

JAN 23 2015

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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that health care  
2 personnel use a sexual assault evidence collection kit, commonly  
3 referred to as a rape kit, to collect and preserve physical  
4 evidence, including DNA, after an alleged sexual assault to help  
5 identify an assailant or eliminate a suspect. Unlike Hawaii,  
6 twenty-seven states already have laws regarding sexual assault  
7 victims, forensic medical examinations, and the collection of  
8 forensic evidence using a rape kit. These laws vary from  
9 requiring training of medical staff conducting forensic medical  
10 examinations of sexual assault victims to establishing rape kit  
11 evidence collection and analysis timelines.

12       The purpose of this Act is to improve the State's ability  
13 to hold perpetrators accountable and ensure responsive and  
14 effective criminal justice practices through the establishment  
15 of the statewide sexual response system, county sexual assault  
16 response teams, and sexual assault victim examination protocols,



1 including time frames pertaining to the collection, submittal,  
2 and analysis of forensic medical evidence.

3 SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended  
4 by adding a new part to be appropriately designated and to read  
5 as follows:

6 **"PART . STATEWIDE SEXUAL ASSAULT VICTIM RESPONSE**

7 **§28-A Definitions.** As used in this part, unless the  
8 context clearly indicates otherwise:

9 "Department" means the department of the attorney general.

10 "Response team" means a county sexual assault response team  
11 established pursuant to section 28-C.

12 "Sexual assault evidence collection kit" means a set of  
13 items used by health care providers to gather and preserve  
14 physical evidence following an allegation of sexual assault.

15 **§28-B Statewide sexual assault response system;**  
16 **establishment; purpose.** (a) There is established within the  
17 department a statewide sexual assault response system to improve  
18 the statewide response to victims of criminal sexual assault  
19 under sections 707-730, 707-731, 707-732, 707-733, and  
20 707-733.6.



(b) The purpose of the statewide sexual assault response system shall be to develop and coordinate a statewide response to victims of sexual assault, deployed through the county sexual assault response teams established pursuant to section 28-C.

**§28-C County sexual assault response teams; established; composition; terms; duties.** (a) The prosecuting attorney for each county shall organize a county sexual assault response team, which shall meet at least four times per year and consist of the following members:

(1) A representative of the prosecuting attorney's office;

(2) A representative of a prosecution-based victim assistance program or unit;

(3) A sexual assault forensic expert;

(4) A representative of a local law enforcement agency;  
and

(5) A representative of a nonprofit agency or program that offers safety, planning, counseling, support, or advocacy to victims of sexual assault.

(b) The members of the response teams shall serve for an unlimited number of two-year terms.



1 (c) The members of the response team shall serve without  
2 compensation but shall be reimbursed for necessary expenses,  
3 including travel expenses.

4 (d) The duties of each county sexual assault response team  
5 shall be to:

6 (1) Implement the statewide response to victims of sexual  
7 assault pursuant to section 28-B; and

8 (2) Adopt administrative rules or seek statutory  
9 amendments to implement additional protocols and  
10 policies as necessary to improve the statewide  
11 response to victims of sexual assault.

12 **§28-D Statewide response to victims of sexual assault.**

13 The statewide response to victims of sexual assault shall  
14 include but not be limited to the forensic medical examination  
15 procedures under chapter 321, part ; and the sexual assault  
16 evidence collection, submittal, and analysis procedures under  
17 section 844D-. The statewide response to victims of sexual  
18 assault shall also include plans for procurement, distribution,  
19 and administration of sexual assault evidence collection kits to  
20 health care providers."



SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . MEDICAL EXAMINATION OF SEXUAL ASSAULT VICTIM**

**§321-A Forensic medical examination of a sexual assault victim; evidence disclosure and written consent.** (a) A health care provider shall inform a sexual assault victim or the parent or guardian of a minor or incapacitated sexual assault victim of the availability of a forensic medical examination to obtain sexual assault evidence. All forensic medical examination results are confidential and shall only be released to the department of health with written consent of one of the following:

- (1) The victim, if over the age of fourteen;
- (2) A parent or guardian or an employee of child welfare services if the victim is fourteen years of age or under;
- (3) A personal representative if the person is deceased;
- (4) Any legal agent if the victim is incapacitated; or
- (5) A law enforcement officer investigating the crime.



1 (b) A health care provider that has not obtained written  
2 consent to release forensic medical results shall inform the  
3 sexual assault victim that any sexual assault evidence gleaned  
4 from the forensic medical examination shall be stored for a  
5 minimum of one year before the evidence is destroyed."

6 SECTION 4. Chapter 844D, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 **"§844D- Sexual assault evidence collection, submittal,**  
10 **and analysis.** (a) Within seventy-two hours of receipt of  
11 written consent from a sexual assault victim, pursuant to  
12 section 321-A, the health care provider shall submit evidence  
13 collected as a result of the forensic medical examination to the  
14 department for evaluation of the presence of a body fluid,  
15 cellular material, or DNA.

16 (b) Within fourteen days of receipt of evidence collected  
17 as a result of the forensic medical examination, the department  
18 shall submit the evidence for evaluation of the presence of a  
19 body fluid, cellular material, or DNA to the designated entity,  
20 as provided in section 844D-23.



1        (c) Within ninety days of receipt of evidence collected as  
2        a result of the forensic medical examination, the department or  
3        the department's designated entity, as provided in section  
4        844D-23, shall evaluate the evidence for the presence of a body  
5        fluid, cellular material, or DNA.

6        (d) Records derived from the DNA analysis in subsection  
7        (c) shall be included in the state DNA database.

8        (e) The failure of the department to take possession of  
9        forensic medical examination sexual assault evidence or to  
10       submit evidence for analysis within the time prescribed under  
11       this section shall not alter the authority of the department to  
12       take possession of that evidence or submit that evidence for  
13       analysis, or the authority of the department or department's  
14       designated entity to analyze the evidence.

15       (f) The failure to comply with the requirements of this  
16       section does not constitute grounds in a criminal proceeding for  
17       challenging the validity of a database match or of any database  
18       information, and any evidence of that DNA record shall not be  
19       excluded by a court on those grounds."

20       SECTION 5. There is appropriated out of the general  
21       revenues of the State of Hawaii the sum of \$                      or so



1 much thereof as may be necessary for fiscal year 2015-2016 and  
2 the same sum or so much thereof as may be necessary for fiscal  
3 year 2016-2017 for the coordination, establishment, and  
4 implementation of the statewide sexual assault response system  
5 pursuant to this Act.

6 The sums appropriated shall be expended by the department  
7 of the attorney general for the purposes of this Act.

8 SECTION 6. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so  
10 much thereof as may be necessary for fiscal year 2015-2016 and  
11 the same sum or so much thereof as may be necessary for fiscal  
12 year 2016-2017 for the establishment and operation of the county  
13 sexual assault response teams.

14 The sums appropriated shall be expended by the counties for  
15 the purposes of this Act.

16 SECTION 7. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19 SECTION 8. In codifying the new parts and new section of  
20 this Act, the revisor of statutes shall substitute the





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1 appropriate section numbers for the letters used in designating  
2 the new parts and new section in this Act.

3 SECTION 9. New statutory material is underscored.

4 SECTION 10. This Act shall take effect upon its approval;  
5 provided that sections 5 and 6 of this Act shall be effective on  
6 July 1, 2015.

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# S.B. NO. 275

**Report Title:**

Attorney General; Sexual Assault Response System; Sexual Assault Response Team; Forensic Medical Examination; Sexual Assault Evidence Collection and Analysis; Appropriation

**Description:**

Establishes the statewide sexual assault response system, sexual assault response teams in each county, and sexual assault victim examination protocols, including time frames pertaining to the collection, submittal, and analysis of forensic medical evidence. Makes appropriations.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

