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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 deoxyribonucleic  
2 acid (DNA) evidence is a powerful law enforcement tool that can  
3 identify unknown suspects, connect crimes to known perpetrators,  
4 and exonerate the innocent. The legislature further finds that  
5 establishing standard and efficient sexual assault evidence  
6 collection kit handling procedures and a statewide tracking  
7 system would ensure that victims of sexual assault receive  
8 accurate information that enables them to take steps to protect  
9 their rights, and prevent the misplacement of kits, delays in  
10 testing, and destruction of evidence.

11           It is the intent of the legislature that sexual assault  
12 evidence collection kits are tested in a timely manner to  
13 enhance public safety by protecting sexual assault survivors,  
14 exonerating the innocent, and holding offenders accountable.

15           The purpose of this Act is to address the manner in which  
16 sexual assault evidence collection kits are processed and  
17 tracked and to ensure that victims of sexual assault are  
18 informed of their rights under the law.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to title 38 to be appropriately designated  
3 and to read as follows:

4 "CHAPTER

5 SEXUAL ASSAULT EVIDENCE COLLECTION KITS

6 § -1 Definitions. As used in this chapter:

7 "Accredited and approved DNA laboratory" means a DNA  
8 laboratory that:

- 9 (1) Meets the requirements of section 844D-54; and  
10 (2) Conducts DNA analysis eligible for upload to the  
11 Combined DNA Index System, as approved by its state  
12 administrator.

13 "Combined DNA Index System" means the FBI's program of  
14 support for criminal justice DNA databases as well as the  
15 software used to run these databases.

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

17 "DNA" means deoxyribonucleic acid.

18 "DNA analysis" refers to the following process:

- 19 (1) The taking of DNA samples from evidence containing DNA  
20 from a known individual or DNA of unknown origin;  
21 (2) The isolation of DNA to develop DNA profiles; and



1 (3) The determination of the DNA test results.

2 "Eligible" means in compliance with the FBI's specific  
3 requirements for a state's participation in the National DNA  
4 Index System, pursuant to the federal DNA Identification Act,  
5 title 34 U.S.C. section 12592(b).

6 "Law enforcement agency" means a county police department.

7 "Medical forensic examination" means an examination  
8 provided to a victim of a suspected sexual assault by a health  
9 care provider to address medical concerns resulting from the  
10 sexual assault and to collect and preserve evidence that may be  
11 used in a police investigation and any subsequent prosecution.

12 "Reported sexual assault evidence collection kit" or  
13 "reported kit" means a sexual assault evidence collection kit  
14 for a case in which:

15 (1) The victim reported a sexual offense to a law  
16 enforcement agency; or

17 (2) The victim reported a sexual offense to a law  
18 enforcement agency and a formal complaint was  
19 generated; the victim subsequently requested that the  
20 complaint be withdrawn; but the victim subsequently  
21 chose to reinstate the complaint.



1 "Sexual assault evidence collection kit" means a kit that  
2 contains a human biological specimen or specimens collected by a  
3 health care provider during a medical forensic examination from  
4 the victim of a suspected criminal sexual offense.

5 "Status" refers to the location, date, and time that a  
6 sexual assault evidence collection kit is transferred within the  
7 chain of custody.

8 "Unreported sexual assault evidence collection kit" or  
9 "unreported kit" means a sexual assault evidence collection kit  
10 for a case in which:

11 (1) The victim chose not to report a sexual offense to a  
12 law enforcement agency; or

13 (2) The victim reported a sexual offense to a law  
14 enforcement agency and a formal complaint was  
15 generated; but the complaint was subsequently  
16 withdrawn at the victim's request.

17 § -2 Hawaii sexual assault response and training  
18 program. (a) The department shall establish a Hawaii sexual  
19 assault response and training program that shall consist of  
20 members who are directly involved with the use, management, and  
21 testing of sexual assault evidence collection kits, or are



1 involved with, communicate with, or otherwise support sexual  
2 assault victims, including but not limited to the respective  
3 police departments of each county, the state or county Combined  
4 DNA Index System administrator, the respective prosecuting  
5 attorney departments of each county, and sexual assault service  
6 providers.

7 (b) The Hawaii sexual assault response and training  
8 program shall have regularly scheduled meetings to strengthen  
9 the coordinated community response and level of quality care for  
10 victims of sexual assault, and shall develop and maintain:

11 (1) Specific guidelines for all medical forensic  
12 examinations in the State that shall be issued to all  
13 sex assault programs and centers, county contractors,  
14 and any other facilities that perform medical forensic  
15 examinations;

16 (2) A protocol for the collection of forensic evidence  
17 included within a sexual assault evidence collection  
18 kit;

19 (3) A statewide standard data set, including status and  
20 location information that all counties shall include



1 in their respective sexual assault evidence collection  
2 kit tracking systems;

3 (4) Policies and procedures for sex assault programs and  
4 centers, county contractors, and any other facilities  
5 that retain sexual assault evidence collection kits  
6 under this chapter regarding proper preservation,  
7 transfer, tracking, and disposal of kits; and

8 (5) Appropriate language for disclosures that shall be  
9 made to any person undergoing a medical forensic  
10 examination, including but not limited to the length  
11 of time a kit may be stored or retained, the point at  
12 which a kit may be disposed, and the person's ability  
13 to access the status of their kit through the  
14 appropriate county tracking system.

15 § -3 Annual statewide inventory and report of sexual  
16 assault evidence collection kits. The department shall prepare  
17 and submit an annual report to the president of the senate and  
18 speaker of the house of representatives no later than twenty  
19 days prior to the convening of each regular session, beginning  
20 with the regular session of 2019, detailing for the prior fiscal  
21 year:



- 1 (1) The number of sexual assault evidence collection kits  
2 collected in each county;
- 3 (2) The number of reported sexual assault evidence  
4 collection kits collected in each county;
- 5 (3) The number of unreported sexual assault evidence  
6 collection kits collected in each county;
- 7 (4) The number of reported sexual assault evidence  
8 collection kits that were submitted to an accredited  
9 and approved DNA laboratory for analysis;
- 10 (5) Of the reported sexual assault evidence collection  
11 kits submitted to an accredited and approved DNA  
12 laboratory for analysis, the number for which analysis  
13 has been completed;
- 14 (6) The number of reported sexual assault evidence  
15 collection kits that were not submitted to an  
16 accredited and approved DNA laboratory for analysis;
- 17 (7) The number of sexual assault evidence collection kits  
18 disposed of in each county, pursuant to section -4;
- 19 (8) The number of sexual assault evidence collection kits  
20 disposed of in each county, for reasons not provided  
21 in section -4, and the reason for disposal;



1 (9) All reasons any kit was in an entity's possession for  
2 longer than the periods allowed under section -5;  
3 and

4 (10) The number of new prosecutions initiated as a result  
5 of an actionable Combined DNA Index System hit on  
6 sexual assault evidence collection kits collected  
7 prior to July 1, 2016.

8 The report shall also be made available to the public on the  
9 department's website.

10 **§ -4 Unreported sexual assault evidence collection kits.**

11 (a) A victim who chooses not to file a police report at the  
12 time of undergoing a medical forensic examination:

13 (1) May request in writing that the unreported kit be held  
14 by the sexual assault program or center in that  
15 county; provided that if the victim does not so  
16 request, then the appropriate law enforcement agency  
17 shall take possession of the unreported kit pursuant  
18 to section -5;

19 (2) Shall not be deemed to have waived the victim's right  
20 to report the crime and to have the victim's kit  
21 tested in the future; and



1           (3) Shall be informed of the date the victim's kit will be  
2           disposed of, in writing, at the time of the  
3           examination.

4           (b) Agencies, organizations, and other entities in  
5 possession of unreported sexual assault evidence collection kits  
6 shall store the kits for at least six years if the victim was  
7 eighteen years of age or older at the time of incident, and at  
8 least twenty years if the victim was under eighteen years of age  
9 at the time of incident.

10           § -5 **Mandatory submission and testing requirements for**  
11 **sexual assault evidence collection kits.** (a) An agency,  
12 program, center, or other entity that collects a sexual assault  
13 evidence collection kit shall notify the appropriate law  
14 enforcement agency as soon as practicable after the kit's  
15 collection; provided that the notification shall be no later  
16 than twenty-four hours after the collection occurred.

17           (b) A notified law enforcement agency shall:

18           (1) Take possession of the sexual assault evidence  
19 collection kit from the agency, program, center, or  
20 other entity that collected the kit within three  
21 business days of receiving notification, if it is



- 1           either a reported sexual assault evidence collection  
2           kit or an unreported sexual assault evidence  
3           collection kit that the victim has not requested to be  
4           held by the sexual assault program or center in that  
5           county;
- 6           (2) Submit a written request for testing of the reported  
7           sexual assault evidence collection kit to an  
8           accredited and approved DNA laboratory within fifteen  
9           business days of taking possession of the kit; and
- 10          (3) Within ten business days of acceptance for testing by  
11          an accredited and approved DNA laboratory, submit the  
12          kit to the laboratory for testing.
- 13          (c) An accredited and approved DNA laboratory in the State  
14 shall:
- 15          (1) Notify a law enforcement agency that has submitted a  
16          written request for testing, within fourteen days of  
17          receiving the request, as to whether the laboratory  
18          accepts the request or instead recommends providing  
19          the reported sexual assault evidence collection kit to  
20          another laboratory for testing; and



1           (2) Pursue DNA analysis of a sexual assault evidence  
2           collection kit that was accepted from a law  
3           enforcement agency to develop DNA profiles that are  
4           eligible for entry into the Combined DNA Index System.

5           (d) The state Combined DNA Index System administrator or  
6           their designee shall enter a DNA profile into the Combined DNA  
7           Index System database pursuant to section 844D-2; provided that  
8           the testing of a sexual assault evidence collection kit resulted  
9           in an eligible DNA profile; provided further that:

10          (1) Prior to July 1, 2023, the average completion rate for  
11          the analysis and classification required by this  
12          section shall not exceed one hundred eighty days; and

13          (2) On or after July 1, 2023, the average completion rate  
14          for the analysis and classification required by this  
15          section shall not exceed ninety days.

16          (e) For cases in which no judgment of conviction has been  
17          entered, and there has been no acquittal or final dismissal, a  
18          law enforcement agency that is in possession of a reported  
19          sexual assault evidence collection kit shall retain the kit for  
20          fifty years or until the expiration of the period of limitation  
21          for any prosecutable offense under section 701-108, whichever is



1 longer. For cases in which a judgment of conviction has been  
2 entered, a law enforcement agency that is in possession of a  
3 reported sexual assault evidence collection kit shall retain the  
4 kit pursuant to the requirements of section 844D-126.

5 (f) A law enforcement agency's lack of compliance with any  
6 of the time requirements of this section shall not:

7 (1) Constitute grounds on which to challenge the validity  
8 of DNA evidence in any criminal or civil proceeding;

9 (2) Justify a court to exclude any evidence generated from  
10 a sexual assault evidence collection kit; or

11 (3) Provide a basis for a person who is accused or  
12 convicted of committing a crime against a victim to  
13 request that the person's case be dismissed or  
14 conviction be set aside.

15 (g) This section shall not establish a private cause of  
16 action or claim on the part of any individual, agency,  
17 organization, or other entity against any law enforcement agency  
18 or against any accredited and approved DNA laboratory.

19 (h) The requirements of this section concerning notice and  
20 transfer of a sexual assault evidence collection kit to a law



1 enforcement agency, and a law enforcement agency's handling of  
2 the kit, shall not apply to:

- 3 (1) Cases that are under the primary jurisdiction of  
4 agencies outside of the authority of the State; or  
5 (2) Cases in which jurisdiction may be asserted by more  
6 than one agency; provided that all reasonable efforts  
7 shall be made to determine jurisdiction as soon as  
8 practicable; provided further that if primary  
9 jurisdiction is determined to belong to a law  
10 enforcement agency under the authority of the State,  
11 then notice and transfer of a sexual assault evidence  
12 collection kit to the law enforcement agency, and the  
13 law enforcement agency's handling of the kit, shall be  
14 in accordance with the requirements of this section as  
15 of the date on which jurisdiction was established with  
16 respect to the kit's collection.

17 § -6 Tracking system for sexual assault evidence  
18 collection kits. (a) No later than January 1, 2020, each  
19 county shall establish an electronic tracking system for sexual  
20 assault evidence collection kits. At a minimum, each system  
21 shall:



- 1 (1) Track the status of sexual assault evidence collection  
2 kits from the specimen collection site to final  
3 storage or disposal, including but not limited to the  
4 initial collection, inventory, and storage by law  
5 enforcement agencies or accredited and approved DNA  
6 laboratories; analysis at accredited and approved DNA  
7 laboratories; and storage or disposal after completion  
8 of analysis;
- 9 (2) Allow all entities, approved by the department, that  
10 collect, receive, maintain, store, or preserve sexual  
11 assault evidence collection kits to update the status  
12 and location of the kits; and
- 13 (3) Allow victims of sexual assault to access the system  
14 for the location and status of their respective sexual  
15 assault evidence collection kits.
- 16 (b) All agencies, organizations, and other entities  
17 approved by the department and in the chain of custody of sexual  
18 assault evidence collection kits shall participate in the  
19 tracking system by updating the status and location of kits, as  
20 appropriate. The department shall have access to all tracking  
21 systems statewide, at all times.



1           §   -7 Victims' right to notification and other

2 information. (a) A sexual assault victim has the right to  
3 receive a medical forensic examination, regardless of whether  
4 the victim chooses to report the assault to a law enforcement  
5 agency.

6           (b) Each law enforcement agency shall designate at least  
7 one person, who is trained in trauma and victim response, to  
8 receive all inquiries concerning sexual assault evidence  
9 collection kits and to serve as a liaison between the agency and  
10 victims.

11           (c) A sexual assault victim shall be provided with the  
12 contact information for the designated liaison or liaisons at  
13 the time that the victim's sexual assault evidence collection  
14 kit is collected.

15           (d) In advance of or during a medical forensic examination  
16 or law enforcement agency interview, medical professionals,  
17 victim advocates, law enforcement officers, or prosecutors shall  
18 provide a sexual assault victim with a physical document  
19 developed by the Hawaii sexual assault response and training  
20 program that identifies the victim's rights under this chapter,  
21 including:



- 1 (1) Support from, and consultation with, a crisis worker  
2 at the time that a sexual assault evidence collection  
3 kit is collected; provided that sufficient funding is  
4 available;
- 5 (2) Information about the current location, analysis date  
6 and status, and estimated disposal date of the  
7 victim's sexual assault evidence collection kit;
- 8 (3) Notification when there is any major development, as  
9 defined in section 801D-2, in a case that the victim  
10 reported to a law enforcement agency, including  
11 whether the case has been closed or reopened;
- 12 (4) Designation of a person of the victim's choosing to  
13 act as a recipient of the information provided under  
14 this subsection;
- 15 (5) Information on how to report an offense to a law  
16 enforcement agency and how to request that the  
17 victim's sexual assault evidence collection kit be  
18 analyzed in the future; provided that the victim  
19 either chose not to report the offense at the time the  
20 victim's kit was collected, or previously withdrew the  
21 report but later chose to reinstate the report; and



1 (6) Information about the availability of crime victim  
2 compensation and other services for victims of sexual  
3 assault, as appropriate."

4 SECTION 3. Section 706-603, Hawaii Revised Statutes, is  
5 amended by amending subsection (3) to read as follows:

6 "(3) There is established a special fund to be known as  
7 the DNA registry special fund which shall be administered by the  
8 attorney general. The fund shall consist of:

9 (a) All assessments and penalties ordered pursuant to  
10 subsection (1);

11 (b) All other moneys received by the fund from any other  
12 source; and

13 (c) Interest earned on any moneys in the fund.

14 Moneys in the DNA registry special fund shall be used for the  
15 Hawaii sexual assault response and training program established  
16 pursuant to chapter ; costs related to testing and storage of  
17 sexual assault evidence collection kits pursuant to chapter ;  
18 and DNA collection, DNA testing, and related costs of recording,  
19 preserving, and disseminating DNA information pursuant to  
20 chapter 844D."



1 SECTION 4. There is appropriated out of the DNA registry  
2 special fund the sum of \$350,743 or so much thereof as may be  
3 necessary for fiscal year 2018-2019 for the staffing, training,  
4 materials, and travel expenses of the Hawaii sexual assault  
5 response and training program and for costs related to testing  
6 and storage of sexual assault evidence collection kits pursuant  
7 to chapter , Hawaii Revised Statutes.

8 The sum appropriated shall be expended by the department of  
9 the attorney general for the purposes of this Act.

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2018;  
12 provided that section -4, Hawaii Revised Statutes,  
13 established by section 2 of this Act, shall take effect on  
14 January 1, 2019.



**Report Title:**

Sexual Assault; Evidence; DNA Testing; AG; Hawaii Sexual Assault Response and Training Program; Appropriation

**Description:**

Creates a Hawaii Sexual Assault Response and Training Program to address the manner in which sexual assault evidence collection kits are processed and tracked, and to ensure that victims of sexual assault are informed of their rights under the law. Requires annual reports by the Attorney General to the President of the Senate and Speaker of the House. Appropriates funds.  
(HB2131 CD1)

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