in which the victim is a minor child or a victim of homicide, his or her family) refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult and obtain the views of the victim or family of the victim, as appropriate, concerning the release of the defendant in the victim’s case pending judicial proceedings upon an indictment, and concerning the availability of sentencing alternatives such as community supervision and restitution from the defendant. The failure of the district attorney to so obtain the views of the victim or family of the victim shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.</p>  A promising practice is to have a procedure in place that reminds victims of their responsibility to keep their contact information current and that enables victims to make any necessary updates easily.	<p>N.Y. Exec. Law § 642(1).</p>

<p><b>Fair Treatment Standards for Crime Victims: Victims' Right to a Separate, Secure Waiting Area in the Courthouse.</b></p> <p>The victims and other prosecution witnesses shall, where possible, be provided, when awaiting court appearances, a secure waiting area that is separate from all other witnesses.</p> <p> N.Y. Exec. Law § 647(2) requires courts to make such a secure waiting area available to victims, where possible.</p>	<p>N.Y. Exec. Law § 642(2).</p>
<p><b>Fair Treatment Standards for Crime Victims: Right of Victims of Sex Offenses to a Private Setting for Interviews with Law Enforcement and Prosecutors.</b></p> <p>(a) All police departments, as that term is defined in subdivision a of section eight hundred thirty-seven-c of this chapter, district attorneys' offices and presentment agencies, as that term is defined in subdivision twelve of section 301.2 of the family court act, shall provide a private setting for interviewing victims of a crime defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law. For purposes of this subdivision, "private setting" shall mean an enclosed room from which the occupants are not visible or otherwise identifiable, and whose conversations cannot be heard, from outside such room. Only (i) those persons directly and immediately related to the interviewing of a particular victim, (ii) the victim, (iii) a social worker, rape crisis counselor, psychologist or other professional providing emotional support to the victim, unless the victim objects to the presence of such person and requests the exclusion of such person from the interview, and (iv) where appropriate, the parent or parents of the victim, if requested by the victim, shall be present during the interview of the victim.</p> <p> A promising practice is to ensure that law enforcement officers who work with victims of sexual offenses inform the victims of this privacy protection when requesting such an interview. Victims should also be notified of the right to have a social worker or other professional present during the interview for emotional support.</p>	<p>N.Y. Exec. Law § 642(2-a)(a).</p>

<p><b>Fair Treatment Standards for Crime Victims: Right of Victims of Sex Offenses to Information from Law Enforcement Regarding Rape Crisis Centers.</b></p> <p>All police departments, as that term is defined in subdivision a of section eight hundred thirty-seven-c of this chapter, shall provide victims of a crime defined in article one hundred thirty of the penal law with the name, address, and telephone of the nearest rape crisis center in writing.</p> <p> A promising practice is to provide victims with this information as soon as possible. Consideration should be given to providing written notice in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	<p>N.Y. Exec. Law § 641(2-a)(b).</p>
<p><b>Fair Treatment Standards for Crime Victims: Victims' Right to the Prompt Return of Property.</b></p> <p>Law enforcement agencies and district attorneys shall promptly return property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial.</p> <p> N.Y. Exec. Law § 647(3) provides that “[t]he court shall assist in and expedite the return of property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial.”</p> <p> N.Y. Exec. Law § 642(3) grants victims the right to the prompt return of their property from law enforcement agencies and district attorneys.</p> <p> A promising practice is to have a policy and procedure in place that clearly defines what “promptly” means in the context of the victim’s right to return of property. Instructions should be ready and available to provide to victims, explaining how they may promptly obtain their property, and including the name of a person they may contact to check the status of the return.</p>	<p>N.Y. Exec. Law § 642(3).</p>

**Fair Treatment Standards for Crime Victims: Victims' Rights Regarding Employers and Creditors.**

N.Y. Exec. Law § 642(4).

The victim or witness who so requests shall be assisted by law enforcement agencies and district attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. In addition, a victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or the district attorney in the investigation or prosecution of a crime is unable to meet obligations to a creditor, creditors or others should be assisted by such agencies or the district attorney in providing to such creditor, creditors or others accurate information about the circumstances of the crime, including the nature of any loss or injury suffered by the victim, or about the victim's or witness' cooperation, where appropriate.



Victims may not be discharged from a job or otherwise penalized for complying with a subpoena to appear at a criminal proceeding, consulting with the district attorney or exercising their rights as a victim to be present and/or heard at sentencing. N.Y. Penal Law § 215.14.



A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully document a victim's request to exercise rights.



A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment- and creditor-related rights.



A promising practice is to have a policy and procedure in place to provide employers and creditors with this information.







<p><b>Fair Treatment Standards for Crime Victims: Victim Assistance Education for Law Enforcement and District Attorneys.</b></p> <p>Victim assistance education and training, with special consideration to be given to victims of domestic violence, sex offense victims, elderly victims, child victims, and the families of homicide victims, shall be given to persons taking courses at state law enforcement training facilities and by district attorneys so that victims may be promptly, properly and completely assisted.</p>	<p>N.Y. Exec. Law § 642(4).</p>
<p><b>Fair Treatment Standards for Crime Victims: Child Victims' Rights and Treatment.</b></p> <p>To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims:</p> <ol style="list-style-type: none"> <li>1. To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child.</li> <li>2. Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.</li> <li>3. To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.</li> </ol>	<p>N.Y. Exec. Law § 642-a.</p>

<p>4. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.</p> <p>5. In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.</p> <p>6. In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the “child witness” or “special witness” as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child’s testimony.</p> <p>7. A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.</p>	
<p><b>Fair Treatment Standards for Crime Victims: Victims’ Right to Copy of Police Report Without Charge; Certain Victims’ Right to File a Complaint with Local Law Enforcement.</b></p> <p>1. A victim of crime shall be entitled, regardless of physical injury, without charge to a copy of a police report of the crime.</p> <p>2. An individual whose identity was assumed or whose personal identifying information, as defined in section 190.77 of the penal law, was used in violation of section 190.78, 190.79 or 190.80 of the penal law, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of the penal law, who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, may make a complaint to the local law enforcement agency of the county in which any part of the offense took place regardless of whether the defendant was actually present in such county, or in the county in which the person who suffered financial loss resided at the time of the commission of the offense, or in the county where the person whose personal identification information was used in the commission of the offense resided at the time of the commission of the offense as provided in paragraph (1) of subdivision four of section 20.40 of the criminal procedure</p>	<p>N.Y. Exec. Law § 646.</p>

<p>law. Said local law enforcement agency shall take a police report of the matter and provide the complainant with a copy of such report free of charge.</p> <p>3. An individual who has been the victim in this state of a family offense as defined in subdivision one of section 530.11 of the criminal procedure law or section eight hundred twelve of the family court act may, upon alleging that it would be a hardship for him or her to make such complaint in the local jurisdiction in which such offense occurred, make a complaint to any local law enforcement agency in the state regardless of where the act took place. Such local law enforcement agency shall take a police report of the matter, as well as prepare a domestic violence incident report as defined in subdivision fifteen of section eight hundred thirty-seven of this chapter and provide the complainant with a copy of such report free of charge. A copy of the police report and completed domestic violence incident report shall be promptly forwarded to the appropriate law enforcement agency with jurisdiction over the location where the incident is reported to have occurred for the purposes of further investigation.</p>	
<p><b>Fair Treatment Standards for Crime Victims: Victims' Right to Informational Pamphlet About Victims' Rights.</b></p> <p>1. The district attorney shall provide the victim, at the earliest time possible, with an informational pamphlet detailing the rights of crime victims which shall be prepared by the division of criminal justice services in consultation with the director of the office of victim services and distributed to each district attorney's office.</p> <p>2. The pamphlet shall summarize provisions of this article. It shall also include specific information with appropriate statutory references on the following:</p> <p>(a) the rights of crime victims to compensation and services;</p> <p>(b) the rights of crime victims to routine notification of judicial proceedings relating to their case as provided in section six hundred forty-one of this article, in section 330.20, and section 440.50 of the criminal procedure law and section one hundred forty-nine-a of the correction law;</p> <p>(c) the rights of crime victims to be protected from intimidation and to have the court, where appropriate, issue protective orders as provided in sections 530.12 and 530.13 of the criminal</p>	<p>N.Y. Exec. Law § 646-a.</p>

<p>procedure law and sections 215.15, 215.16 and 215.17 of the penal law;</p> <p>(d) the rights of crime victims to submit, where appropriate, a victim impact statement for the pre-sentencing report and the parole hearing as provided in section 390.30 of the criminal procedure law and section two hundred fifty-nine-i of this chapter;</p> <p>(e) the rights of crime victims, where a defendant is being sentenced for a felony, to request the right to make a statement at the time of sentencing as provided in section 380.50 of the criminal procedure law; and</p> <p>(f) the rights of crime victims to request restitution and have the district attorney present such request to the court and assist the crime victim in the filing and collection of a restitution order in cooperation with the designated agency of the court as provided in section 420.10 of the criminal procedure law and section 60.27 of the penal law.</p> <p>(g) the rights of crime victims to be aware of the defendant's incarceration status by providing the division of parole's contact information, including the division's toll-free telephone number, as provided for in subdivision two of section two hundred fifty-nine-i of this chapter. Such notice shall advise the crime victim to use the division's toll-free telephone number to update contact information.</p> <p>3. This pamphlet shall provide space for the insertion of the following information:</p> <p>(a) the address and phone number of the office of victim services;</p> <p>(b) the address and phone numbers of local victim service programs, where appropriate;</p> <p>(c) the name, phone number and office location of the person in the district attorney's office to whom inquiries concerning the victims case may be directed; and</p> <p>(d) any other information the division deems appropriate.</p> <p>4. (a) The commissioner of the division of criminal justice services in consultation with the director of the office of victim services shall develop and prepare a standardized form for the use of district attorney offices for the purpose of reporting compliance with this section. The form is to be distributed to each district attorney. Every district attorney's office in the state shall complete the reporting form annually and send it to the director of the office of victim services by the first day of January each year subsequent to the effective date of this subdivision.</p> <p>(b) A copy of the report shall be retained by the district attorney and upon request, a victim of a crime or relative of a victim shall be entitled to receive from the district attorney a copy of their</p>	
--	--

<p>district attorney's annual report without charge. Any other person requesting a copy of the report shall pay a fee not to exceed the actual cost of reproduction.</p> <p> A promising practice is to have a policy and procedure defining what "earliest possible time" means to ensure that district attorneys provide victims required information as quickly and consistently as possible. Consideration should be given to providing written notice in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Fair Treatment Standards for Crime Victims: Victims' Rights to Have Views Considered by Court, to a Separate Waiting Area in Courthouses and to Court Assistance Regarding the Return of Property; Victim Assistance Education for Judicial and Nonjudicial Court Employees.</b></p> <p>Fair treatment standards for crime victims in the courts shall provide that:</p> <ol style="list-style-type: none"> <li>1. The court shall consider the views of the victim of a violent felony offense, a felony involving physical injury to the victim, a felony involving property loss or damage in excess of two hundred fifty dollars, a felony involving attempted or threatened physical injury or property loss or damage in excess of two hundred fifty dollars or a felony involving larceny against the person, or of the family of a homicide victim or minor child, regarding discretionary decisions relating to the criminal case, including, but not limited to, plea agreements and sentence. In addition, the court shall consider the views of the victim or family of the victim, as appropriate, concerning the release of the defendant in the victim's case pending judicial proceedings upon an indictment, and concerning the availability of sentencing alternatives such as community supervision and restitution from the defendant. The failure of the court to consider the views of the victim or family of the victim shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.</li> <li>2. The victims and other prosecution witnesses shall, where possible, be provided, when awaiting court appearances, a secure waiting area that is separate from all other witnesses.</li> <li>3. The court shall assist in and expedite the return of property held for evidentiary purposes unless</li> </ol>	<p>N.Y. Exec. Law § 647.</p>

<p>there is a compelling reason for retaining it relating to proof at trial.</p> <p>4. Victim assistance education shall be given to judicial and nonjudicial personnel of the unified court system so that victims may be promptly, properly and completely assisted.</p> <p> N.Y. Exec. Law § 642 grants victims the right to such a secure waiting area, where possible.</p> <p> N.Y. Exec. Law § 642(3) grants victims the right to the prompt return of their property from law enforcement agencies and district attorneys.</p> <p> Instructions should be ready and available to provide to victims, explaining how they may promptly obtain their property, and including the name of a person they may contact to check the status of the return.</p>	
<p><b>Fair Treatment Standards for Crime Victims Does Not Create a Cause of Action for Damages or Injunctive Relief.</b></p> <p>Nothing in this article shall be construed as creating a cause of action for damages or injunctive relief against the state or any of its political subdivisions or officers or any agency thereof.</p>	N.Y. Exec. Law § 649.
<p><b>Victims' Right to Compensation: Obligations of Police Station, Precinct House and Other Locations Where a Crime May Be Reported; Victims' Rights to Information About Compensation, Rights and Available Services; Application Forms.</b></p> <p>1. Every police station, precinct house, any appropriate location where a crime may be reported and any location required by the rules and regulations of the office shall have available informative booklets, pamphlets and other pertinent written information, including information cards, to be supplied by the office, relating to the availability of crime victims compensation including all necessary application blanks required to be filed with the office and shall display prominently</p>	N.Y. Exec. Law § 625-a.

posters giving notification of the existence and general provisions of this article, those provisions of the penal law that prohibit the intimidation of crime victims and the location of the nearest crime victim service program. The office may issue guidelines for the location of such display and shall provide posters, application forms, information cards and general information. Every victim who reports a crime in any manner whatsoever shall be given notice about the rights of crime victims and the existence of all relevant local victim's assistance programs and services pursuant to section six hundred twenty-five-b of this article, and supplied by the person receiving the report with information, application blanks, and information cards which shall clearly state: (a) that crime victims may be eligible for state compensation benefits; (b) the address and phone number of the office; (c) that police and district attorneys can help protect victims against harassment and intimidation; (d) the addresses and phone numbers of local victim service programs, where appropriate, or space for inserting that information; or (e) any other information the office deems appropriate. Such cards shall be designed by the office in consultation with local police, and shall be printed and distributed by the office. The office shall develop a system for distributing a sufficient supply of the information cards referred to in this subdivision, to all the appropriate designated locations, which shall include a schedule for meeting that requirement.

...


2. No cause of action of whatever nature or kind arising out of a failure to give or receive the notice required by this section shall accrue to any person against the state or any of its agencies or local subdivisions, or, any police officer or other agent, servant or employee thereof, or any hospital or agents or employees thereof, nor shall any such failure be deemed or construed to affect or alter any time limitation or other requirement contained in this article for the filing or payment of a claim hereunder.



N.Y. Exec. Law § 621 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."



Records related to a victim's compensation claim are confidential, subject to certain limitations. N.Y. Exec. Law § 633.

<p><b>Victims' Right to Compensation: Standardized Victim Notification and Verification Procedure for Police Officers.</b></p> <p>1. The commissioner of the division of criminal justice services in cooperation with the office shall develop and implement a standardized procedure to be used by police officers, county sheriffs' departments and state police officers whereby victims of crime are notified about the rights of crime victims and the existence of programs designed to assist crime victims.</p> <p>2. In establishing a victims assistance notification procedure, consideration shall be given to (a) developing a uniform method of informing victims of crime of their rights and services available, (b) including notification as part of a routine task performed in the course of law enforcement duties, and (c) documenting a victim's receipt of such notice.</p> <p>3. All state or municipal printed forms for a police primary investigation report shall include a space to indicate that the victim did or did not receive information on victim's rights, office of victim services assistance and relevant local assistance pursuant to subdivision one of section six hundred twenty-five-a of this article.</p> <p> N.Y. Exec. Law § 621 defines the terms in used in this statutory provision. These definitions are included above in the section "Select Definitions."</p>	<p>N.Y. Exec. Law § 625-b.</p>
<p><b>Sex Offense Victims' Rights Regarding Evidence Kit Collection and Testing; Maintenance of Kits; Obligations of Police and Prosecutorial Agencies; Adoption of Victim-Focused Policies and Procedures Regarding Contact with Sex Offense Victims.</b></p> <p>1. The following requirements shall apply to all sexual offense evidence kits surrendered to or collected by, at the request of, or with cooperation of a police agency or prosecutorial agency:</p> <p>(a) Each such police agency and prosecutorial agency shall submit any sexual offense evidence kits in its custody or control to an appropriate forensic laboratory within ten days of receipt.</p>	<p>N.Y. Exec. Law § 838-a.</p>



- (b) Each forensic laboratory receiving sexual offense evidence kits after the effective date of this section shall assess case specific information for Combined DNA Index System (CODIS) eligibility and, if eligible, analyze the kits and attempt to develop CODIS eligible profiles of any potential perpetrators from the evidence submitted. The forensic lab shall report the results to the submitting agency and appropriate prosecutorial entity within ninety days after receipt of a kit.
- (c) Each police agency and prosecutorial agency that has one or more sexual offense evidence kit in its custody or control shall, within ninety days after the effective date of this paragraph, inventory such kits and report the total number of such kits to the division and to the forensic laboratory where such kits will be submitted pursuant to paragraph (a) of this subdivision. The division shall provide such inventories to the senate and assembly leaders by March first, two thousand seventeen. Every police and prosecutorial agency shall update this report each month thereafter until paragraph (a) of this subdivision has become effective.
- (d) Each police agency and prosecutorial agency that, prior to the effective date of paragraph (a) of this subdivision, has one or more sexual offense evidence kits in its custody or control shall, within thirty days after the effective date of this section, submit all untested kits in its possession or control to an appropriate forensic laboratory.
- (e) Each forensic laboratory, within one hundred twenty days after receiving each sexual offense evidence kit pursuant to paragraph (d) of this subdivision shall assess case specific information for CODIS eligibility and, if eligible, analyze the kits and attempt to develop CODIS eligible profiles for any potential perpetrators and shall, within ninety days of such assessment, report the results to the submitting agency and the appropriate prosecutorial entity.
- (f) The failure of any such police agency, prosecutorial agency or forensic laboratory to comply with a time limit specified in this section or section eight hundred thirty-eight-b of this article shall not, in and of itself, constitute a basis for a motion to suppress evidence in accordance with section 710.20 of the criminal procedure law.
2. (a) Each forensic laboratory in the state shall report to the division, on a quarterly basis, in writing, on (i) the number of sexual offense evidence kits it received, (ii) the number of such kits processed for the purpose of developing Combined DNA Index System (CODIS) eligible profiles of any potential perpetrators, and (iii) the number of kits not processed for testing, including, the reason such kits were ineligible for processing.

(b) Each police agency and prosecutorial agency shall report to the division on a quarterly basis, in writing, on (i) the number of all the sexual offense evidence kits it received, (ii) the number of such kits it submitted to a forensic laboratory for processing, (iii) the number of kits in its custody or control that have not been processed for testing, and (iv) the length of time between receipt of any such sexual offense evidence kit and the submission of any such kit to the forensic laboratory.


(c) The division shall provide to the senate and assembly leaders such quarterly reports received from the forensic labs and police and prosecutorial agencies pursuant to paragraphs (a) and (b) of this subdivision by January first, two thousand eighteen and annually thereafter.

3. Each police agency, prosecutorial agency and other law enforcement agency within this state shall adopt policies and procedures concerning contact with victims of sexual offenses, and the provision of information 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 nonjudgmental 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.

4. The division shall undertake actions designed to ensure that all police agencies and prosecutorial agencies in the state and all forensic laboratories are educated and aware of the provisions of this section.

<p><b>Sex Offense Victims' Notification Rights Regarding DNA Testing.</b></p> <p>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.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully document a victim's request to exercise rights.</p>	<p>N.Y. Exec. Law § 838-b.</p>
<p><b>Victims' Right to Restitution or Reparation.</b></p> <p>1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action taken against the victim. The district attorney shall where appropriate, advise the court at or before the time of</p>	<p>N.Y. Penal Law § 60.27.</p>

sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action, caused thereby to the victim. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

2. Whenever the court requires restitution or reparation to be made, the court must make a finding as to the dollar amount of the fruits of the offense and the actual out-of-pocket loss to the victim caused by the offense. In making this finding, the court must consider any victim impact statement provided to the court. If the record does not contain sufficient evidence to support such finding or upon request by the defendant, the court must conduct a hearing upon the issue in accordance with the procedure set forth in section 400.30 of the criminal procedure law.

3. The provisions of sections 420.10, 420.20 and 420.30 of the criminal procedure law shall apply in the collection and remission of restitution and reparation.

4. For purposes of the imposition, determination and collection of restitution or reparation, the following definitions shall apply:

(a) the term "offense" shall include the offense for which a defendant was convicted, as well as any other offense that is part of the same criminal transaction or that is contained in any other accusatory instrument disposed of by any plea of guilty by the defendant to an offense.

(b) the term "victim" shall include the victim of the offense, the representative of a crime victim as defined in subdivision six of section six hundred twenty-one of the executive law, an individual

whose identity was assumed or whose personal identifying information was used in violation of section 190.78, 190.79 or 190.80 of this chapter, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, a good samaritan as defined in section six hundred twenty-one of the executive law and the office of victim services or other governmental agency that has received an application for or has provided financial assistance or compensation to the victim. A victim shall also mean any owner or lawful producer of a master recording, or a trade association that represents such owner or lawful producer, that has suffered injury as a result of an offense as defined in article two hundred seventy-five of this chapter.

5. (a) Except upon consent of the defendant or as provided in paragraph (b) of this subdivision, or as a condition of probation or conditional discharge as provided in paragraph (g) of subdivision two of section 65.10 of this chapter, the amount of restitution or reparation required by the court shall not exceed fifteen thousand dollars in the case of a conviction for a felony, or ten thousand dollars in the case of a conviction for any offense other than a felony. Notwithstanding the provisions of this subdivision, if an officer of a school district is convicted of violating any section of article one hundred fifty-five of this chapter where the victim of such crime is such officer's school district, the court may require an amount of restitution up to the full amount of the fruits of the offense or reparation up to the full amount of the actual out-of-pocket loss suffered by the victim, provided further that in such case the provisions of paragraph (b) of this subdivision shall not apply.

(b) The court in its discretion may impose restitution or reparation in excess of the amounts specified in paragraph (a) of this subdivision, provided however that the amount in excess must be limited to the return of the victim's property, including money, or the equivalent value thereof; and reimbursement for medical expenses actually incurred by the victim prior to sentencing as a result of the offense committed by the defendant.

6. Any payment made as restitution or reparation pursuant to this section shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment.

7. In the event that the court requires restitution or reparation to be made to a person and that person dies prior to the completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.

8. The court shall in all cases where restitution or reparation is imposed direct as part of the disposition that the defendant pay a designated surcharge of five percent of the entire amount of a restitution or reparation payment to the official or organization designated pursuant to subdivision eight of section 420.10 of the criminal procedure law. The designated surcharge shall not exceed five percent of the amount actually collected. Upon the filing of an affidavit of the official or organization designated pursuant to subdivision eight of section 420.10 of the criminal procedure law demonstrating that the actual cost of the collection and administration of restitution or reparation in a particular case exceeds five percent of the entire amount of the payment or the amount actually collected, as the case may be, the court shall direct that the defendant pay an additional surcharge of not more than five percent of the entire amount of a restitution or reparation payment to such official or organization, or the actual cost of collection or administration, whichever is less unless, upon application of the defendant, the court determines that imposition of such additional surcharge would cause undue hardship to the defendant, or any other person who is financially supported by the defendant, or would otherwise not be in the interest of justice. Such additional surcharge, when added to the initial five percent surcharge, shall not exceed ten percent of the amount actually collected.

9. If the offense of which a person is convicted is a class A, class B, class C, or class D felony involving the sale of a controlled substance, as defined in article two hundred twenty of this chapter, and no other victim who is a person is seeking restitution in the case, the term "victim" as used in this section, in addition to its ordinary meaning, shall mean any law enforcement agency of the state of New York or of any subdivision thereof which has expended funds in the purchase of any controlled substance from such person or his agent as part of the investigation leading to such conviction. Any restitution which may be required to be made to a law enforcement agency pursuant to this section shall be limited to the amount of funds expended in the actual purchase of such controlled substance by such law enforcement agency, less the amount of any funds which have been or will be recovered from any other source, and shall not include a designated surcharge pursuant to subdivision eight of this section. Any law enforcement agency seeking restitution pursuant to this section shall file with the court and the district attorney an affidavit stating that funds expended in the actual purchase of a controlled substance for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding. Any law enforcement agency receiving restitution pursuant to this section shall

promptly transmit to the commissioner of the division of criminal justice services a report stating the dollar amount of the restitution received.

10. If the offense of which a person is convicted is defined in section 150.10, 150.15 or 150.20 of this chapter, and no other victim who is a person is seeking restitution in the case, the term "victim" as used in this section, in addition to its ordinary meaning, shall mean any municipality or volunteer fire company which has expended funds or will expend funds for the purpose of restoration, rehabilitation or clean-up of the site of the arson. Any restitution which may be required to be made to a municipality or volunteer fire company pursuant to this section shall be limited to the amount of funds reasonably expended or to be expended for the purpose of restoration, rehabilitation or clean-up of the site of the arson, less the amount of any funds which have been or will be recovered from any other source, and shall not include a designated surcharge pursuant to subdivision eight of this section. Any municipality or volunteer fire company seeking restitution pursuant to this section shall file with the court, district attorney and defense counsel an affidavit stating that the funds reasonably expended or to be expended for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding. For the purposes of this subdivision, "volunteer fire company" means a fire company as defined in paragraph a of subdivision two of section one hundred of the general municipal law.

11. Notwithstanding any other provision of this section to the contrary, when a person is convicted of harming an animal trained to aid a person with a disability in the second degree as defined in section 195.11 of this chapter, or harming an animal trained to aid a person with a disability in the first degree as defined in section 195.12 of this chapter, the court, in addition to any other sentence, shall order the payment of restitution to the person with a disability who was aided by such animal.

12. If the offense of which a person is convicted is defined in section 155.25, 155.30, 155.35, 155.40 or 155.42 of this chapter, and the property taken is timber, the court may upon conviction, in addition to any other sentence, direct the defendant to pay the rightful owner of such timber an amount equal to treble the stumpage value of the timber stolen as defined in section 71-0703 of the environmental conservation law and for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition



immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of monetary payment to make such restoration.



13. If the offense of which a person is convicted is defined in section 240.50, subdivision one or two of section 240.55, section 240.60, section 240.61, section 240.62 or section 240.63 of this chapter, and no other victim who is a person is seeking restitution in the case, the term “victim” as used in this subdivision, in addition to the ordinary meaning, shall mean any school, municipality, fire district, fire company, fire corporation, ambulance association, ambulance corporation, or other legal or public entity engaged in providing emergency services which has expended funds for the purpose of responding to a false report of an incident or false bomb as defined in section 240.50, subdivision one or two of section 240.55, section 240.60, section 240.61, section 240.62, or section 240.63 of this chapter. Any restitution which may be required to be made to a victim pursuant to this subdivision shall be limited to the amount of funds reasonably expended for the purpose of responding to such false report of incident or false bomb, less the amount of any funds which have been or will be recovered from any other source and shall not include a designated surcharge pursuant to subdivision eight of this section. Any victim seeking restitution pursuant to this subdivision shall file with the court, district attorney and defense counsel an affidavit stating that the funds reasonably expended for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding, except as provided for by section 3-112 of the general obligations law.

14. Where a transfer of probation has occurred pursuant to section 410.80 of the criminal procedure law and the probationer is subject to a restitution condition, the department of probation in the county in which the order of restitution was imposed shall notify the appropriate district attorney. Upon notification by the department of probation, such district attorney shall file a certified copy of the judgment with the clerk of the county in the receiving jurisdiction for purposes of establishing a first lien and to permit institution of civil proceedings pursuant to the provisions of subdivision six of section 420.10 of the criminal procedure law.



A promising practice is to inform victims of their right to seek restitution upon the conviction of defendant for losses caused by defendant’s criminal conduct. Assisting victims with the documentation of their losses—including anticipated future expenses—is recommended from the earliest moments of the case.



<p><b>Sexual Assault Victims' Right to Not be Subjected to a Polygraph Test or Psychological Stress Evaluator Test.</b></p> <p>1. No district attorney, police officer or employee of any law enforcement agency shall request or require any victim of a sexual assault crime to submit to any polygraph test or psychological stress evaluator examination.</p> <p>2. As used in this section, "victim of a sexual assault crime" means any person alleged to have sustained an offense under article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law.</p> <p> A promising practice is to ensure that law enforcement officers who work with victims of sexual offenses are aware that victims cannot be subjected to truth-telling examinations or psychological stress tests and that they communicate this right to the victims.</p>	<p>N.Y. Crim. Proc. Law § 160.45.</p>
<p><b>Victims' Right to Notice of Special Order of Conditions Following Verdict or Plea of Not Responsible By Reason of Mental Disease or Defect.</b></p> <p>Whenever the court issues a special order of conditions pursuant to this section, the commissioner shall make reasonable efforts to notify the victim or victims or the designated witness or witnesses that a special order of conditions containing such provisions has been issued, unless such victim or witness has requested that such notice should not be provided.</p> <p> For purposes of this right, an "order of conditions" means an order directing a defendant to comply with this prescribed treatment plan, or any other condition which the court determines to be reasonably necessary or appropriate, and, in addition, where a defendant is in custody of the commissioner, not to leave the facility without authorization." N.Y. Crim. Proc. Law § 330.20(1)(o). When it is "reasonably necessary or appropriate, an order of conditions may be accompanied by a special order of conditions set forth in a separate document requiring that the defendant: (i) stay away from the home, school, business or place of employment of the victim or</p>	<p>N.Y. Crim. Proc. Law § 330.20(7-a).</p>

<p>victims, or of any witness designated by the court, of such offense; or (ii) refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such special order. An order of conditions or special order of conditions shall be valid for five years from the date of its issuance, except that, for good cause shown, the court may extend the period for an additional five years.” <i>Id.</i></p>	
<p><b>Victims’ Right to Speak at Sentencing.</b></p> <p>(a) For purposes of this section “victim” shall mean:</p> <p>(1) the victim as indicated in the accusatory instrument; or</p> <p>(2) if such victim is unable or unwilling to express himself or herself before the court or a person so mentally or physically disabled as to make it impracticable to appear in court in person or the victim is deceased, a member of the family of such victim, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim, unless the court finds that it would be inappropriate for such person to make a statement on behalf of the victim.</p> <p>(b) If the defendant is being sentenced for a felony the court, if requested at least ten days prior to the sentencing date, shall accord the victim the right to make a statement with regard to any matter relevant to the question of sentence. The court shall notify the defendant no less than seven days prior to sentencing of the victim’s intent to make a statement at sentencing. If the defendant does not receive timely notice pursuant to this subdivision, the defendant may request a reasonable adjournment.</p> <p>(c) Any statement by the victim must precede any statement by counsel to the defendant or the defendant made pursuant to subdivision one of this section. The defendant shall have the right to rebut any statement made by the victim.</p> <p>(d) Where the people and the defendant have agreed to a disposition which includes a sentence acceptable to the court, and the court intends to impose such sentence, any rebuttal by the defendant shall be limited to an oral presentation made at the time of sentencing.</p>	<p>N.Y. Crim. Proc. Law § 380.50(2).</p>

(e) Where (1) the defendant has been found guilty after trial or there is no agreement between the people and the defendant as to a proposed sentence or the court, after the statement by the victim, chooses not to impose the proposed sentence agreed to by the parties; (2) the statement by the victim includes allegations about the crime that were not fully explored during the proceedings or that materially vary from or contradict the evidence at trial; and (3) the court determines that the allegations are relevant to the issue of sentencing, then the court shall afford the defendant the following rights:

(A) a reasonable adjournment of the sentencing to allow the defendant to present information to rebut the allegations by the victim; and

(B) allow the defendant to present written questions to the court that the defendant desires the court to put to the victim. The court may, in its discretion, decline to put any or all of the questions to the victim. Where the court declines to put any or all of the questions to the victim it shall state its reasons therefor on the record.

(f) If the victim does not appear to make a statement at the time of sentencing, the right to make a statement is waived. The failure of the victim to make a statement shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.



Under N.Y. Crim. Proc. Law § 390.50(2)(b), the district attorney must give the victim at least twenty-one days notice of the date of sentencing, of the right to present an impact statement to the sentencing court, and of the need to inform the court, ten days prior to sentencing, of the victim's intent to make a statement.





A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully document a victim's request to exercise rights.




A promising practice is to be familiar with the acceptable formats for victim impact statements so that victims can be informed about all of their options. Depending on your jurisdiction's law,

<p>victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology.</p>	
<p><b>Victims' Right to File Form Requesting Notice of a Defendant's Escape, Absconding, Discharge, Parole, Conditional Release, Release to Post-Release Supervision, Transfer to Office of Mental Hygiene or Release from Confinement.</b></p> <p>4. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is committed to the custody of the department of corrections and community supervision upon a sentence of imprisonment for conviction of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law, or a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law, within sixty days of the imposition of sentence the prosecutor shall provide the victim with a form, prepared and distributed by the commissioner of the department of corrections and community supervision, on which the victim may indicate a demand to be informed of the escape, absconding, discharge, parole, conditional release, release to post-release supervision, transfer to the custody of the office of mental health pursuant to article ten of the mental hygiene law, or release from confinement under article ten of the mental hygiene law of the person so imprisoned. If the victim submits a completed form to the prosecutor, it shall be the duty of the prosecutor to mail promptly such form to the department of corrections and community supervision.</p> <p>5. Following the receipt of such form from the prosecutor, it shall be the duty of the department of corrections and community supervision or, where the person is committed to the custody of the office of mental health, at the time such person is discharged, paroled, conditionally released, released to post-release supervision, or released from confinement under article ten of the mental hygiene law, to notify the victim of such occurrence by certified mail directed to the address provided by the victim. In the event such person escapes or absconds from a facility under the jurisdiction of the department of corrections and community supervision, it shall be the duty of such department to notify immediately the victim of such occurrence at the most current address or</p>	<p>N.Y. Crim. Proc. Law § 380.50(4)–(5).</p>

<p>telephone number provided by the victim in the most reasonable and expedient possible manner. In the event such escapee or absconder is subsequently taken into custody by the department of corrections and community supervision, it shall be the duty of such department to notify the victim of such occurrence by certified mail directed to the address provided by the victim within forty-eight hours of regaining such custody. In the case of a person who escapes or absconds from confinement under article ten of the mental hygiene law, the office of mental health shall notify the victim or victims in accordance with the procedures set forth in subdivision (g) of section 10.10 of the mental hygiene law. In no case shall the state be held liable for failure to provide any notice required by this subdivision.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully document a victim’s request to exercise rights. Victims who wish to receive the type of notice identified here should be reminded, throughout their participation in the justice system, that their contact information must be kept current with relevant agencies.</p>	
<p><b>Violent Felony Victims’ Right to Notice of a Defendant’s Name Change.</b></p> <p>Regardless of whether the victim requests to make a statement with regard to the defendant’s sentence, where the defendant is sentenced for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision two of section 230.30 or 230.32, the prosecutor shall, within sixty days of the imposition of sentence, provide the victim with a form, prepared and distributed by the commissioner of the division of criminal justice services, in consultation with the director of the office of victim services, on which the victim may indicate a demand to be informed of any petition to change the name of such defendant. Such forms shall be maintained by such prosecutor. Upon receipt of a notice of a petition to change the name of any such defendant, pursuant to subdivision two of section sixty-two of the civil rights law, the prosecutor shall promptly notify the victim at the most current address or telephone number provided by such victim in the most reasonable and expedient possible manner of the time and place such petition will be presented to the court.</p>	<p>N.Y. Crim. Proc. Law § 380.50(6).</p>

 A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully document a victim’s request to exercise rights. Victims who wish to receive the type of notice identified here should be reminded, throughout their participation in the justice system, that their contact information must be kept current with relevant agencies.	
<p><b>Victims’ Right to Have Impact Statement Included in Pre-Sentence Investigation Report; Misdemeanor Victims’ Right to Inclusion of Restitution-Related Information in Abbreviated Pre-Sentence Investigation Report.</b></p> <p>3. The report and victim impact statement. (a) The report of the pre-sentence investigation must contain an analysis of as much of the information gathered in the investigation as the agency that conducted the investigation deems relevant to the question of sentence. The report must also include any other [information] that the court directs to be included and the material required by paragraph (b) of this subdivision which shall be considered part of the report.</p> <p>(b) The report shall also contain a victim impact statement, unless it appears that such information would be of no relevance to the recommendation or court disposition, which shall include an analysis of the victim’s version of the offense, the extent of injury or economic loss and the actual out-of-pocket loss to the victim and the views of the victim relating to disposition including the amount of restitution and reparation sought by the victim after the victim has been informed of the right to seek restitution and reparation, subject to the availability of such information. In the case of a homicide or where the victim is unable to assist in the preparation of the victim impact statement, the information may be acquired from the victim’s family. The victim impact statement shall be made available to the victim by the prosecutor pursuant to subdivision two of section 390.50 of this article. Nothing contained in this section shall be interpreted to require that a victim supply information for the preparation of this report.</p> <p>4. Abbreviated investigation and short form report. In lieu of the procedure set forth in subdivisions one, two and three of this section, where the conviction is of a misdemeanor the scope of the pre-sentence investigation may be abbreviated and a short form report may be made. The use of abbreviated investigations and short form reports, the matters to be covered therein and the form of</p>	<p>N.Y. Crim. Proc. Law § 390.30(3)–(4).</p>

<p>the reports shall be in accordance with the general rules regulating methods and procedures in the administration of probation as adopted from time to time by the commissioner of the division of criminal justice services pursuant to the provisions of article twelve of the executive law. No such rule, however, shall be construed so as to relieve the agency conducting the investigation of the duty of investigating and reporting upon:</p> <p>(a) the extent of the injury or economic loss and the actual out-of-pocket loss to the victim including the amount of restitution and reparation sought by the victim, after the victim has been informed of the right to seek restitution and reparation, or</p> <p>(b) any matter relevant to the question of sentence that the court directs to be included in particular cases.</p> <p> Another section of New York's Criminal Procedure Law provides that the prosecutor must make any impact statement prepared pursuant to § 390.30(3) available to the victim or the victim's family. N.Y. Crim. Proc. Law § 390.50(2)(b). The prosecutor must "also give at least twenty-one days notice to the victim or victim's family of the date of sentencing and of the rights of the victim pursuant to subdivision two of section 380.50 of this chapter, including the victim or victim's family's obligation to inform the court of its intention, at least ten days prior to the sentencing date, to make a statement at sentencing." <i>Id.</i> In the event the victim does not receive timely notice of sentencing, "the court may proceed with sentencing if it determines that the victim and the defendant have received reasonable notice or may adjourn sentencing for no more than seven days in order to afford such reasonable notice. Failure to give notice shall not affect the validity of any sentence imposed." <i>Id.</i></p>	
<p><b>Victims' Right to Notice of the Case Disposition.</b></p> <p>1. Upon the request of a victim of a crime, or in any event in all cases in which the final disposition includes a conviction of a violent felony offense as defined in section 70.02 of the penal law, a felony defined in article one hundred twenty-five of such law, or a felony defined in article one hundred thirty of such law, the district attorney shall, within sixty days of the final disposition of the case, inform the victim by letter of such final disposition. If such final disposition results in the commitment of the defendant to the custody of the department of corrections and community supervision for an indeterminate sentence, the notice provided to the crime victim shall also inform</p>	<p>N.Y. Crim. Proc. Law § 440.50.</p>

the victim of his or her right to submit a written, audiotaped, or videotaped victim impact statement to the department of corrections and community supervision or to meet personally with a member of the state board of parole at a time and place separate from the personal interview between a member or members of the board and the inmate and make such a statement, subject to procedures and limitations contained in rules of the board, both pursuant to subdivision two of section two hundred fifty-nine-i of the executive law. A copy of such letter shall be provided to the board of parole. The right of the victim under this subdivision to submit a written victim impact statement or to meet personally with a member of the state board of parole applies to each personal interview between a member or members of the board and the inmate.

2. As used in this section, “victim” means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged or a person alleged or found to have sustained, upon the record, an offense under article one hundred thirty of the penal law, or in the case of a homicide or minor child, the victim's family.

3. As used in this section, “final disposition” means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the district attorney, for whatever reason, to not file the case.



Unlike many New York statutes affording victims' rights, the notification requirements in this law apply to certain victims, even if they do not request such notification beforehand.



A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully document a victim’s request to exercise rights. Victims who wish to receive the type of notice identified here should be reminded, throughout their participation in the justice system, that their contact information must be kept current with relevant agencies.



**Family Offense Victims' Right to Notice of Rights and Available Remedies; Law Enforcement's Obligation to Provide Notice.**

Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of this chapter and the family court act. Such notice shall be prepared, at minimum, in plain English, Spanish, Chinese and Russian and if necessary, shall be delivered orally, and shall include but not be limited to the information contained in the following statement:

“Are you the victim of domestic violence? If you need help now, you can call 911 for the police to come to you. You can also call a domestic violence hotline. You can have a confidential talk with an advocate at the hotline about help you can get in your community including: where you can get treatment for injuries, where you can get shelter, where you can get support, and what you can do to be safe. The New York State 24hour Domestic & Sexual Violence Hotline number is (insert the statewide multilingual 800 number). They can give you information in many languages. If you are deaf or hard of hearing, call 711.

This is what the police can do:

They can help you and your children find a safe place such as a family or friend's house or a shelter in your community.

You can ask the officer to take you or help you and your children get to a safe place in your community.

They can help connect you to a local domestic violence program.

They can help you get to a hospital or clinic for medical care.

They can help you get your personal belongings.

N.Y. Crim. Proc. Law  
§ 530.11(6).

They must complete a report discussing the incident. They will give you a copy of this police report before they leave the scene. It is free.

They may, and sometimes must, arrest the person who harmed you if you are the victim of a crime. The person arrested could be released at any time, so it is important to plan for your safety.

If you have been abused or threatened, this is what you can ask the police or district attorney to do:

File a criminal complaint against the person who harmed you.

Ask the criminal court to issue an order of protection for you and your child if the district attorney files a criminal case with the court.

Give you information about filing a family offense petition in your local family court.

You also have the right to ask the family court for an order of protection for you and your children.

This is what you can ask the family court to do:

To have your family offense petition filed the same day you go to court.


To have your request heard in court the same day you file or the next day court is open.

Only a judge can issue an order of protection. The judge does that as part of a criminal or family court case against the person who harmed you. An order of protection in family court or in criminal court can say:

That the other person have no contact or communication with you by mail, phone, computer or through other people.

That the other person stay away from you and your children, your home, job or school.

<p>That the other person not assault, harass, threaten, strangle, or commit another family offense against you or your children.</p> <p>That the other person turn in their firearms and firearms licenses, and not get any more firearms.</p> <p>That you have temporary custody of your children.</p> <p>That the other person pay temporary child support.</p> <p>That the other person not harm your pets or service animals.</p> <p>If the family court is closed because it is night, a weekend, or a holiday, you can go to a criminal court to ask for an order of protection.</p> <p>If you do not speak English or cannot speak it well, you can ask the police, the district attorney, or the criminal or family court to get you an interpreter who speaks your language. The interpreter can help you explain what happened.</p> <p>You can get the forms you need to ask for an order of protection at your local family court (insert addresses and contact information for courts). You can also get them online: <a href="http://www.NYCourts.gov/forms">www.NYCourts.gov/forms</a>.</p> <p>You do not need a lawyer to ask for an order of protection.</p> <p>You have a right to get a lawyer in the family court. If the family court finds that you cannot afford to pay for a lawyer, it must get you one for free.</p> <p>If you file a complaint or family court petition, you will be asked to swear to its truthfulness because it is a crime to file a legal document that you know is false.”</p> <p>The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with provisions of this</p>	
---	--

<p>section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law.</p> <p>Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the criminal court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.</p> <p> A promising practice is to have a policy and procedure in place ensuring that law enforcement provides this information “immediately” as required. Consideration should be given to providing written notice in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Domestic Violence Victims’ Rights to Residential Services.</b></p> <p>In accordance with section one hundred thirty-one-u of this chapter and the regulations of the office of children and family services, a social services district shall offer and provide necessary and available emergency shelter and services for up to ninety days at a residential program for victims of domestic violence to a victim of domestic violence who was residing in the social services district at the time of the alleged domestic violence whether or not such victim is eligible for public assistance. Two forty-five day extensions of necessary and available emergency shelter may be granted beyond the maximum length of stay at a residential program for victims of domestic violence for residents who continue to be in need of emergency services and temporary shelter. If the victim of domestic violence has a service animal as such term is defined in section one hundred twenty-three-b of the agriculture and markets law, or therapy dog as such term is defined in section one hundred eight of the agriculture and markets law, respectively, such service animal or therapy dog shall be allowed to accompany the victim at the residential program authorized pursuant to this section, so long as such accompaniment would not create an undue burden as defined by section two hundred ninety-six of the executive law.</p>	<p>N.Y. Soc. Serv. Law § 459-b.</p>

Where such accompaniment would constitute an undue burden, the residential program shall make reasonable efforts to facilitate placement of such animal at an off-site animal care facility or if reasonable efforts fail, provide referral to one or more off-site animal care facilities. Such off-site animal care may include, but not be limited to, boarding at a veterinary hospital or under the auspices of a duly incorporated humane society, or duly incorporated animal protection association approved for such purpose by the department of agriculture and markets.

Nothing in this section shall be construed to limit any rights or obligations provided pursuant to federal or state law, including but not limited to providing reasonable accommodations for individuals with disabilities.



The terms used in this section are defined in N.Y. Soc. Serv. Law § 459-a. These definitions are included above in the section “Select Definitions.”



During the COVID-19 pandemic, this statute is subject to any modifications or suspensions set forth in N.Y. Legislative Executive Order 202 and any subsequent orders. For more information about the Executive Orders, visit <https://www.governor.ny.gov/news/no-20268-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.










New York also affords domestic violence victims the right to certain non-residential services, such as “information and referral services, advocacy, counseling, community education and outreach activities, and hotline services, to a victim of domestic violence whether or not the victim is eligible for public assistance.” N.Y. Soc. Serv. Law § 459-c.



An abuser’s cooperation is not required as a condition of a domestic violence victim’s eligibility for benefits or services. N.Y. Soc. Serv. Law § 459-g.

<p><b>Privacy Rights of Victims of Sex Offenses and Victims of Offenses Involving the Transmission of HIV.</b></p> <p>1. The identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law, or of an offense involving the alleged transmission of the human immunodeficiency virus, shall be confidential. No report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file, or other document, which tends to identify such a victim except as provided in subdivision two of this section.</p> <p>2. The provisions of subdivision one of this section shall not be construed to prohibit disclosure of information to:</p> <p>a. Any person charged with the commission of an offense, as defined in subdivision one of this section, against the same victim; the counsel or guardian of such person; the public officers and employees charged with the duty of investigating, prosecuting, keeping records relating to the offense, or any other act when done pursuant to the lawful discharge of their duties; and any necessary witnesses for either party; or</p> <p>b. Any person who, upon application to a court having jurisdiction over the alleged offense, demonstrates to the satisfaction of the court that good cause exists for disclosure to that person. Such application shall be made upon notice to the victim or other person legally responsible for the care of the victim, and the public officer or employee charged with the duty of prosecuting the offense; or</p> <p>c. Any person or agency, upon written consent of the victim or other person legally responsible for the care of the victim, except as may be otherwise required or provided by the order of a court.</p> <p>3. The court having jurisdiction over the alleged offense may order any restrictions upon disclosure authorized in subdivision two of this section, as it deems necessary and proper to preserve the confidentiality of the identity of the victim.</p> <p>4. Nothing contained in this section shall be construed to require the court to exclude the public from any stage of the criminal proceeding.</p>	<p>N.Y. Civ. Rights Law § 50-b.</p>
--	-------------------------------------

<p>5. No disclosure of confidential HIV related information, as defined in section twenty-seven hundred eighty of the public health law, including the identity of the victim of an offense involving transmission of the human immunodeficiency virus, shall be permitted under this section contrary to article twenty-seven-F of the public health law.</p> <p> A promising practice is to inform victims of a sex offense or the transmission of HIV that their identities are confidential, as well as to describe the limitations on that confidentiality.</p>	
<p><b>Domestic Violence Victims' Right to Call for Police and Emergency Assistance.</b></p> <p>1. Any person who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, or who otherwise believes they are in need of police or emergency assistance has the right to request such assistance and to be free of any direct or indirect penalty or reprisal for accessing assistance, or because they reside at a property where domestic violence or other law enforcement or emergency response activity occurred. Other than as provided in section ninety-two of this article, no victim of conduct which has been used as the grounds for the application of a local law or ordinance established for the purpose of regulating nuisances shall be directly or indirectly penalized, or otherwise subject to reprisal by application of such local law, including by termination or refusal to renew a tenancy or by eviction. These protections shall also extend to any residential occupant upon whose behalf a third party has called for police or emergency assistance.</p> <p>2. No residential occupant shall be required, either orally or in writing, to waive rights under this article, and any such waiver shall be void and unenforceable.</p> <p> For the legislative findings underlying these protections, <i>see</i> N.Y. Civ. Rights Law § 90.</p> <p> In actions or proceedings taken by municipalities, municipal authorities, landlords and property owners against domestic violence victims, exercise of these rights is a defense. N.Y. Civ. Rights</p>	<p>N.Y. Civ. Rights Law § 91.</p>

<p>Law § 95. Victims have the right to notice of such actions or proceedings and the right to be heard. <i>Id.</i></p> <p> Domestic violence victims have the right to continued occupancy in their residence after their offenders have been removed. N.Y. Civ. Rights Law § 96.</p> <p> Property owners who respect the rights of victims to request police or emergency assistance may not be “subject to fines or loss of permits or licenses by a municipality for failing to penalize or take steps to remove an occupant who has exercised [such] rights.” N.Y. Civ. Rights Law § 93.</p> <p> Municipalities, municipal authorities, landlords and property owners may not prohibit, restrict, penalize or otherwise limit victims’ exercise of their right to request police or emergency assistance. N.Y. Civ. Rights Law § 94.</p> <p> When these protections are violated, a victim may bring a cause of action or special proceeding to seek damages and/or declaratory and injunctive relief or any other available remedies. N.Y. Civ. Rights Law § 97. Seeking such legal remedies or relief “shall not diminish or impair the right of a person to seek or receive any other relief, remedy or benefit under any other applicable law or legal process.” <i>Id.</i> at § 98.</p>	
<p><b>Treatment of Sex Offense Victims and Maintenance of Evidence: Sex Offense Victims’ Rights; Obligations of Hospitals and Law Enforcement.</b></p> <p>1. Every hospital providing treatment to alleged victims of a sexual offense shall be responsible for:</p> <p>(a) maintaining sexual offense evidence and the chain of custody as provided in subdivision two of this section;</p> <p>(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;</p>	<p>N.Y. Pub. Health Law § 2805-i.</p>



(c) [Eff. until June 15, 2020. See, also, par. (c) below.] 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

(c) [Eff. June 15, 2020. See, also, par. (c) above.] 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

(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

<p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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).</p> <p>(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).</p> <p>(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.</p> <p>(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</p>	
---	--

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. (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

<p>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</p> <p>(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</p> <p>(8) decide whether or not the victim wishes to report the offense to law enforcement.</p> <p>(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.</p> <p>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.</p>	
<p><b>Human Trafficking Victims' Right to Law Enforcement Assistance with Respect to Immigration.</b></p> <p>Upon the request of a human trafficking victim or a representative of a human trafficking victim, the state or local law enforcement agency or district attorney's office shall provide the victim with the United States Citizenship and Immigration Service (USCIS) Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. In order to provide persuasive evidence, the state or local law enforcement agency endorsement must contain a description of the victimization upon which the application is based, including the dates the trafficking in persons occurred. The endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor servitude or services or for the purposes of a commercial sex act as defined in subdivision three of section 7102 of title 22 of the United States Code.</p>	<p>N.Y. Soc. Serv. Law § 483-dd.</p>



 A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully document a victim’s request to exercise rights.	
<p><b>Rape Crisis Counselor-Victim Privilege.</b></p> <p>(b) Confidential information privileged. A rape crisis counselor shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or for the rape crisis counselor be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records, except:</p> <ol style="list-style-type: none"> <li>1. that a rape crisis counselor may disclose such otherwise confidential communication to the extent authorized by the client;</li> <li>2. that a rape crisis counselor shall not be required to treat as confidential a communication by a client which reveals the intent to commit a crime or harmful act;</li> <li>3. in a case in which the client waives the privilege by instituting charges against the rape crisis counselor or the rape crisis program and such action or proceeding involves confidential communications between the client and the rape crisis counselor.</li> </ol> <p>(c) Who may waive the privilege. The privilege may only be waived by the client, the personal representative of a deceased client, or, in the case of a client who has been adjudicated incompetent or for whom a conservator has been appointed, the committee or conservator.</p> <p>(d) Limitation on waiver. A client who, for the purposes of obtaining compensation under article twenty-two of the executive law or insurance benefits, authorizes the disclosure of any privileged communication to an employee of the office of victim services or an insurance representative shall not be deemed to have waived the privilege created by this section.</p>	<p>N.Y. C.P.L.R. 4510(a).</p>



<p> These terms used in this privilege are defined in N.Y. C.P.L.R. 4510(a). These definitions are included above in the section “Select Definitions.”</p> <p> Although this privilege is contained within New York’s Civil Practice Law and Rules, it is applicable to criminal proceedings. N.Y. C.P.L.R. 60.10.</p> <p> New York’s Criminal Procedure Law provides the procedure when disclosure of a communication that falls under the rape crisis counselor-victim privilege “is sought on the grounds that the privilege has been waived or that disclosure is required pursuant to the constitution of this state or the United States. N.Y. Crim. Proc. Law § 60.76. In such an instance, “the party seeking disclosure must file a written motion supported by an affidavit containing specific factual allegations providing grounds that disclosure is required. Upon the filing of such motion and affidavit, the court shall conduct an in camera review of the communication outside the presence of the jury and of counsel for all parties in order to determine whether disclosure of any portion of the communication is required.” <i>Id.</i></p>	
<p><b>Address Confidentiality Program.</b></p> <p>There is created in the office of the secretary of state a program to be known as the “address confidentiality program” to protect victims of domestic violence, victims of human trafficking, victims of a sexual offense and victims of stalking by authorizing the use of designated addresses for such victims and their minor children. The program shall be administered by the secretary of state.</p> <p>...</p> <p>2. Address confidentiality program; application; certification. (a) An adult person, a parent or legal guardian acting on behalf of a minor, or a legal guardian acting on behalf of an incapacitated person, may apply to the secretary to have an address designated by the secretary to serve as the person’s address or address of the minor or incapacitated person in lieu of the person’s actual address. The</p>	<p>N.Y. Exec. Law § 108(2)–(6).</p>

secretary shall approve an application if it is filed in the manner and on the form prescribed by the secretary, and if it includes:

- (i) a signed written statement affirmed by the applicant that:
  - (A) the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, victim of human trafficking, victim of a sexual offense, or victim of stalking;
  - (B) the applicant, or the minor or incapacitated person on whose behalf the application is made, has left his or her residence because of such violence or acts;
  - (C) the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made; and
  - (D) the parent or legal guardian applying on behalf of a minor or incapacitated person has legal authority to act on the person's behalf;
- (ii) a designation of the secretary as agent for purposes of service of process and for the purpose of receipt of mail;
- (iii) the mailing address where the applicant can be contacted by the secretary and the telephone number or numbers where the applicant can be called by the secretary;
- (iv) the actual address or addresses that the applicant requests not be disclosed because of the increased risk of domestic violence, a sexual offense, stalking, or physical injury; and
- (v) the name of any person who resides with the applicant who also needs to be a program participant in order to ensure the safety of the applicant and, if the person named in the application is eighteen years of age or older, the consent of such person to be a program participant and designation by such person of the secretary as agent for purposes of service of process and for the purpose of receipt of mail; and
- (vi) the signature of the applicant and the name and signature of any individual or representative of any office designated by the secretary under subdivision three of this section who assisted in the preparation of the application, and the date on which the applicant signed the application.

(b) The secretary shall establish, distribute and make available a form for the purpose of making applications pursuant to this section.

(c) Applications shall be filed with the office of the secretary.

(d) Upon receipt of a properly completed application, the secretary shall certify the applicant as a program participant and shall serve as the participant's agent for service of process and receipt of mail for the duration of the term of certification.

(e) Participants shall be certified for four years following the date of filing, unless the certification is withdrawn or cancelled before that date. The secretary shall promulgate rules and regulations for renewal of applications pursuant to this section.

3. Designation of agencies to assist applicants. The secretary shall designate state, local or nonprofit agencies that provide counseling, referral, shelter or other specialized services to victims of domestic violence, victims of human trafficking, victims of a sexual offense and victims of stalking to assist persons applying to be program participants. Such persons providing assistance shall be trained by the secretary. Any assistance and counseling rendered by an officer of the secretary or his or her designees to applicants shall in no way be construed as legal advice.

4. Use and acceptance of substitute address; mail forwarding. (a) A program participant may request that state and local agencies use the substitute address. When creating, modifying or maintaining a public record, state and local agencies shall accept the substitute address upon demonstration by a program participant of his or her certification in the program, unless the secretary waives this requirement after determining that:

(i) the agency has a bona fide statutory or administrative requirement for the use of the participant's actual address which would otherwise be confidential under this section; and

(ii) the agency has explained how its acceptance of the substitute address will prevent the agency from meeting its obligations under the law and why it cannot meet its statutory or administrative obligation by a change in its internal procedures.

(b) Any agency receiving a waiver shall maintain the confidentiality of the program participant's address by redacting the actual address when the record is released to any person and shall not make the program participant's actual address available for inspection or copying, except under the following circumstances:

(i) there is a bona fide statutory or administrative requirement for the communication of an actual address to another agency that has received a waiver from the secretary, provided that each waiver specifically authorizes such communication with the specified agency; or

(ii) if directed by a court order to a person identified in the order.

(c) Upon receipt by the secretary of a process or mail for a participant, the office of the secretary shall immediately forward all such process or mail to the appropriate program participants at the address specified by the participant for that purpose, and shall record the date of such forwarding. Service of process on a program participant, a program participant's minor child, incapacitated

person or other adult member of the program participant's household shall be complete when the secretary receives such process by mail or otherwise.

(d) A program participant may use the substitute address as his or her work address.

(e) The secretary or any member of the department of state who reasonably and in good faith handles any process or mail on behalf of a participant in accordance with this section shall be immune from any civil liability which might otherwise result by reason of such actions.

5. Cancellation of certification. (a) The secretary may cancel a program participant's certification if, after the passage of fourteen days:

(i) from the date of changing his or her name, the program participant does not notify the secretary that he or she has obtained a name change; however, the program participant may reapply under his or her new name;

(ii) from the date of changing his or her actual address, the program participant fails to notify the secretary of the change of such address; or

(iii) from the date the secretary first receives mail, forwarded to the program participant's address, returned as non-deliverable.

(b) The secretary shall cancel certification of a program participant who applies using false information.

(c) The secretary shall cancel certification of a program participant if the participant's certification term has expired and certification renewal has not been completed.

(d) The secretary shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. The program participant shall have thirty days to appeal the cancellation decision under procedures developed by the secretary.

(e) Program participants may withdraw from the program by giving the secretary written notice of their withdrawal and his or her current identification card. The secretary shall establish, by rule, a secure procedure for ensuring that the request for withdrawal is legitimate.

(f) Any records or documents pertaining to a program participant shall not be a public record and shall be retained and held confidential for a period of three years after termination of certification and then destroyed.

6. Disclosure of participant information prohibited; exceptions. (a) The secretary shall not make a program participant's information, other than the substitute address, available for inspection or copying, except under any of the following circumstances:

(i) if requested by a law enforcement agency for a legitimate law enforcement purpose as determined by the law enforcement agency; or  
 (ii) to a person identified in a court order, upon the secretary's receipt of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor.

(b) The secretary may verify the participation of a specific program participant, in which case the secretary may only confirm information supplied by the requester.

7. Rules and regulations. The secretary shall promulgate rules and regulations necessary to implement the provisions of this section.

8. Report to the legislature. The secretary shall submit to the legislature, no later than February first of each year, a report that includes for each county, the total number of applications received, the total number of persons participating in the program established by this section during the previous calendar year and the total number of pieces of mail forwarded to program participants during the previous calendar year.



The terms used in this statutory provision are defined in N.Y. Exec. Law § 108(1). These definitions are included above in the section "Select Definitions."



For additional information about New York's address confidentiality program, *see* <https://www.dos.ny.gov/acp/index.html>.

This draft publication was developed by the National Crime Victim Law Institute (NCVLI) under 2018-V3-GX-K049, awarded to the International Association of Chiefs of Police (IACP) by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this draft publication are those of the contributors and do not necessarily represent the official position of the U.S. Department of Justice.