

ACT 113

H.B. NO. 2131

A Bill for an Act Relating to Sexual Assault.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that deoxyribonucleic acid (DNA) evidence is a powerful law enforcement tool that can identify unknown suspects, connect crimes to known perpetrators, and exonerate the innocent. The legislature further finds that establishing standard and efficient sexual assault evidence collection kit handling procedures and a statewide tracking system would ensure that victims of sexual assault receive accurate information that enables them to take steps to protect their rights, and prevent the misplacement of kits, delays in testing, and destruction of evidence.

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

The purpose of this Act is 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.

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

**“CHAPTER  
SEXUAL ASSAULT EVIDENCE COLLECTION KITS**

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

that: “Accredited and approved DNA laboratory” means a DNA laboratory

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

“Combined DNA Index System” means the FBI’s program of support for criminal justice DNA databases as well as the software used to run these databases.

“Department” means the department of the attorney general.

“DNA” means deoxyribonucleic acid.

“DNA analysis” refers to the following process:

- (1) The taking of DNA samples from evidence containing DNA from a known individual or DNA of unknown origin;
- (2) The isolation of DNA to develop DNA profiles; and
- (3) The determination of the DNA test results.

“Eligible” means in compliance with the FBI’s specific requirements for a state’s participation in the National DNA Index System, pursuant to the federal DNA Identification Act, title 34 U.S.C. section 12592(b).

“Law enforcement agency” means a county police department.

“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) The victim reported a sexual offense to a law enforcement agency; or
- (2) The victim reported a sexual offense to a law enforcement agency and a formal complaint was generated; the victim subsequently requested that the complaint be withdrawn; but the victim subsequently chose to reinstate the complaint.

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

“Status” refers to the location, date, and time that a sexual assault evidence collection kit is transferred within the chain of custody.

“Unreported sexual assault evidence collection kit” or “unreported kit” means a sexual assault evidence collection kit for a case in which:

- (1) The victim chose not to report a sexual offense to a law enforcement agency; or
- (2) The victim reported a sexual offense to a law enforcement agency and a formal complaint was generated; but the complaint was subsequently withdrawn at the victim’s request.

**§ -2 Hawaii sexual assault response and training program.** (a) The department shall establish a Hawaii sexual assault response and training program that shall consist of members who are directly involved with the use, management, and testing of sexual assault evidence collection kits, or are involved with, communicate with, or otherwise support sexual assault victims, including but not limited to the respective police departments of each county, the state or county Combined DNA Index System administrator, the respective prosecuting attorney departments of each county, and sexual assault service providers.

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

- (1) Specific guidelines for all medical forensic examinations in the State that shall be issued to all sex assault programs and centers, county

contractors, and any other facilities that perform medical forensic examinations;

- (2) A protocol for the collection of forensic evidence included within a sexual assault evidence collection kit;
- (3) A statewide standard data set, including status and location information that all counties shall include in their respective sexual assault evidence collection kit tracking systems;
- (4) Policies and procedures for sex assault programs and centers, county contractors, and any other facilities that retain sexual assault evidence collection kits under this chapter regarding proper preservation, transfer, tracking, and disposal of kits; and
- (5) Appropriate language for 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 disposed, 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.** The department shall prepare and submit an annual report to the president of the senate and speaker of the house of representatives no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2019, detailing for the prior fiscal year:

- (1) The number of sexual assault evidence collection kits collected in each county;
- (2) The number of reported sexual assault evidence collection kits collected in each county;
- (3) The number of unreported sexual assault evidence collection kits collected in each county;
- (4) The number of reported sexual assault evidence collection kits that were submitted to an accredited and approved DNA laboratory for analysis;
- (5) Of the reported sexual assault evidence collection kits submitted to an accredited and approved DNA laboratory for analysis, the number for which analysis has been completed;
- (6) The number of reported sexual assault evidence collection kits that were not submitted to an accredited and approved DNA laboratory for analysis;
- (7) The number of sexual assault evidence collection kits disposed of in each county, pursuant to section -4;
- (8) The number of sexual assault evidence collection kits disposed of in each county, for reasons not provided in section -4, and the reason for disposal;
- (9) All reasons any kit was in an entity's possession for longer than the periods allowed under section -5; and
- (10) The number of new prosecutions initiated as a result of an actionable Combined DNA Index System hit on sexual assault evidence collection kits collected prior to July 1, 2016.

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

**§ -4 Unreported sexual assault evidence collection kits.** (a) A victim who chooses not to file a police report at the time of undergoing a medical forensic examination:

- (1) May request in writing that the unreported kit be held by the sexual assault program or center in that county; provided that if the victim does not so request, then the appropriate law enforcement agency shall take possession of the unreported kit pursuant 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 of the date the victim's kit will be disposed of, in writing, at the time of the examination.
- (b) Agencies, organizations, and other entities in possession of unreported sexual assault evidence collection kits shall store the kits for at least six years if the victim was eighteen years of age or older at the time of incident, and at least twenty years if the victim was under eighteen years of age at the time of incident.

**§ -5 Mandatory submission and testing requirements for sexual assault evidence collection kits.** (a) An agency, program, center, 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, program, center, or other entity that collected the kit within three business days of receiving notification, if it is either a reported sexual assault evidence collection kit or an unreported sexual assault evidence collection kit that the victim has not requested to be held by the sexual assault program or center in that county;
  - (2) Submit a written request for testing of the reported sexual assault evidence collection kit to an accredited and approved DNA laboratory within fifteen business days of taking possession of the kit; and
  - (3) Within ten business days of acceptance for testing by an accredited and approved DNA laboratory, submit the kit to the laboratory for testing.
- (c) An accredited and approved DNA laboratory in the State 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 reported sexual assault evidence collection kit to another laboratory for testing; and
  - (2) Pursue DNA analysis of a sexual assault evidence collection kit that was accepted from a law enforcement agency to develop DNA profiles that are eligible for entry into the Combined DNA Index System.
- (d) The state Combined DNA Index System administrator or their designee shall enter a DNA profile into the Combined DNA Index System database pursuant to section 844D-2; provided that the testing of a sexual assault evidence collection kit resulted in an eligible DNA profile; provided further that:
  - (1) Prior to July 1, 2023, the average completion rate for the analysis and classification required by this section shall not exceed one hundred eighty days; and
  - (2) On or after July 1, 2023, the average completion rate for the analysis and classification required by this section shall not exceed ninety days.

(e) For cases in which no judgment of conviction has been entered, and there has been no acquittal or final dismissal, a law enforcement agency that is in possession of a reported sexual assault evidence collection kit shall retain the kit for fifty years or until the expiration of the period of limitation for any prosecutable offense under section 701-108, whichever is longer. For cases in which a judgment of conviction has been entered, a law enforcement agency that is in possession of a reported sexual assault evidence collection kit shall retain the kit pursuant to the requirements of section 844D-126.

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

- (1) Constitute grounds on which to challenge the validity of DNA evidence in any criminal or civil proceeding;
- (2) Justify a court to exclude any evidence generated from a sexual assault evidence collection kit; or
- (3) Provide a basis for a person who is accused or convicted of committing a crime against a victim to request that the person's case be dismissed or conviction be set aside.

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

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

- (1) Cases that are under the primary jurisdiction of agencies outside of the authority of the State; or
- (2) Cases in which jurisdiction may be asserted by more than one 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 an electronic 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 to final storage or disposal, 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 disposal after completion of analysis;
- (2) Allow all entities, approved by the department, that collect, receive, maintain, store, or preserve sexual assault evidence collection kits to update the status and location of the kits; and
- (3) Allow victims of sexual assault to access the system for the location and status of their respective sexual assault evidence collection kits.

(b) All agencies, organizations, and other entities approved by the department and 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. The department shall have access to all tracking systems statewide, at all times.

**§ -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 provide a sexual assault victim with a physical document developed by the Hawaii sexual assault response and training program that identifies the victim's rights under this chapter, including:

- (1) Support from, and consultation with, a crisis worker at the time that a sexual assault evidence collection kit is collected; provided that sufficient funding is available;
- (2) Information about the current location, analysis date and status, and estimated disposal date of the victim's sexual assault evidence collection kit;
- (3) Notification when there is any major development, as defined in section 801D-2, in a case that the victim reported to a law enforcement agency, including whether the case has been closed or reopened;
- (4) Designation of a person of the victim's choosing to act as a recipient of the information provided under this subsection;
- (5) Information on how to report an offense to a law enforcement agency and how to request that the victim's sexual assault evidence collection kit be analyzed in the future; provided that the victim either chose not to report the offense at the time the victim's kit was collected, or previously withdrew the report but later chose to reinstate the report; and
- (6) Information about the availability of crime victim compensation and other services for victims of sexual assault, as appropriate."

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

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

- (a) All assessments and penalties ordered pursuant to subsection (1);
- (b) All other moneys received by the fund from any other source; and
- (c) Interest earned on any moneys in the fund.

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

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

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

**SECTION 5.** New statutory material is underscored.

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

(Approved July 5, 2018.)