
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



1 tracked and to ensure that victims of sexual assault are
2 informed of their rights under the law.

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

6 "CHAPTER

7 SEXUAL ASSAULT EVIDENCE COLLECTION KITS

8 § -1 Definitions. As used in this chapter:

9 "Accredited and approved DNA laboratory" means a DNA
10 laboratory that:

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

15 "Combined DNA Index System" means the Federal Bureau of
16 Investigation's program of support for criminal justice DNA
17 databases as well as the software used to run these databases.

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

19 "DNA" means deoxyribonucleic acid.

20 "DNA analysis" means the following process:



(1) The isolation of autosomal DNA to develop DNA profiles that are eligible for entry into the Combined DNA Index System;

(2) The taking of DNA samples from evidence containing DNA from a known individual or DNA of unknown origin;

(3) The determination of the DNA test results; and

(4) Entry of resulting DNA profiles into the Combined DNA Index System.

"Law enforcement agency" means a police department, the office of a sheriff, the office of a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and whose employees have statutory powers of arrest.

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

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



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

3 (2) The victim reported a sexual offense to a law
4 enforcement agency and a formal complaint was
5 generated but was later withdrawn and then
6 subsequently reinstated at the victim's request.

7 "Sexual assault evidence collection kit" means a kit that
8 contains a human biological specimen or specimens collected by a
9 health care provider during a medical forensic examination from
10 the victim of a suspected sexually-oriented criminal offense.

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

14 "Unreported sexual assault evidence collection kit" or
15 "unreported kit" means a sexual assault evidence collection kit
16 for a case in which:

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

19 (2) The victim reported a sexual offense to a law
20 enforcement agency and a formal complaint was



1 generated but was subsequently withdrawn at the
2 victim's request.

3 § -2 Hawaii sexual assault response team. (a) The
4 department shall establish a Hawaii sexual assault response team
5 that shall consist of members who are directly involved with the
6 use, management, and testing of sexual assault evidence
7 collection kits, or are involved with, communicate with, or
8 otherwise support sexual assault victims, including but not
9 limited to the respective police departments of each county,
10 accredited and approved DNA laboratories, the respective
11 prosecuting attorney departments of each county, and sexual
12 assault service providers.

13 (b) The Hawaii sexual assault response team shall:

14 (1) Develop and regularly update a protocol for all
15 medical forensic examinations in the State. The
16 medical forensic examination protocol shall be used by
17 all medical facilities, rape crisis centers, and any
18 other facilities that perform medical forensic
19 examinations;

20 (2) Develop and adopt a statewide standard data set,
21 including status and location information that all



counties shall include in their respective sexual
assault evidence collection kit tracking systems;

(3) Establish standard policies and procedures for any
facility that performs medical forensic examinations
and retains possession of sexual assault evidence
collection kits under this chapter. The policies and
procedures shall address proper preservation of kits,
recordkeeping requirements, and chain of custody
requirements; and

(4) Establish required disclosures that shall be made to
any person undergoing a medical forensic examination,
including but not limited to the length of time a kit
may be stored or retained, the point at which a kit
may be destroyed, and the person's ability to access
the status of their kit through the appropriate county
tracking system.

**§ -3 Annual statewide inventory and report of sexual
assault evidence collection kits.** Reports containing the
following information shall be submitted to the department on an
annual basis, in the manner directed by the department, by law
enforcement agencies, medical facilities, rape crisis centers,



1 DNA laboratories, and any other facilities in the State that
2 collect, receive, maintain, store, or preserve sexual assault
3 evidence collection kits:

4 (1) The total number of all kits containing forensic
5 samples;

6 (2) For each kit:

7 (A) The date of collection or receipt;

8 (B) Whether the kit's existence was reported to law
9 enforcement; and

10 (C) The status of the kit, with respect to its
11 handling by each of the following types of
12 entities:

13 (i) For facilities performing medical forensic
14 examinations, the date the kit was collected
15 by the facility and the date the facility
16 reported the collected kit's existence to a
17 law enforcement agency;

18 (ii) For law enforcement agencies, the date the
19 kit was retrieved by a law enforcement
20 agency from the facility that performed the
21 medical forensic examination, the date a law



1 enforcement agency sent a request for
2 testing to an accredited and approved DNA
3 laboratory, and the date a law enforcement
4 agency delivered the kit to the accredited
5 and approved DNA laboratory; provided that
6 for kits originating from another
7 jurisdiction, the information to be reported
8 shall include the date that a law
9 enforcement agency in Hawaii notified a law
10 enforcement agency in the other jurisdiction
11 and the date the kit was retrieved, on
12 behalf of the other jurisdiction, from the
13 facility that performed the medical forensic
14 examination; and

15 (iii) For accredited and approved DNA
16 laboratories, the date the kit was received
17 by the laboratory, the law enforcement
18 agency from which the kit was received, the
19 date a DNA analysis was performed on the
20 kit, the date any resulting information from
21 the kit was entered into the Combined DNA



1 Index System, and all reasons a kit was not
2 tested or a DNA profile was not created;

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

6 (4) The total number of kits destroyed and reason for
7 destruction of each.

8 The department shall compile the reported information into a
9 summary report. The summary report shall be made available to
10 the public on the department's website and shall be submitted to
11 the legislature annually no later than twenty days prior to the
12 convening of each regular session.

13 **§ -4 Unreported sexual assault evidence collection kits.**

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

16 (1) May request in writing that the unreported kit be held
17 by the facility that performed the medical forensic
18 examination; provided that if the victim does not so
19 request, then the appropriate law enforcement agency
20 shall take possession of the unreported kit pursuant
21 to section -5;



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

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

(b) Agencies, organizations, and other entities in possession of unreported sexual assault evidence collection kits shall store the kits for a duration of twenty years.

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

(b) A notified law enforcement agency shall:

(1) Take possession of the sexual assault evidence collection kit from the agency, organization, or other entity that collected the kit within three business days of receiving notification;



(2) Submit a written request for testing of the sexual assault evidence collection kit to an accredited and approved DNA laboratory within ten working days of taking possession of the kit, unless the suspected offender has been entered into the Combined DNA Index System database; and

(3) Deliver the kit to the laboratory for testing within seven days of acceptance by an accredited and approved DNA laboratory.

(c) An accredited and approved DNA laboratory shall:

(1) Notify a law enforcement agency that has submitted a written request for testing, within fourteen days of receiving the request, as to whether the laboratory accepts the request or instead recommends providing the sexual assault evidence collection kit to another laboratory for testing;

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



1 (3) Enter a DNA profile into the Combined DNA Index System
2 database; provided that the testing of a sexual
3 assault evidence collection kit resulted in a DNA
4 profile; provided further that:

5 (i) Prior to July 1, 2023, the average completion
6 rate for this analysis and classification shall
7 not exceed one hundred eighty days; and

8 (ii) On or after July 1, 2023, the average completion
9 rate for this analysis and classification shall
10 not exceed ninety days.

11 (d) For cases in which no judgment of conviction has been
12 entered, a law enforcement agency that is in possession of a
13 reported sexual assault evidence collection kit shall retain the
14 kit for a duration of fifty years, or until the expiration of
15 the period of limitation for any prosecutable offense under
16 section 701-108, whichever is longer. For cases in which a
17 judgment of conviction has been entered, a law enforcement
18 agency that is in possession of a reported sexual assault
19 evidence collection kit shall retain the kit pursuant to the
20 requirements of section 844D-126.



1 (e) A law enforcement agency's lack of compliance with any
2 of the time requirements of this section shall not:

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

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

7 (3) Provide a basis for a person who is accused or
8 convicted of committing a crime against a victim to
9 request that the person's case be dismissed or
10 conviction be set aside.

11 (f) This section shall not establish a private cause of
12 action or claim on the part of any individual, agency,
13 organization, or other entity against any law enforcement agency
14 or against any accredited and approved DNA laboratory.

15 (g) The requirements of this section concerning notice and
16 transfer of a sexual assault evidence collection kit to a law
17 enforcement agency, and a law enforcement agency's handling of
18 the kit, shall not apply to:

19 (1) Cases that are under the primary jurisdiction of law
20 enforcement agencies outside of the authority of the
21 State; or



(2) Cases in which jurisdiction may be asserted by more than one law enforcement agency; provided that all reasonable efforts shall be made to determine jurisdiction as soon as practicable; provided further that if primary jurisdiction is determined to belong to a law enforcement agency under the authority of the State, then notice and transfer of a sexual assault evidence collection kit to the law enforcement agency, and the law enforcement agency's handling of the kit shall be in accordance with the requirements of this section as of the date on which jurisdiction was established with respect to the kit's collection.

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

(1) Track the status of sexual assault evidence collection kits from the specimen collection site throughout the criminal justice process, including but not limited to the initial collection, inventory, and storage by law enforcement agencies or accredited and approved DNA



laboratories, analysis at accredited and approved DNA laboratories, and storage or destruction after completion of analysis;

(2) Allow all entities that collect, receive, maintain, store, or preserve sexual assault evidence collection kits to continuously update the status and location of the kits;

(3) Allow victims of sexual assault to anonymously access the system and receive secure updates regarding the location and status of their respective sexual assault evidence collection kits; and

(4) Use electronic technology that allows continuous access by victims, entities that collect sexual assault evidence collection kits, law enforcement agencies, and accredited and approved DNA laboratories.

(b) Law enforcement agencies may contract with public or private entities, including private software and technology providers, for the creation, operation, or maintenance of a tracking system.



(c) All agencies, organizations, and other entities in the chain of custody of sexual assault evidence collection kits shall participate in the tracking system by updating the status and location of kits, as appropriate.

§ -7 Victims' right to notification and other information. (a) A sexual assault victim has the right to receive a medical forensic examination, regardless of whether the victim chooses to report the assault to a law enforcement agency.

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

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

(d) In advance of or during a medical forensic examination or law enforcement agency interview, medical professionals, victim advocates, law enforcement officers, or prosecutors shall



1 provide a sexual assault victim with a physical document
2 developed by the Hawaii sexual assault response team that
3 identifies the victim's rights under this chapter, including:

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



1 victim's kit was collected, or previously withdrew the
2 report but later chooses to reinstate the report; and
3 (6) Information about the availability of crime victim
4 compensation and other services for victims of sexual
5 assault, as appropriate."

6 SECTION 3. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$135,000 or so much
8 thereof as may be necessary for fiscal year 2018-2019 for the
9 staffing, training, and travel expenses of the Hawaii sexual
10 assault response team.

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

13 SECTION 4. This Act shall take effect on July 1, 2035.
14



Report Title:

Sexual Assault; Evidence; DNA Testing; Hawaii Sexual Assault Response Team; Appropriation

Description:

Creates a Hawaii Sexual Assault Response Team 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 to the Attorney General on the status of sexual assault evidence collection kits and annual summary reports by the Attorney General to the legislature. Appropriates funds. Effective 7/1/2035. (SD1)

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